

# NAVAJO NATION DEPARTMENT OF JUSTICE

**QUARTER 4**  
<JULY TO SEPTEMBER 2020>

Attorney General: Doreen N. McPaul

## **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 4th 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 reviewed Executive Orders. DOJ continues to staff a Donations Section under the Logistics Branch of the Health Command Operations Center and as part of Humanitarian Aid under the Department of Emergency Management. As of September 18, 2020, DOJ's work to facilitate the contribution of monetary and property donations to the Nation has resulted in over \$8.5 million dollars in monetary donations to the Nation as well as substantial donations of non-monetary items including food, medical supplies, fabric face masks, hand sanitizer, cleaning supplies, and other needed goods. OAG has also participated in online Town Hall meetings, congressional update calls, and numerous other virtual meetings with leadership and the Health Command Center.

This quarter, litigation continued 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 appealed this decision to the D.C. Circuit. On September 25, 2020, the Court of Appeals determined that the ANCs are not "tribal governments" under the CARES Act and not eligible for CARES Act funds. Approximately \$500 million dollars in CARES funds remain to be distributed to tribal governments, including the Nation. As of October 2, it is unknown how the remaining funding will be disbursed.

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On June 11, 2020, DOJ filed a lawsuit in the District Court of the Navajo Nation, Judicial District of Shiprock, New Mexico, against Dineh Benally, Native American Agriculture Company, and Navajo Gold Company, alleging that these Defendants were illegally growing, producing, manufacturing, transporting, licensing, and selling industrial hemp within the exterior boundaries of the Navajo Nation. On September 10, 2020, the Shiprock District Court denied a motion by Defendant Dineh Benally that the Navajo Nation’s lawsuit against him and his companies should be dismissed. The Navajo Nation also filed a motion for a temporary restraining order and a request for a preliminary injunction to stop Benally’s hemp operation. On September 18, after more than a day of testimony from several witnesses, the Court granted the Nation’s Motion for temporary restraining order and preliminary injunction. DOJ is coordinating with the Nation’s public safety partners to ensure illegal hemp activities cease pursuant to the Shiprock District Court’s Order. A decision on the merits of the complaint remains pending before the Court, and in the meantime, DOJ has filed for default judgment based on Mr. Benally’s failure to file an Answer to the Complaint. There was also a separate forcible entry and detainer action against Mr. Benally regarding an RV Park where Mr. Benally is engaged in illegal hemp cultivation activities. More details on that action can be found herein under the Economic and Community Development Unit’s section of this report.

DOJ also joined a lawsuit on September 1, 2020 in the United States District Court for the Northern District of California against the U.S. Census Bureau and the Department of Commerce based on the adoption of an illegally expedited plan, the “Rush Plan,” for conducting the 2020 census. The Navajo Nation joined the lawsuit as a plaintiff alongside a number of nonprofits, city and county governments. The Navajo Nation and other plaintiffs contend that federal defendants illegally curtailed time to complete the 2020 census, which threatens to cause significant undercount of minority populations, including members of the Navajo Nation. The judge issued a TRO on September 5 to require the Census Bureau to keep their offices open and continue to collect data until the preliminary injunction hearing. The federal government’s implementation of the Rush Plan is especially detrimental in the midst of the COVID-19 pandemic, which has severely impacted the Navajo Nation. The pandemic has disrupted Census operations across the United States. As of October 7, 2020, the Ninth Circuit ruled that Census collection must continue until October 31, 2020. The federal defendants sought a writ from the U.S. Supreme Court, which was granted on October 13. The Supreme Court’s ruling that the Census Bureau is able to cease data collection at any time and our information as of October 14 is that the Census activities will cease on October 15.

On September 14, 2020, the Hopi Tribe claims for future uses trial (as part of claims associated with the Little Colorado River Adjudication) began with opening statements by the participating parties including the Navajo Nation, Hopi Tribe, the United States as trustee and others. The trial is anticipated to run from September 14, 2020 through January 28, 2021. The Nation’s claims in the LCR Adjudication are anticipated to be tried beginning in September of 2022.

On August 17, DOJ welcomed support staff back to DOJ offices. Most DOJ prosecutors, advocates, and attorneys continue to work from home as they did during the 5-month closure of the Navajo Nation government. DOJ is proud to report that there has not been any disruption of work

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throughout the COVID-19 pandemic, and DOJ has continued to provide high quality legal services to the Navajo Nation government throughout the pandemic and the closure of government offices.

Notwithstanding the COVID-19 pandemic, during this quarter, DOJ hired 3 staff members, all of whom are Navajo: 1) an Attorney Candidate who is working in the Chapter Unit; 2) a Senior Attorney working for the Litigation Unit and OAG; and 3) a Senior Programmer Analyst who joins DOJ on October 12. This quarter, Assistant Attorney General (AAG) Jana Werner retired and OAG promoted Principal Attorney Mel Rodis to serve as the AAG for the Tax & Finance Unit (TFU). Also, an HSGU Attorney Candidate transferred to the Office of the Prosecutor this quarter. Finally, OAG interviewed and offered an attorney position to a Navajo applicant this quarter who will start next quarter.

The current vacancies in DOJ include:

- Assistant Attorney General (WRU) – Position vacated on 8/5/19 and is being filled by promotion of a Senior Attorney (Navajo) effective Oct. 26. This will result in a Senior Attorney vacancy for LU next quarter, which we will advertise.
- Senior Attorney (HSGU) – Position vacated when incumbent was promoted on 5/20/20; position is being advertised.
- Principal Attorney (TFU) – Position vacated when incumbent was promoted on 7/31/20; position is being advertised.

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

**A. Office of the Prosecutor**

The Office of the Prosecutor (OTP) manages and oversees the initiation and resolution of adult criminal and juvenile delinquency cases, white collar crime/government corruption cases, child dependency cases, and child in need of supervision (ChNS) matters for the thirteen Judicial Districts across the Navajo Nation. This includes working closely with other law enforcement agencies, the Department of Family Services (DFS) and Ramah Navajo Social Services, federal and state agencies and programs and others to ensure the successful investigation and prosecution of alleged violations of the Navajo Nation criminal law and for successful adjudication of cases involving our children. The OTP also has the statutory authority to intervene or bring civil matters on behalf of the Navajo Nation, including exclusion proceedings and petitions for involuntary assessment/treatment. The OTP also presents civil traffic citations, animal control ordinance citations, civil fish and wildlife violations, and some election and EPA violations. We continue to assert that we are the most cohesive, comprehensive, creative, enthusiastic and competent prosecutorial team in Indian Country, if not the entire United States, and that we'll remain under-resourced and unacknowledged.

**DIKOS NTSAAÍGÍÍ**

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The OTP remained fully operational – within the limitations of our criminal justice partners – throughout the government closure. All but a handful of our support team members worked remotely during the closure, many districts sharing workloads and covering for team members who were unable to work. On August 17, 2020 our entire team resumed full-time work. This quarter has proven again 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-19. Therefore, some of our team members continue to work remotely, some split their time between remote and in-office work, and others are working full-time out of our offices. As individual circumstances or the needs of a particular district change, the OTP team also adapts to those new needs.

Court hearings, meetings with law enforcement partners and defense counsel continue to be conducted by phone and video. Several of our offices need physical improvements (plexiglass installations and other physical lobby barriers; non-load-bearing walls to create office and conference room spaces) and OTP, like many other offices, need a reliable and consistent source of disinfectants and other cleaning supplies to maintain safety. We remain unwilling to reopen our offices to the public, even though many of our team members have returned to the worksites, without those safety measures in place. Signs on all doors indicate that the buildings are closed to the public, and invite anyone who needs assistance to call the office to make arrangements for meetings. We also have secondary contact information for every district, and to our knowledge there have been no complaints about individuals/programs unable to reach any of our team at any time.

The OTP received 279 complaints regarding Public Health Emergency Order enforcement from our Police Departments this quarter.

**STAFFING, ADMINISTRATION, AND DISTRICT OFFICES**

**Staffing:**

New Team Members:

- Crownpoint – P/N 244220 Reclassified to Attorney Candidate from Prosecutor; Michael Platero transferred from DOJ 09/28/2020
- Kayenta – P/N 244395 Records Clerk; hired Ericka Joe 08/31/20
- Shiprock – P/N 202201 Senior Legal Secretary; hired Calvin Smith on 09/28/20
- Window Rock – P/N 244397 Records Clerk; hired Pamela T. Carl on 09/28/20

Chinle:

- HIRING Victim & Witness Advocate, P/N 244592 (OVC grant) – interviews conducted with qualified candidates in September; one candidate invited to do OBI check

Crownpoint:

- HIRING Victim & Witness Advocate, P/N 244593 (OVC grant) – interviews conducted with qualified candidates; one candidate invited to do OBI check
- HIRING Legal Secretary, P/N 244396 – interviews conducted with qualified candidates; one candidate invited to do OBI check

Dilkon:

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- VACANT Victim & Witness Advocate, P/N 244594 (OVC grant) – This position has not been advertised again, as currently there is not office space in Dilkon; going to change worksite for this position due to ongoing office-space issue
- VACANT Legal Secretary, P/N 244396 – Reclassified from Senior Legal Secretary this quarter; advertised once with no qualified applicants; re-advertised; 2 applications pending qualification assessments

**Dzil Yijiin:**

- VACANT Prosecutor, P/N 244602 – JVA closed 9/17/20; application pending qualification assessment

**Kayenta:**

- VACANT Prosecutor, P/N 244513 (TIWAHE grant) – JVA has been advertised numerous times with no applicants; currently advertised OUF
- VACANT Victim & Witness Advocate, P/N 244595 (OVC grant) – interviews conducted in September; no candidate selected; will re-advertise

**Shiprock:**

- HIRING Prosecutor, P/N 204739 – interviews conducted in September; one candidate invited to do OBI check
- CLASSIFICATION Victim & Witness Advocate, P/N XXXXXX – Awaiting grant approval
- HIRING Legal Secretary, P/N 297954 – interviews conducted in August; one candidate invited to do OBI check

**To'hajiilee:**

- HIRING Victim & Witness Advocate, P/N 244596 (OVC grant) – interviews conducted in September; one candidate invited to do OBI check

**Tuba City:**

- VACANT Prosecutor, P/N 291150 – JVA has been advertised numerous times with no qualified applicants; currently advertised OUF
- CLASSIFICATION Victim & Witness Advocate, P/N XXXXXX (OVC grant) – Awaiting grant approval

**White Collar Crime Unit:**

- HIRING Prosecutor, P/N 202268 – reclassified from JPO; advertised; one qualified application received and interview scheduled
- HIRING Investigator, P/N 204738 – applicant selected for OBI check; pending FY2021 budget

**Office of the Chief Prosecutor:**

- VACANT Chief Prosecutor, P/N 297943; advertised as OUF

**Program Challenges:** The programmatic challenges highlighted this quarter are Covid-19, the government closures, not receiving CARES Act funding, and the end of the fiscal year (and the FY21 budget “process”), which combined to create the perfect storm out of most everyone’s control. The OTP is profoundly frustrated at not having received an allocation of the CARES Act funding: the proposed budgets for that funding were relied upon to purchase important equipment that would allow for smoother telecommuting and to rehabilitate some of the OTP offices to create safe working environments. As it is, the OTP has a limited and insufficient number of MIFI adapters that enable some of our team members to have consistent internet access to work at home, and we have cannibalized our district offices of almost all of the existing old computer equipment. The OTP spent considerable time and effort compiling smart and efficient IT packages for different positions and for each district office, as well as planning to use consultants to analyse our physical building needs going into the future so that the OTP could continue to serve our communities. As it became clear that CARES funding would not be forthcoming to the OTP, and in anticipation of reopening our offices at least to our own team members, we committed to spend a significant portion of our remaining general funds on disinfectants, sanitizers, and other PPEs and supplies. When regular vendors did not have any stock of these items, the OTP identified new vendors who provided quotes and set aside stock in anticipation

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of obtaining a purchase order. Following the Procurement Act, the OTP sought and obtained the required written determination to allow for emergency procurement pursuant to the Procurement Act and BFD-192-03. Starting in July, and to date, the OTP was unable to make those purchases – using our already allocated funding – because the “new vendor” was not inputted into FMIS by OOC, and we continued not to receive a response to our numerous inquiries.

**Technology/JustWare:** The looming technology issue remains JustWare, and what platform the OTP (and our partners, especially the Judicial Branch) will move to in 2021. The OTP has been working with other justice partners receiving system demonstrations from various providers, but the direction forward remains unclear. 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’s likely that our JustWare data would be portable to eCourt and eProsecutor, as both are produced by the same parent technology company as JustWare. However, after years of the Judicial Branch hindering the spirit of true information sharing by holding JustWare hostage and within its sole control, the OTP is frankly wary of continuing down a road that allows that situation again, especially if there are other options available to the OTP.

Dikos Ntsaaígíí-19 will hopefully make something very clear to other programs (it has always been clear to the OTP): it’s the end of 2020 and we must make use of technology. The way that our courts and other programs have been functioning is inefficient and detrimental to the Navajo People. The OTP hopes that as programs are required to use more technology than they are accustomed to due to 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 for the sake of habitual thinking. Unfortunately, as noted above regarding budgeting and funds, increased technology costs money, which is not a luxury that the OTP or other programs tend to have.

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

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

Eveline Curley-Sandoval, Senior Programs & Projects Specialist and Cindy Roanhorse, Administrative Legal Secretary: Ms. Curley-Sandoval spent significant time this quarter compiling proposed CARES Act budgets for the OTP which were subsequently neither considered nor addressed, and also keeping in contact with applicants for various positions throughout the government closure. Eveline was busy with the condensed and hectic FY21 budget process, as well as with processing new hire documentation and PAFs following the reopening. Ms. Roanhorse was recently promoted from Senior Legal Secretary to Administrative Legal Secretary as a part of a reclassification and restructure within the OTP. Since returning to the office on August 17, 2020, Ms. Roanhorse has risen to the new responsibilities of her position and has become our true hub at OCP. Cindy processes most of the paperwork at the OTP and distributes documents to the right district offices, fields all OCP phone calls, completes master timesheets,

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requisitions supplies and other items through FMIS, follows up on all pending matters at OMB and DPM, facilitates the ongoing work orders to facilities maintenance for our buildings, and all the other daily matters to keep the OTP afloat.

Kyle King, Senior Network Specialist

Mr. King has provided remote and on-site IT assistance for the OTP and DOJ staff, primarily including installation, configuration, setup and troubleshooting for JustWare, Email Exchange, Skype for Business, Sonic Wall NetExtender, Sharepoint and MIFI wireless hotspots. Kyle also provides hardware and software support and new equipment setup for all new hires throughout the OTP districts. Kyle travelled to Chinle to set up the internet for the “old trailer,” into which the OTP teams for Chinle and Dził Yijiin moved after deciding that the district office in the “new” judicial complex remains unsafe. Kyle also travelled to Shiprock and Kayenta to assist with NUTA fiber and new radio (internet) set up and peripheral setup. Mr. King continues to attend TAP, Open Fox Messenger, JTI eSeries demos, JWIn Training, Cyber Team, DIT and OTP webinars and conference calls.

Erica Christie, Administrative Services Officer

Ms. Christie oversees and administers both of OTP’s external grants: USDOJ OVC set-aside (victim advocate program) and BIA TIWAHE (juvenile justice). Erica completed narrative reporting in GMS for the OVC grant, and also completed all the PMT required information. Equipment for the new victim advocates has been requisitioned and approved through FMIS; Ms. Christie is following up on the pending GSA contract. Ms. Christie also prepared all budgets and other documentation for the new year’s funds for both of the external grants, working closely with OMB and DPM. Erica drafted and submitted PCQs to DPM to reclassify two positions within the OVC grant. Ms. Christie and Ms. Henry participate in regular conference calls with grant administrators, Unified Solutions and the OVC Tribal Financial Management Center.

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 continues to participate in projects with other programs/entities. Ms. Henry has been tapped by several Delegates and the Office of Legislative Counsel to assist in legislative drafting for Title 17 amendments, including VAFA amendments, a change in the criminal definition of marijuana, researching potential new exclusionary provisions, and amendments to further enforce the DOH Public Health Emergency Orders. Other ongoing projects include exploring Child Advocacy Centers, developing and implementing the OTP Victim Advocate program, and coordinating Alternate Care/Isolation/Quarantine sites in conjunction with the DOH and NPD. Jenn has also enjoyed a tighter-knit working relationship with LaTonia Johnson (DOJ/HSGU) as HSGU has worked through ICWA transfer petitions, a difficult dependency case (seeking outside counsel in Pennsylvania), and additional ICWA and Title IV-E training through Casey Family Foundation, and other joint projects.

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 answers this phone 24/7; the calls are increasing in number and variety, and although the OTP is not authorized to handle most of the civil issues, it seems it has become the hub to at least reach a human being and be guided in the appropriate direction. Jenn also continues to teach at the Navajo Police Training Academy, Class 55.

**White Collar Crime Unit:**



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The WCCU consists of Frank Brown, Senior Investigator; Brandon Bitsuie, Attorney; and Joni Pino-Begay, Office Specialist. The WCCU has been busy since the government re-opening in August. Ms. Pino-Begay was one of several team members who met the call of duty during the office closures, performing many legal secretary duties for the Window Rock District in uploading new incident reports and ensuring that documents got to the appropriate prosecutors. This unanticipated cross-training highlights the importance of OTP's restructure: it really is true that all of the support staff are essentially performing the same duties, despite the disparate positions, titles and pay grades.

The WCCU received and opened nine new cases for investigation this quarter. Cases in twenty-seven chapters are under investigation by the WCCU, with a total of 59 open investigations. The WCCU issued subpoenas regarding its investigation into the hemp cultivation activities in the Shiprock area, and subsequently filed petitions to enforce those subpoenas in the Shiprock District Court.

Mr. Brown travelled to Tucson this quarter to conduct interviews and other special investigations-related matters. The WCCU anticipates hiring another investigator, although the continuing resolution calls the hiring of the qualified candidate into question. Similarly, in terms of bolstering the WCCU, a qualified candidate is scheduled for interviews to fill a newly classified prosecutor position within the unit.

The WCCU notes ongoing flaws in financial responsibility regarding the contract authority given to school boards like Alamo and Ramah, including a loophole within the statutory language of the Nation's purchasing and procurement laws. There is little oversight by the Nation over these organizations, and school boards allegedly frequently use unrestricted grant funds to pay for questionable or disallowed expenses. The WCCU believes that school board officials and administrators move funds from unrestricted accounts even when those funds have been encumbered for other purposes. The WCCU has repeatedly recommended that statutes be amended to prevent and/or deter continued circumvention of the Nation's procurement and purchasing laws.

**Alamo and To'hajiilee Districts:**

The district team includes Marguerite Charley, Senior Legal Secretary; and Cathy Begay, Senior Prosecutor. Marguerite continued to provide remote support for the Shiprock district office, as well as for Alamo and To'hajiilee. She is now assisting with training the new Senior Legal Secretary in Shiprock. Ms. Charley and Ms. Begay continue to work remotely, as a number of non-OTP individuals with office keys were entering and using the district office during the official closure. A few weeks ago the office was re-keyed to prohibit non-OTP use, and we are discussing whether and to what extent Cathy and Marguerite will resume in-office work.

These districts were incredibly slow this quarter, with no adult or juvenile referrals in Alamo, and only 11 adult reports and 2 juvenile referrals in To'hajiilee. It is unclear how to interpret this, except to wonder if it remains the lack of police presence in these districts, which has been reported regularly throughout the year.

**Chinle & Dzil Yijiin Districts:**

The Chinle district consists of Shirley Bedonie, Senior Legal Secretary; Garveda Harrison, Records Clerk. The Dzil Yijiin district consists of Althea Bezahaloni, Senior Legal Secretary, who transferred from our Dilkon District office this quarter. Tyson Yazzie, Senior Prosecutor, and Ruby Benally, TIWAHE prosecutor, comprise the legal team for both Chinle and Dzil Yijiin.

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Mr. Yazzie coordinated with Probation/Parole Services and the Department of Behavioral and Mental Health Services to secure temporary jail releases for seven defendants so that they could participate in residential treatment in Phoenix, Arizona. One defendant, who had been serving a jail sentence in the Navajo Nation since 2016 after being convicted for a double homicide, was transferred to federal custody on a detainer and is now serving a 30+ year sentence.

**Crownpoint and Pueblo Pintado Districts:**

The district team consists of Vernon Jackson, Prosecutor; Ryan Sandoval, Prosecutor (TIWAHE prosecutor); Michael Platero, Attorney Candidate; and Tamara Begay, Senior Legal Secretary. Michael Platero, who transferred from DOJ to OTP is a welcome addition to the team in this very busy district. Tamara provided remote support for the Shiprock district office, as well as for Crownpoint and Pueblo Pintado, and will be travelling to Shiprock to continue training the new Senior Legal Secretary in Shiprock. Mr. Sandoval was scheduled to take the August 2020 NNBA exam, but opted out of doing so due to health concerns regarding Covid-19. Ryan will take the next-scheduled NNBA exam, and in the meantime continues to work with the other district team members and gains expertise in the juvenile justice cases so that he will hit the ground running once he becomes licensed to practice law.

There were three significant issues in Crownpoint this quarter, including a prolonged federal detainer during which defense counsel sought to certify a question to the Navajo Supreme Court regarding whether detainees comply with Áłchíní Bi Beehaz'áanii. Following four hearings, the Crownpoint District Court denied Defendant's request to certify the question, and ultimately ordered Defendant's transfer to federal custody. A second interesting case involved the homicide of a Navajo individual by a Navajo defendant, committed in Gallup, New Mexico. The defendant fled into the Navajo Nation, where he was arrested by NPD for possession of liquor. Mr. Jackson charged the defendant with homicide pursuant to 17 N.N.C. 203(B) and moved to deny bail. Four days later, New Mexico charged the defendant with Voluntary Manslaughter and sought extradition from the Navajo Nation. This led to internal discussions about double jeopardy and which jurisdiction had more interest in prosecuting the offense. The third significant issue that arose was the Court's declination to hear an 8-year old's testimony against a defendant at a bail hearing, holding that she could be traumatized by doing so. The Court also declined to admit any evidence of the alleged facts contained in the criminal charges in order to determine whether to deny bail; the result was that the defendant was granted pre-trial release absent testimonial evidence that he poses a danger to others if released.

**Dilkon District:**

The district consists of Brenna Hanley, Prosecutor. This quarter Althea Bezaaloni, Senior Legal Secretary, transferred to Dzil Yijiin as she was previously commuting 1.5 hours each way to work, and the new worksite is only 40 minutes from her residence. Brenna and Jenn transported and set up Ms. Bezaaloni's computer equipment and other work property in Chinle prior to the office reopening, so that Althea could have her new space ready beginning August 17<sup>th</sup>. The Senior Legal Secretary position was reclassified to a Legal Secretary position and advertised, but no qualified applicants were received. We received information that several qualified individuals did not apply due to the low salary.

The OTP continues to experience space issues in Dilkon, and remains without an office location. Ms. Hanley is working from home, and Shirley Bedonie, Senior Legal Secretary in Chinle, has travelled to Dilkon to assist Brenna in reorganizing and updating all of the district's files and systems.

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Dilkon Judicial District is reportedly not hearing any non-emergency cases until Spring 2021; the only hearings being scheduled are emergency and/or children's cases. Arizona requested an extradition for a Navajo individual believed to be located in the Dilkon area, and OTP requested and received an Extradition Warrant from the President. Shortly thereafter, the individual was arrested in Phoenix and we requested that the Extradition Warrant be quashed. This extradition included excellent communication between the FBI, Arizona and the OTP, and the issue of how to quash an extradition warrant was a case of first impression for the OTP, with some good lessons learned.

**Kayenta District:**

The office consists of Megan Horning, Attorney; Charmaine James, Prosecutor; Chandra Kinlacheeny, Legal Secretary; and Ericka Joe, Records Clerk. Ms. James took the NNBA exam in August.

Megan continued to coordinate bar study activities for Ms. James and Ms. Dam-Noble (Shiprock) throughout the quarter, including curriculum development, reading lists and a regular study group. Megan is also interested in pursuing a Special Assistant United States Attorney (SAUSA) position, and with Jenn's support will be exploring that option either in New Mexico, Arizona or Utah.

Ms. Horning filed another Health Commitment Act petition, and coordinated with HIS, Regional Behavioral Health Authority, and the Department of Corrections to admit the individual to Level 1 psychiatric care at the Arizona State Hospital for the necessary treatment. The Navajo court order was domesticated in Navajo County to effectuate the admission to the state facility. Ms. Horning also participated in a telephonic bench trial for a violence against family member offense in which the defendant was convicted and subsequently sentenced; despite a long history of domestic violence this is Defendant's first conviction, and the victim is relieved and grateful.

**Ramah District:**

The district team consists of Jennifer Henry, Attorney; and Sylvia Kelsey, Senior Legal Secretary.

Ms. Kelsey was unable to work remotely during the government closure, and returned to work full-time on August 17<sup>th</sup>. Since August 17<sup>th</sup>, Ms. Kelsey has been busy organizing the piles of incident reports and electronically-filed documents that Jenn created while valiantly (but futilely) trying to manage the Ramah district by herself for six months. The Ramah office is now caught up, and Sylvia's consistent prodding will force Ms. Henry to work through the backlog this quarter.

Ms. Henry focused on the public health emergency enforcement complaints this quarter, as unlike other districts, the Ramah Navajo Police Department issues Agreements for Release on Personal Recognizance instead of citations, all with regular monthly court hearing dates. Likewise, Ms. Henry also prioritized the violent crimes and Violence Against Family Act charges for filing, especially those that required additional motions to deny bail in order to promote public safety. Many of the more "petty" offenses will be followed up with and charged in the next quarter and as courts slowly become more fully staffed, so as not to overwhelm the court staff, who are not working full time.

**Shiprock and Aneth Districts:**

The district team consists of a Karen Bernally, Attorney and Davena Sam-Noble, Prosecutor (TIWAHE prosecutor). Ms. Sam-Noble took the

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NNBA exam in August, and continued to participate in Ms. Horning's bar study activities until the exam. There was no dedicated support team for Shiprock/Aneth, and Tamara (Crownpoint) and Marguerite (To'hajiilee/Alamo) have worked hard to provide remote support; without them this office would not be functional. Calvin Smith, Shiprock's new Senior Legal Secretary, began work on September 28, 2020 and is a great addition to the team. Jenn travelled to Shiprock to assist in some in-person training, Tamara will be travelling in-person for additional training, and other OTP team members are providing remote training to Ms. Smith. Interviews were held for the Legal Secretary and Prosecutor positions in August and September, and candidates have been invited for OBI check for both positions. We look forward to fully staffing this very busy office in the near future.

Jenn hauled away 19 boxes of old files, where they are currently in Ramah pending shredding. Jenn, Karen and Calvin will arrange for the remaining boxes of files to also be removed from the Shiprock Office so that there is more room for the growing team. This is a long-promised project that is finally getting done, with Ramah becoming the central shredding/storage location so that the eyesore does not sit at OCP in public view. Thank you to the OAG for donating an old large shredder to the OTP.

Following the Shiprock District Court's preliminary injunction/temporary restraining order against Mr. Benally for the hemp activities in the area, the office has been busy with enforcement actions. Ms. Bernally has filed numerous Interference with Judicial Proceedings charges against both Navajo and non-Navajo individuals, and also sought and obtained a search warrant in conjunction with an enforcement proceeding.

**Tuba City District:**

The district team consists of Marie James, Prosecutor; Philandra Adson, Senior Legal Secretary; and Jerriellane Edwards, Records Clerk.

The Tuba City Department of Family Services has been very busy with referrals to the OTP. One of the CPS workers resigned this quarter, leaving cases to be picked up by the other two caseworkers. Six new dependency petitions were filed this quarter, with another two reported but not referred to the OTP for action. One reported matter involved a Hopi member giving birth in Tuba City, allegedly with methamphetamine in her system, and Hopi officials declining to take custody of the new born. A second reported matter involves a Navajo member giving her child to a Phoenix adoption agency for adoption in violation of our Áłchíńí Bi Beehaz'áanii and the Indian Child Welfare Act. Ms. Henry has been in contact with LaTonia Johnson regarding this matter, and has recommended that it be referred to the OTP as a Dependency case.

Two concerning issues with Tuba City OTP partners include very few police reports being forwarded to the district this quarter, and also that the Court is not docketing or issuing summonses for the complaints that have been filed. If the issue with the Court remains ongoing, the OTP will address it outright and may need to file a writ in the Supreme Court to compel the cases be docketed and that summons be issued, although that would be a last resort if continued efforts to communicate with the Court fail.

**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, Records Clerk.

Window Rock is a hectic district office, with the largest team. Since August 17<sup>th</sup>, three team members are working from the office, with the others

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working from home with occasional short trips to the office. This arrangement is deemed to be the safest for everyone and is working well. Brandon continues to juggle both district work and White Collar Crime Work, along with his supervisory responsibilities in the district. Brandon is also a SAUSA in Arizona, although his initial training was postponed due to the Covid-19 outbreak and will be rescheduled. Mr. Bitsue successfully assisted some respondents into treatment at the Kayenta Infinity Group Home, which is a new resource for the OTP. Brandon also filed a homicide charge this quarter, but the defendant was released after the Court denied the motion to deny bail based on the defendant's criminal history. Similar to Crownpoint, defendants are frequently released on their own recognizance following violent and dangerous charges, due to the OTP's inability to use prior convictions or facts of the underlying charge. The OTP fully understands the concept of "innocent until proven guilty," but the Judicial Branch's interpretation of 17 N.N.C. 1812 in *Seaton v. Greyeyes* (Nav. Sup. Ct. 2006) causes, in the OTP's opinion, serious public safety concerns for victims and community members regarding pre-trial release.

Ella and Jane work ever-diligently, heads down and without complaint, and continue to review incident reports, file criminal complaints and negotiate plea agreements. There is a pending bench trial in the Window Rock District Court, which will be Window Rock's first telephonic trial. Although there are numerous witnesses and evidence handling would be complicated, the telephonic trial in the Kayenta District Court this quarter proves that it can be done, and that in fact the OTP must acclimate to the "new normal" as much as possible to ensure the forward-movement of cases.

Mikki 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 becoming a more cohesive team. 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.

**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, complaints continued to be primarily limited to those wherein the defendant is in custody or wherein the OTP has grounds to seek a warrant simultaneous to filing the complaint. The reasons remain 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 seemingly closing on a rotating basis following exposures and the need for deep-cleaning) and doing telephonic hearings only – to file the typical number of what could be considered "petty offenses" would choke the court system during this difficult time.

Likewise, 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. Citations are being filed as their return dates approach.

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District	Total Cases Uploaded	<b>ADULT</b>		
		COVID Citations	Cases Filed	Cases Closed
Alamo	0	0	0	0
Aneth	10	0	13	1
Chinle	164	33	77	33
Crownpoint	36	0	23	3
Dilkon	94	51	10	104
Dzil Yijiin	71	2	31	40
Kayenta	319	17	178	140
Pueblo Pintado	4	1	5	0
Ramah	128	30	32	157
Shiprock	128	13	35	1
To'hajiilee	11	0	9	14
Tuba City	225	30	47	57
Window Rock	395	102	117	173
<b>TOTALS:</b>	<b>1585</b>	<b>279</b>	<b>577</b>	<b>723</b>

District	<b>JUVENILE</b>		
	Cases Uploaded	Cases Filed	Cases Closed
Alamo	0	0	0
Aneth	2	2	1
Chinle	6	3	9
Crownpoint	3	3	0
Dilkon	2	1	6
Dzil Yijiin	8	1	0
Kayenta	17	12	5
Pueblo Pintado	0	0	0
Ramah	14	4	12
Shiprock	13	4	8

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To'hajiilee	2	3	3
Tuba City	12	10	16
Window Rock	25	13	10
<b>TOTALS:</b>	<b>104</b>	<b>56</b>	<b>70</b>

**FINANCIAL REPORT**

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	62.48%	\$275,576.00	50.29871%
BU #K190800 OVC	0	7	\$320,194.00	.00%	\$243,933.00	.00%
BU #K190770 TIWAHE	4	1	\$441,753.00	20.98601%	\$95,6790	13.00674%

**B. DOJ Units**

This quarter, DOJ received 594 Requests for Legal Services and completed 434. These requests do not include other work such as time spent in meetings, court appearances, time spent preparing for litigation, phone calls, and responding to work/client email.

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

**Chapter Unit (CU)**

The Chapter Unit (CU) is led by Assistant Attorney General Rodgerick Begay. This quarter, CU hired Attorney Candidate Cynthia Freeman who started in early August. Ms. Freeman is Navajo, originally from Cameron, and recently graduated from the Arizona State University College of Law. Ms. Freeman is learning quickly and has been assisting in many of the CU projects. This quarter, CU has engaged in the following notable projects:

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

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dealing with the Local Governance Act (LGA). The 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.

1. Requests for Legal Services (RFS) from Chapters: Under the old quarterly report format, CU would enumerate the number of RFS submitted by Chapters. Pre-pandemic, Chapters would file their RFS at DOJ and that was the norm. Pre-pandemic, DOJ would respond to an RFS with a DOJ memorandum on DOJ letterhead. With the quarterly report format change and the Covid-19 pandemic, it has been more difficult to enumerate and record the amount of legal services provided to Chapters. During this pandemic, most communications with Chapters were done via email or telephone. Hence, the two prior quarterly reports did not adequately describe the amount legal services provided to Chapters. Beginning with this quarterly report, CU must express that the first priority for CU has always been the Chapters. Additionally, CU works closely with the Administrative Services Centers (ASC) and the Division of Community Development (DCD) on Chapter matters. CU also assists other governmental clients on Chapter matters. Essentially, in every quarter since the creation of CU, the CU has tried to provide the best legal services in the most expeditious manner to any and all Chapters that seek guidance from DOJ. This quarterly report does not show how much CU has responded to every Chapter email but everyone reading this quarterly report should be aware that there is a mountain of work for CU. Chapters are in great need of legal services and the CU is in great need of additional legal staff.

2. Chapter Return to Operations Plan (Plan): This project began in the third quarter as part of the overall effort to reopen the Navajo Nation government. In March, DCD issued guidance to Chapters for certain essential governmental services while Chapters were closed to the public. In April, DCD designated certain Chapter staff of non-governance certified Chapters as essential employees to provide a limited amount of essential governmental services. CU assisted ASC/DCD in those efforts and CU also assisted with the Plan. This Plan was particularly important for Chapters that never closed during the pandemic. The focus of the Plan was for the return of full Chapter services to include non-essential governmental services and to reopen to the public in a safe manner. The Plan was based on multiple sources including but not limited to the Navajo Nation's reopening plan and many guidelines authored by or influenced by the Centers of Disease Control. The Plan was finalized by CU on August 7<sup>th</sup> and distributed to Chapters by the ASC in mid-August. This was a huge undertaking and should be a major accomplishment for DOJ and DCD.

3. Navajo Nation Cemetery Regulations: As previously reported, there are no regulations as described under 13 N.N.C. §1952. In the prior quarter, CU reported that the initial draft was done by law intern Krista Thompson and was shared with several governmental departments for comment. In this quarter, CU updated the draft and with assistance from the Natural Resources Unit, the draft was also presented at a couple of District Grazing Committee meetings. CU hopes to receive final comments in order to finalize the draft in the next quarter.

4. Quadrilateral Agreement (QA): Prior to the creation of the CU, the DOJ Economic/Community Development Unit provided legal services to all Chapters. Thus, prior legal services to the Chapters about the QA was performed by the ECDU. In this quarter, CU and ECDU participated in the Western Agency Council meeting and explained the new arrangement. As a result, CU visited Naatsis' Aan Chapter and plans to visit the Chapter again in October. Given the history, CU spent a great amount of time in researching historical documents. Along with Ms. Freeman and Mr. Benally from the Navajo-Hopi Legal Services Program, CU will continue to provide legal services to the area Chapters.



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5. Guidance on Chapter Operations: In March, Council passed CMY-09-20 which reduced the Chapter meeting quorum to three (3) and restricted chapter action items to budget matters, Covid-19 matters, and Emergency Public Health Order matters. In May, Council overrode a veto to make CAP-19-20 effective. CAP-19-20 did many things including allowing telephonic Chapter meetings and allowing other Chapter action items when approved by DCD. Both resolutions were extended by NABIJN-26-20 and CJY-64-20 respectively. In May, CU issued a memorandum providing guidance in reconciling the two resolutions. Since that time, CU has provided further guidance via email and various telemeetings. In the fourth quarter, the focus has been about the effect of these resolutions on other matters like the CARES Act and Special Duty Pay. Additionally, because the pandemic has revealed many impracticalities with following normal Chapter policies, more guidance and temporary measures were created to benefit overall chapter operations. Such was done under CAP-19-20 which authorized DCD and DOJ to issue temporary modifications to the standard five management system. There were many arrangements made but as an example, DCD/DOJ supported the temporary elimination of the restriction on financial assistance to one family within a fiscal year. The temporary elimination allowed families to be eligible for Chapter emergency funds for the pandemic even though one of their children received a scholarship before the pandemic began.
  
6. CARES Act Funding for Chapters: At each instance that any legislation contemplated for funding to Chapters, CU has participated in numerous telemeetings with DCD to plan for those legislations. Some legislations were eventually vetoed but some legislations allowing for sub-recipient agreements to Chapters led to further planning for CARES Act administration by Chapters. CU participated in numerous calls with various NN Departments and Programs and helped draft and review various documents in the Chapters' best interests.
  
7. Construction Contracts for Governance Certified Chapters: Years ago, DOJ began modifying certain industry standard contracts (American Institute of Architects (AIA) and Engineer's Joint Contract Documents Committee (EJCDC). There are several categories of contracts depending on the type of project and even separate contracts for the various parties to a construction project. Additionally, DOJ has previously created a Navajo Nation Supplemental General Conditions (NNSGC) for each contract arrangement. Currently, there is a decent set of templates for projects wherein the Project Owner is the Navajo Nation. The overall structure is fairly complicated to describe in a summary report. In any case, as more Chapters become governance certified and able to administer their own construction projects, there will be a need to modify ALL of these contracts to have the Chapter as the Project Owner. This will be and has been a major project and may take years to complete. One cannot simply replace the NN with the Chapter's name in any of these contracts. In fact, even if templates were completed, the uniqueness of all design-construction project requires a great deal of legal work. In this quarter, because of two projects at the To'NaneesDizi Local Government, CU started with modifying the AIA-B101-2017 and modified the NNSGC for use by Tuba City. This will be an on-going project.
  
8. Updating the 2010 Model Five Management System (FMS): This is another major project. In 1998, the NN passed the LGA and amended parts of the NN Code. All 110 Chapters were told to operate under a FMS for fiscal, personnel, property, records, and procurement. All Chapters were told to make their own FMS. However, by 2005, there were only 5 governance certified Chapters and leadership instructed DOJ and others to help create a standard FMS so that more Chapters could become governance certified. This led to the creation of the 2007 Standard FMS and a few Chapters adopted it. In 2010, the standard FMS was updated and a few more Chapters became certified under the 2010 FMS. Much of the 2010 FMS was developed under NN law that existed in 2010. Since then there have been amendments to NN law, regulations, and policies which make the 2010 FMS outdated. In this quarter, CU started to review and began planning for the update to the 2010 FMS. This is another major project as it requires locating and cross-referencing all of the changes to NN law over the past decade and how each requires a necessary alteration to any portion of the 2010 FMS.

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9. Honorable Mention: A) RDC meetings; B) Commission on Navajo Government Development meetings; C) Agency/District meetings; D) Chapter telemeetings; E) NEA or NBOES meetings; F) CU support for remote working and remote assignments of Chapter Summer Youth Employment; G) Finalized NTUA Choice Wireless Agreement template to be used by Chapters which contains an arbitration clause and thus requiring CU signature, several of these have been processed this quarter; H) Weekly ASC meetings; I) Training to Ms. Freeman on the History of Navajo Local Governance; J) Chapter Special Duty Pay; K) Chapter Covid Leave; L) CARES Act Training to certain Chapters; M) Participation in HEMP matters; N) Healthy Dine Nutrition Act tax renewal; O) MOA between Baahaali Chapter and DCD; P) San Juan Southern Paiute Tribe issues; and Q) countless meetings with the ASC and Dr. Yellowman.

Important CU Issues: Twenty-two years after the LGA was passed (1998), our governmental employees and officials continue to struggle with the intent of the LGA which has led to inconsistent policies/practices and the diminishment of local autonomy. To be fair, governance certified chapters have had their fair share of struggles. Currently with 65 non-governance certified Chapters and 45 governance certified Chapters, it presents significant challenges in providing uniform guidance to all 110 Chapters. There are few with a firm understanding of the distinctions between these chapters and even fewer with historical knowledge about our local government system. In a world where almost every local government across the world has ready access to their own legal services, that responsibility falls on one DOJ unit for all 110 Chapters. CU cannot meet the legal needs without more staff.

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

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

1. Master Contract with Work Orders for CARES Act Bathroom Additions: In response to the Capital Projects Management Department's need to contract for the bathroom additions included in CARES Act legislation CJN-47-20, and with an eye toward future projects at CPMD, ECDU drafted a Navajo Nation master contract with work orders. Instead of having individual contracts for each bathroom addition, the master contract allowed CPMD to treat all of the bathroom additions as a single project and enter into just one contract with NECA. The master contract ensures consistency across all bathroom addition projects and allows for changes as the projects progress. The master contract is not specific to this project and can be used by CPMD for future for projects where several of the same project exists. This is the second Navajo Nation construction specific contract ECDU has created for CPMD. It is ECDU's hope to develop more Navajo Nation specific contracts that CPMD can use for all its future construction needs.

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2. IDIQ Drafting: ECDU has been developing a new contract for use on architect and engineering design projects that will allow CPMD to have a single Indefinite Delivery Indefinite Quantity Contract (IDIQ). The contract will allow CPMD to contract with several architect firms, who it will then issue work orders to for any design project that meets the criteria set forth in the IDIQ's scope of work. This will reduce CPMD's contracting process and move design projects at a faster rate while maintaining the need to limit project costs. CPMD is interested in establishing IDIQ's for other areas, such as construction. The IDIQ will be able to be used as a starting point for drafting all future IDIQs.
  
3. Crownpoint Hotel: ECDU began working on the funding and construction contract related to the Crownpoint Hotel that is on a business site lease to CSB Enterprises, LLC and is partially funded by Navajo Nation funds. After receiving requests for assistance from the Eastern Regional Business Development Office, ECDU looked into the history of the project and a way for Navajo Nation funds to be provided for the construction without the need for the Nation to handle the construction directly. ECDU is awaiting a response from the Office of the Controller on how to proceed.
  
4. Census: ECDU has been assigned to advise the Navajo Nation Complete Count Commission. As such ECDU attends bi-weekly Commission Meetings as well as weekly Native American Rights Fund (NARF) Native Census meetings, during which ECDU provides the Nation's update. ECDU spent much of its time this quarter working to ensure that all relevant parties on the Nation – from the Complete Count Commission to the Office of the President and Vice President to outside organizations – were working with current and necessary information as it relates to the U.S. Census efforts generally, and particularly on the Nation. This involved attending multiple weekly meetings, coordination through emails and phone calls, and research into historical efforts on the Nation. Additionally, ECDU provided support to the Litigation Unit as it pursues a case against the Census Bureau and Department of Commerce for the end dates of census data collection to be restored to October 31.
  
5. Quadrilateral Agreement: ECDU continues to work with the respective parties on the Quadrilateral Agreement (Quad Agreement). The Nation originally entered into the Quad Agreement with the Bureau of Indian Affairs, National Park Service (NPS), and Bureau of Reclamation in 1970. The Quad Agreement allows the NPS to develop land in the Glen Canyon National Recreation Area (GCNRA) without having to receive Navajo Nation Council approval, as required by 72 Stat. 1688. It also provides the Nation certain access to GCNRA lands that it would not otherwise have. The Quad Agreement is the legal basis for several subsequent agreements: the 1994 MOU between the Nation and NPS and the 2003 Bridge Agreement between the Nation and NPS. While the Quad Agreement governs the entire area of the GCRA that borders the Nation, these subsequent agreements only concern the Antelope Point area. Both of these agreements discuss how NPS and the Nation will co-manage the businesses operating on Antelope Point. All three of these agreements were set to expire on September 10, 2020. ECDU provided multiple presentations to Council on these agreements during this quarter. It also worked with the Speaker's Office on legislation providing that the federal agencies extend the agreements for an initial year to allow the parties time to renegotiate the terms of the agreements. While Council did pass a resolution requesting the extension, there has been no written response from the Nation's federal partners agreeing to the extension.
  
6. Gaming: ECDU has been regularly attending the Gaming Tribal Regulations Subcommittee, Arizona Department of Gaming Regulatory Subcommittee, and the Naabi Gaming Subcommittee meetings. The current discussion is focused on updating the Arizona tribal gaming compact by including specific appendices and MOUs to the current draft. The compact is nearly complete and there are only minor, technical edits that need to be worked through with the State. The Nation will need to decide before the end of the year if it wants to approve the compact as drafted. If the

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Nation does approve the compact, it will need to work with the other tribes to educate the Arizona legislatures on the compact before it goes before the Arizona legislature in January.

ECDU has also been working with Navajo Gaming Regulatory (NGRO) this quarter to address concerns with its FY 2021 budget, online bingo on the Nation, and the proposed sports betting agreement with MGM. ECDU also met NGRO's outside counsel to discuss the work he has been doing for NGRO, as well as the status of the AZ gaming compact. As ECDU continues to build its internal capacity on gaming law, it hopes to schedule future in-house trainings with outside counsel. ECDU attended ASU's webinar on Trends in Indian Gaming this quarter.

7. Voting: ECDU has been holding regular meetings with the New Mexico and Arizona counties and Secretary of States to discuss election related issues. ECDU assisted the counties with facility availability issues for the Arizona Primary, recruitment of poll workers, and navigating the Nation's Public Health Emergency Orders. ECDU assisted the counties in accessing various locations on the Nation to conduct voter registration, as many of their normal locations were closed due to COVID-19. ECDU worked with Coconino County to provide more ballot drop-off locations on the Nation for the early voting period. ECDU is having continuing conversations with the United States Postal Service (USPS) on how to shorten the mailing time for ballots mailed on the Nation. ECDU is hoping that ballots from the 860- zip codes will be able to be trapped in Flagstaff and distributed to the respective counties, as opposed to being sent to Phoenix-Show Low-then the respective county. ECDU is also hoping that USPS will be able to shorten the time for ballots from the 865-zipcode. Currently 865- ballots go to Albuquerque-Phoenix-Show Low-respective county. ECDU is working with USPS to determine how it can shorten this trip. ECDU has also been working with the New Mexico counties to provide more in-person ballot drop off locations. However, the New Mexico counties have been resistant to the idea, with only Sandoval County willing to add an additional drop off locations. ECDU will continue to work with the New Mexico Secretary of State on options to provide Navajo voters more voting access. ECDU participated in regular meetings of the NARF Native American Voting Rights Coalition, ITCA Native Vote Strategy Sessions, and Naabi State Task Force Committee. ECDU has also been discussing the threat of voter intimidation on the Navajo Nation with Acting Chief Prosecutor Jennifer Henry and the U.S. DOJ Criminal Division, and the best approaches to possible voter intimidation on Election Day. Lastly, ECDU responded to request for voting information from various sources, non-profit voting groups, political parties, and media inquiries.

8. Intellectual Property: ECDU continues to help monitor and enforce unauthorized use of the Nation's trademarks, seal, and name. ECDU has been working closely with outside counsel to send cease and desist letters to unauthorized users. ECDU is also working with Division Director Willie and outside counsel to hire staff for the Intellectual Property Department, which is currently under DED but is unstaffed. ECDU will work with Director Willie to establish a fund management plan so that settlement monies from the Urban Outfitters Settlement can be used to pay for the staff of the Department. ECDU worked this quarter to increase its in-house knowledge in intellectual property law. It attended the first of two trainings by outside counsel as well as the webinar, US Legal Protections for Tribal Knowledge and Traditional Cultural Expressions, sponsored by Colorado Law School.

9. GIMC Future Site: ECDU continues to monitor the discussions between CPMD and IHS regarding a potential alternative IHS site. Right now the Nation and IHS are moving forward with Phase 2 evaluation of site development at Rehoboth. However, the Nation is also interested in conducting its own Phase 2 evaluation of site development at another site in Gamerco. CPMD would be the agency responsible for carrying out this

Phase 2 evaluation, since IHS only will pay for one Phase 2. ECDU has been monitoring these discussions. The Gamerco site does appear to be a satisfactory alternative to the Rehoboth site. There are hopes that this area will become a medical campus. The traffic impact analysis for both sites is a factor. The Northwest New Mexico Council of Government is very supportive of the Gamerco location and is willing to pay the Environmental Site Assessment for the site if the Nation chooses that site, which will reduce costs for the Nation.

10. DED v. Benally: ECDU received a favourable decision from the Shiprock District Court in this action. In June 2020, DED filed a Complaint for forcible entry and detainer action against Mr. Benally for his unauthorized use of the To’bahi’ RV Park in Shiprock. Mr. Benally filed a Motion to Dismiss, claiming the partnership, a party to former BIA lease for the RV Park, should be added as a defendant based on their previous interest in the property. The District Court denied the Motion finding that since the BIA lease had been cancelled the partnership no longer had an interest in the premise. A hearing was held on the Complaint on September 21 during which Mr. Benally admitted to occupying the land and drilling wells without a permit. Mr. Benally claimed he still had a valid lease for the premise since the lease was not properly cancelled. Mr. Benally argued the Nation, not the BIA, had the authority to cancel his lease. Mr. Benally also claimed to have a fundamental right to occupy the land. The District Court found both arguments unpersuasive. The court held that based on testimony from Shiprock Regional Business Development Office, Mr. Benally held a BIA lease that was never novated to a Navajo Nation lease. Since Mr. Benally held a BIA lease, the BIA had the authority to cancel the lease. Therefore, since the BIA had cancelled the lease, Mr. Benally no longer had any legal right to enter the RV Park. The District Court also noted that the Tourism Department in DED had a lease for the premise; had provided undisputed testimony that Mr. Benally had entered the premise after its lease was issued; and that Mr. Benally was currently using the premise without the Nation’s permission. The District Court issued its decision finding Mr. Benally guilty of forcible entry on September 23 and Mr. Benally filed a Notice of Appeal with the Navajo Supreme Court on September 29. ECDU will file a Motion to Dismiss based on its belief that Mr. Benally did not comply with the timing requirements to file an appeal in 16 N.N.C. § 1807(A).

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

HSGU is led by Assistant Attorney General LaTonia Johnson. 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 an Attorney Candidate transferred from HSGU to the Office of the Prosecutor. This quarter, notable projects include:

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

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1. Office of Inspector General (OIG) Audit: The Office of Justice Programs (OJP), in a letter dated September 16, 2020, informed the Nation that there continues to be outstanding issues related to Audit No. GR-60-15-015. The OIG still has concerns related to Recommendations #2, #3, and #9. Specifically, that there are lists of “several” non-exhaustive concerns. Additionally, OJP continues to note that there are concerns about “unsupported inmate data” and “discrepancies” in data. The Nation has previously provided all its documents related to this audit, but OJP and OIG continue to request information. In response, the Nation requested additional clarification to properly address all the outstanding issues and an extension of time to respond. The Nation’s request was not granted and it must respond to two Recommendations as soon as possible, but need not respond to Recommendation #9 unless the Bureau of Justice Assistance (BJA) requests additional information, which it has not.

2. Navajo Department of Corrections (NDOC) - Serious Incident Reports: HSGU routinely receives copies of Serious Incident Reports (SIRS) submitted to the Bureau of Indian Affairs (BIA). This quarter, HSGU received 10 SIRS, and notes that many of the reports relate to NDOC’s daily interactions with COVID positive arrestees/inmates; and NDOC’s constant sanitizations of the affected detention facilities and testing of its staff often results in self-quarantine of staff. This presents serious liability and workers’ compensation concerns, HSGU and Insurance Service Department are communicating to ensure the respective insurance programs immediately address concerns NDOC or its staff may present.

II. PUBLIC LAW 93-638:

1. 2021 Contract Renewals and SAFA Proposals: HSGU worked with OMB to update the standardized Annual Funding Agreements (AFA) and Model 108 contracts for the upcoming Calendar Year 2021 proposals. OMB set a September 25, 2020 deadline for submission of these proposals so that it could compile the completed documents to prepare for submission of the proposals to the BIA NRO by October 1, 2020. HSGU reviewed the Scopes of Work, 2021 SAFAs, and 2021 Contract Renewal Proposals for the 18 Navajo Nation programs that are funded with P.L. 93-638 contracts. HSGU will continue to work with OMB and the programs to negotiate and finalize the contract renewals and SAFAs with BIA NRO in the next quarter.

Complications/Concerns: There are at least six (6) contract renewals that require authorizing legislation, which may take a month or so. Those contract renewal proposals cannot be submitted to BIA NRO until the authorizing legislation is passed by the Naabik’íyáti’ Committee. This will push the negotiation and finalization of the contract renewals into the next calendar year. Further, the Department of Family Services (DFS) of the Division of Social Services (DSS) previously had one contract for government assistance and programs, but due to reorganization and amendment of the DSS’ Plan of Operation, DSS is now seeking to divide that contract into three (3) separate contracts. Each contract will require separate documents and authorizing legislation.

2. NDOH/DCD/OMB/OPVP - P.L. 93-638 Title I Contract for Site Selection and Evaluation Process (SSER) Phase II project for the new Gallup Indian Medical Center (GIMC): HSGU assisted with the Nation's work group which includes NDOH, Division of Community Development, OMB and OPVP in communication with the IHS Division of Engineering Services (DES) and NAIHS to discuss the Nation's request for a P.L. 93-638 Title I contract to complete the SSER Phase II project for the new GIMC. HSGU drafted a proposed authorizing legislation for this contract and worked with the Office of Legislative Counsel to finalize the legislation. HSGU participated in teleconferences with the Nation’s work group and

IHS DES to review the proposed contract. HSGU completed a pre-review of the updated contract and provided comments to the Nation's work group. HSGU will continue to participate in teleconferences and further negotiation to finalize the contract.

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

1. Health Command Operations Center (HCOC): Contract with PAE Applied Technologies: HSGU assisted NDOH with negotiation and revision of this contract which took a couple of months including phone calls and emails between the parties to finalize. This contractor is to provide isolation services, wrap-around services and testing for the Nation to address the COVID-19 pandemic. This contract uses CARES Act funds, and it took a while for the legislation regarding expenditure of those funds to be approved.

Isolation Centers: HSGU finalized the isolation center agreement in Kayenta and a modification for the isolation center in Chinle. NCOC was working in consultation with Navajo Housing Authority (NHA) because NHA was the entity that was responsible for payment for the most of the services in each respective agreement. HSGU has provided guidance to HCOC to meet NHA's request.

2. Division of Aging and Long Term Care Services (DALTCS) - Negotiation of Language in Title III Contract with State of Arizona: HSGU received the document for review and found that the agreement included several objectionable provisions (including indemnification and immigration). HSGU contacted the Arizona Department of Economic Security (ADES) by email on August 11, 2020 to request some revisions and deletions to the agreement to make it legally sufficient. ADES has forwarded the Nation's request to the Arizona Attorney General for review. DALTCS needs this contract to be executed as soon as possible to continue providing services.

### IV. DIVISION OF HUMAN RESOURCES:

1. Department of Child Support Services (DCSS): A non-custodial parent issued threats to the Tuba City DCSS office and staff members, including a bomb threat. This same non-custodial parent returned to Tuba City DCSS and re-applied for child support services. While the staff did not want to assist due to the prior threats, DCSS is mandated to provide services within the territorial boundaries of the Nation. Because the non-custodial parent lives off the Nation, it was recommended to conduct an intrastate transfer and allow the State of Arizona to deal with this individual or DCSS could refuse to take case for cause. Given that child support is a multijurisdictional practice, there are no easy answers.

Counsel for Child Support cases: Prior to the closure of the Nation's government, a private attorney filed a petition to establish paternity, child support, and arrearages with the Office of Hearing and Appeals (OHA), not OHA Child Support Services. OHA provided the private attorney with a case number and sent it to OHA Child Support Services. There are two ways in which child support can be pursued on the Nation. One by filing a petition with the family court and the second option is administratively through OHA. The administrative process requires the custodial parent to apply for services with DCSS and voluntarily assign their right to pursue child support to the Nation. The administrative process does not have provisions for custodial parents having their own legal counsel. Instead, the case is given to the assigned DOJ attorney/advocate and they prosecute for establishment, modification, and enforcement of child support. OHA issued an order and a briefing schedule to determine whether OHA has jurisdiction to consider a child support matter without an assignment of rights. DOJ filed its brief this quarter on September 28, 2020.

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Establishment of paternity: Although the Nation's government has reopened, some offices are not open to the public. DCSS is required to establish paternity by collecting DNA specimens by buccal swab in all of the agency offices. However, because the DCSS offices remain closed to the public, it has made complying with OHA's orders impossible and required continuances of child support matters until the testing can be completed. The continuances are for at least 60 days due to the delay caused by shipping the specimens to laboratories and in processing the materials. To avoid additional continuance, DOJ drafted a DNA Collection Procedures during the COVID –19 pandemic. The procedures have been finalized.

Child Support Hearings: HSGU has been attending child support hearings and monthly case staffing. In addition, HSGU has been reviewing and editing proposed orders for the different district offices for the Department of Child Support Services.

**V. DIVISION OF SOCIAL SERVICES (DSS):**

1. Indian Child Welfare Act (ICWA): HSGU continues to work with the ICWA Program (ICWAP) to conduct staffing of cases that are in state court and require a request for legal intervention, and other related matters. For this quarter, HSGU conducted 15 case staffing, and sent several cases for legal intervention in the State of Arizona at the request of the ICWAP. At the request of ICWAP and Department of Family Services, HSGU also filed a petition to transfer jurisdiction from the State of Arizona to the Nation. The court approved the transfer, and HSGU is awaiting the order from the court. HSGU will continue to staff cases and answer related legal questions.

2. Title IV(E): DSS has received Title IV(E) funding, which allows DSS to pay families who have physical custody in dependency action. However, the Nation has not drawn down these funds for years. In an attempt to understand the issue, HSGU met with DSS to find out the problems in drawing down the funds. It appears that there is/was a breakdown in communication between OOC and DSS in providing all the documents to DSS in order to properly draw down. In the fall of 2019, DSS provided all documents for OOC's review and draw-down, but due to the outstanding years of non-submittal, OOC has informed DSS that the prior years have been closed out and OOC is unable to draw down. It is unclear how the failure of draw-down will affect future appropriations for the Nation.

Complications/Concerns: DSS has taken full accountability to address the outstanding issues of prior staff and ensure that the current staff proactively address all matters. However, it has been difficult to address these matters when OOC is slow to respond or does not respond at all. Without TFU's assistance, OOC is generally non-responsive.

3. COVID-19 Guidelines: DSS has submitted several guidelines for HSGU's review related to general, school, burial assistance for individuals, and foster placements who have been affected by COVID-19. These guidelines provide guidance to individuals who are applying for funds, ensure the funding is used for its intended purposes and ensure consistency for all guidelines. Because DSS wanted to timely use these funds, the review of the guidelines was fast tracked.

**VI. BOARD OF EDUCATION (BOE):**



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1. Navajo Nation’s Plan to Re-open Schools: On September 3, 2020, the Navajo Nation BOE passed several resolutions pertaining to the re-opening of schools on the Nation, including NNBESE-664-2020 and NNBESE-666-2020. NNBESE-664-2020 recommends that all schools on the Nation, including Public Law 100-297 grant schools, Public Law 93-638 contract schools, Bureau of Indian Education (BIE)-operated schools, public schools (including charter schools), private schools, parochial schools, higher education institutions, early childhood programs including CCDF, Head Start, FACE Programs, and all after-school programs provide virtual or online learning options only, without face-to-face instruction, until the Nation deems it safe to return to in person instruction. NNBESE-666-2020 opposed reported plans by the BIE to reopen schools on the Nation on September 16, 2020 with face-to-face and in-person instruction and directed all BIE-operated schools to provide virtual or online learning options only, without face-to-face instruction, for the duration of first semester of the 2020-2021 school year or until the Nation deems it safe to return to face-to-face instruction.

Complications/Concerns: While the official stance of the Nation is online-learning only, many schools and parents have raised concerns about the unique needs of children in special education programs and those children that do not have a safe place to stay during the day. DODE is working to recommend a more flexible policy, subject to OPVP approval.

2. Wide Ruins Community School Due Process Hearing: The BOE has held two (2) sessions thus far for the Due Process Hearing for Wide Ruins Community School and has scheduled another date to continue the hearing in October. The hearing is moving along with each side presenting their witnesses and the Board asking questions.

Complications/Concerns: While the hearings are moving forward, given the lack of any evidentiary or procedural guidance on such Due Process Hearings, there is a lot of uncertainty on the process, but fairness and transparency are essential. Two non-DOJ attorneys involved are adverse which makes progress with the hearings difficult at times and the lack of official process does not help. It will be recommended that the Board work on a policy for any such hearings in the future.

**VII. DEPARTMENT OF DINE EDUCATION:**

1. Navajo Nation’s Plan to re-open schools: DODE continues to revisit its school re-opening guidance plan. BIE, states, and border schools have their own re-opening plans, and this has caused some inconsistency and confusion for many families on the Nation. Information from schools and families about students with special needs or without a safe place to be during the day suggests that online-only learning is insufficient to meet the needs of all students on the Nation. As a result, DODE has been working with the many different types of schools on the Nation to gain input on what schools and families view as the best policy moving forward. From these roundtable discussions, which DODE is now holding regularly (online), and some flexibility may be needed to ensure all Navajo students are supported and protected. DODE may establish a list of “critical school functions” (per the PHEO) to create greater clarity for schools. Ms. Gonnie, current Acting Superintendent, and HSGU are in contact often to ensure DODE is supported as new and complicating issues continue to arise.

2. 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

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implement any systemic and notable changes to its administration of public education to Native students. DODE has reiterated its stance that it opposes New Mexico's motion to dismiss. HSGU has been providing research and updates for DODE.

3. 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 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 appealed the decision, but then amended its application and withdrew the appeal. The local schools filed for a Temporary Restraining Order (TRO) and a predetermination hearing. The New Mexico District Court held a TRO hearing on September 2, 2020. After all parties had the opportunity to present their positions, the Judge granted the State's motion to quash with the reason that the matter is in a federal administrative process for state funding and the State is providing required information. The schools stated they would appeal. On August 31, 2020, the Court held a pre-determination Hearing. NMPED and the local schools each had the opportunity to present their positions on FY2020 and FY2021 matters. Decision is pending.

Complications/Concerns: DOJ providing updates and working with DODE to set up a meeting with NM PED to discuss their perspective on the issue. HSGU is partnering with DOJ's Litigation Unit to monitor the Impact Aid developments.

4. Navajo Head Start (NHS)1303 Plan: On May 8, 2020, the Office of Head Start (OHS) sent an email informing the 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. The OHS Grants Management Officer, stated that the 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, and requesting OHS to reconsider. OHS provided a response stating that NHS did not follow the federal budget requirements necessary to allocate funds in the way they have attempted for the 1303 building. OHS further stated that the building provides administrative rooms in violation of the original design plan. OHS recommended re-applying for the 1303 plan this upcoming grant year, which NHS is considering. There is a need for higher-level government-to-government communication.

#### VIII. DIVISION OF GENERAL SERVICES:

1. Insurance Service Department (ISD): Navajo Nation Insurance Commission (NNIC): A virtual meeting was held on September 28, 2020, and outlined below is a summary of the agenda results:

- The Nation's insurance broker of record, in coordination with RMP, provided a summary of the FY Year 2021 property and casualty renewals, along with the quoted and recommended premium rates. In the end, NNIC provided authorization to RMP to bind all lines of coverages.

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- The Employee Benefits Program (EBP) actuarial consultant provided a report with some options/recommendations on the projected CY 2021 premium rates. Likewise, the third-party administrator provided its financial report on the status of Employee Health Benefits Funds. Overall, the Plan continues to do very well, and the NNIC thereby accepted EBP recommendation for approval of a 0% premium rate change. In this respect, HSGU completed an RFS packet review that included the proposed NNIC resolution approving the 0% premium rate change for the entire Navajo Nation insurance pool for Calendar Year 2021. EBP is now moving forward with a formal Document Review packet which will be presented to NNIC for action during at its next meeting on October 9, 2020.
- At the next NNIC meeting on October 9<sup>th</sup>, a report is to be provided on the Enhanced Retirement package proposal. In this respect, the DPM Acting Personnel Director who serves as a member of NNIC stated RPAC is scheduled to meet on September 30<sup>th</sup> about this matter. This special retirement package includes a proposal to allow retirees to continue participating in the Nation's health plan.
- The Controller provided a brief statement that the recent audit report included a finding on the large Employee Health Benefits Fund balance which she stated will be adequately addressed with the 4-month premium holiday that was implemented for the entire insurance pool.

2. Risk Management Program: Legal assistance and advice are continually provided in the administration and defence of tort, civil rights violation and other claims/cases; contract reviews for appropriate insurance requirements, including property damage (structural, etc.) and fire losses; fidelity bond (crime) coverage loss assessments; business interruptions; and insurance needs for newly acquired or expansion of properties and services, etc. Moreover, HSGU is involved in the investigations, evaluations, assessment of liability exposures, and settlement negotiations in pre-litigation claims. HSGU also assisted with the defence of lawsuits pending in both tribal and federal courts on FTCA claims arising from the actions/inactions of P.L. 93-638 programs.

Litigation: HSGU continue to carry over seventy (70) pending litigation (tribal and federal courts) matters.

- a. FTCA Cases: As the assigned Navajo Nation FTCA Liaison, Arita Yazzie is heavily involved with federal litigation. HSGU works with the United States (four Arizona cases and one New Mexico case) in (1) responding to extensive written discovery (Interrogatories and Requests for Production) which also entails the compilation and production of documents; and (2) reviewing Motions and attachments which generally also include Declarations/Affidavits. The ongoing cases are as follows:
  - HSGU coordinated and participated, along with the assigned AUSAs, in telephonic interviews/discussions with two (2) NDOC Supervisors and other NDOC staff related to a wrongful inmate death cases at the Chinle and Shiprock facilities.
  - In another Arizona inmate death case, the assigned AUSA raised the issue of whether plaintiff, as an individual victim of a jail tort, has standing to bring an action pursuant to the jail Consent Decree. Since this is an issue pending in several NN Supreme Court cases with inmate tort claims, HSGU provided the Nation's position and arguments regarding the Consent Decree.
  - An Arizona wrongful death case resulting from a two-vehicle collision was settled in late June, and the case was dismissed.
  - A Motion for Summary Judgment filed in an Arizona inmate death case was dismissed in its entirety after the U.S.'s Motion for Summary Judgment was granted on August 30, 2020. Although several counts were dismissed with prejudice, plaintiff has leave to re-file an "implied" claim against NDOC, and said renewed complaint is expected to be filed around September 30, 2020.

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- A New Mexico case resulting from a two-vehicle collision was dismissed on September 18, 2020 after the U.S. filed its Motion for Summary Judgment and certification of substitution for the Navajo Nation officer.

b. Tribal Cases: Due to the government closure, tribal cases have been dormant. Although the Window Rock District Court started activating its docket by scheduling motion hearings and pre-trial/status conferences within this quarter, most of them were vacated again, the re-scheduling of which are pending. In the interim, HSGU is continuing with settlement evaluations on other cases where demands have been made by plaintiffs.

3. Workers' Compensation Program: In the Matter of a NECA/Precast Employee: HSGU received a letter from claimant's attorney with allegations the WCP is not responding to his client's claim and not paying the medical bills, with a further assertion the client's private insurance instead is paying all the bills. After reviewing the WCP file, HSGU issued a detailed response on September 15, 2020 with a request for the private insurance and medical expense payments, if any, for further review by the WCP.

**Litigation Unit (LU)**

LU is led by Assistant Attorney General Paul Spruhan who manages four attorneys and two legal secretaries. LU handles many of the internal and external litigation matters. LU hired a Senior Attorney this quarter. This quarter's notable projects include:

1. Census case: Staff Attorney Jason Searle and AAG Paul Spruhan have been working with a number of outside attorneys on the challenge to the Census Bureau's "Replan" which required closure of data collection on the Nation and elsewhere on September 30. This case is more fully reported on page 3 of this report.

2. CARES Act Litigation: DOJ continues to participate in litigation against the U.S. Department of the Treasury concerning the eligibility of Alaska Native Corporations (ANCs) for CARES Act funding set aside for "tribal governments." This case is more fully reported on page 2 of this report.

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, and is also seeking pre-approval for the next fiscal year under a new equalization formula. DOJ is reviewing whether the Nation can and should intervene in the appeal and pre-approval cases, and is set to meet with the New Mexico Public Education Department this quarter to discuss the State's views on the issue.

LU continues to work on high-profile litigation matters during the COVID-19 crisis, as discussed above. Despite working remotely, LU continues to provide timely advice to supervisors concerning employee disciplinary matters. With the ongoing issues arising from the COVID-19 pandemic, it would be helpful to have case management software to help manage our dockets.

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

NHLSP is located in Tuba City, Arizona and is charged with representing relocatee applicants before the Office of Navajo-Hopi Relocation (ONHIR). We are pleased to report that NHLSP is fully staffed and has been since November 2019. NHLSP is staffed by Ms. Susan Eastman who serves as the Director, and she oversees one Attorney Candidate a Legal Secretary.

This quarter, because of 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 was closed until August 17, 2020 when the Navajo Nation government officially re-opened. Legal Secretary Brela Multine reports to work in-person each workday. Attorney Candidate Chris P. Benally and Principal Attorney and Director Susan Eastman work remotely for the most part pursuant to approved telecommuting agreements.

Even before the NHLSP office officially reopened, Chris Benally continued to assist the Tuba City Child Support Services Office by attending staffing meetings, representing DOJ before OHA at the monthly child support hearings, and drafting administrative child support orders after the hearings. Additionally, Chris has been assisting AAG Rodgerick Begay by interpreting into Navajo the Quadrilateral Agreement to help explain the importance of this agreement to chapter members and officials of the Navajo Mountain Chapter, and Chris will continue to provide such assistance to the Chapter Unit and the affected chapters going into the next quarter.

Susan provided assistance to outside counsel for an oral argument in the District Court of Arizona regarding a NHLSP client's federal appeal. The Court issued an order granting our client's motion for summary judgment and remanding back to ONHIR on the legal issue presented in order to satisfy the second requirement for eligibility for relocation benefits. NHLSP was successful in the 9<sup>th</sup> Circuit Appeal for another client whose primary issue was also head of household. This case was remanded from the 9<sup>th</sup> Circuit to the District Court to provide remand instructions to ONHIR, and we are awaiting instructions from the Court.

Another appeal is pending in the District Court of Arizona for another NHLSP client. The Assistant U.S. Attorney filed the Answer and Administrative Record for ONHIR on August 7, 2020. NHLSP filed a Motion for Summary Judgment and a Motion to Strike on October 6, 2020.

1. Federal appeals of ONHIR denial determinations: As a case filed pursuant to the federal Administrative Procedure Act, NHLSP cases in federal court are decided for our client or ONHIR through the Motion for Summary Judgment. The Motion to Strike was necessary to file because ONHIR added documents to the Administrative Record that should not be there because they were not evidence that was properly considered at the time of

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our client's hearing because ONHIR failed to disclose the documents either prior to or at our client's hearing. ONHIR disclosed the documents for the first time as citations in ONHIR counsel's post-hearing brief. This improperly-disclosed evidence was relied upon by the Hearing Officer to deny our client's administrative appeal and to uphold ONHIR's denial determination. The other basis for the appeal is ONHIR's disregard for its own precedent.

There are currently five (5) cases pending in the federal district court for Arizona. Several cases filed in April and May of this year are "on hold" because after completion of service on ONHIR and the United States, the Assistant U.S. Attorney filed Motions to Extend the time to file Answers in these appeals until 60 days after the federal archives center in Riverside, CA reopens because NARA is closed due to the pandemic. Three other federal district court cases were decided this quarter. One resulted in a favourable outcome for the client and a remand back to ONHIR, and two were decided against the NHLSP clients. For one of these cases, NHLSP recommended against filing further appeal in the 9<sup>th</sup> Circuit because of admissions the client made to ONHIR that hurt the case. The other case that was denied by the court on September 21, 2020, will be reviewed to determine whether to appeal to the 9<sup>th</sup> Circuit.

There is one pending 9<sup>th</sup> Circuit appeal. Another 9<sup>th</sup> Circuit appeal was decided unfavourably for the relocation applicant by a panel ruling dated September 28, 2020. Another 9<sup>th</sup> Circuit appeal was favourable to the applicant and will be remanded back to ONHIR.

2. Remands from federal court: The case that was remanded by Judge Humetewa in July 2019 regarding a NHLSP's client's claim for legal residency was scheduled for a hearing in January 2020, but was vacated by the Hearing Officer, and a hearing has yet to occur. The Hearing Office tried to re-schedule the hearing for June 22, 2020, but NHLSP has been unable to reach the client since March 2020. NHLSP has sent letters, text messages and phone calls to the client without response. We have even reached out to the client's current chapter to try to make contact with the client. The Hearing Officer wanted to re-schedule the hearing for Fall 2020 but due to continuing difficulties contacting the client and COVID-19, ONHIR counsel suggested that having the hearing at the ONHIR conference room would not be advisable because of the inability to comply with social distancing guidelines for ONHIR staff, counsel, the Hearing Officer, and the parties and their witnesses.

There will be two (2) more cases remanded back to ONHIR, one from the 9<sup>th</sup> Circuit and one from the District Court. The 9<sup>th</sup> Circuit remand was actually back to the District Court to provide an order with instructions to ONHIR on what the remand proceedings should be. NHLSP plans to request another evidentiary hearing before another decision by the Hearing Office is issued to gather testimony on the client's "self-supporting status" to support her head-of-household claim and eligibility for benefits.

The other remanded case from the federal district court was the only case for a NHLSP client to prevail with Judge Rayes since he began hearing Navajo-Hopi relocation appeals in 2017. For this client in August 2020, Judge Rayes ordered a remand back to ONHIR for further proceedings which have yet to be scheduled by the Hearing Officer and ONHIR.

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3. Assistance to Certified Applicants: A NHLSP client who was certified eligible for relocation benefits in 2019 after a successful 9<sup>th</sup> Circuit Appeal. NHLSP made contact with the client on September 16, 2020. The client is expected to sign a Relocation Contract with ONHIR so that relocation benefits vest.

4. Assistance to the Navajo-Hopi Land Commission: During this quarter, Susan regularly called into both regular, special, and leadership meetings of the Navajo-Hopi Land Commission (NHLC). In July the NHLC wanted to develop a strategic plan to assist the Navajo-Partitioned Land (“NPL”) Chapters with infrastructure needs that have arisen from these Chapters’ absorption of Navajo relocatees who were forced to move from the HPL. NHLC/O has asked DOJ for assistance in drafting a RFP to hire a consultant to develop a strategic plan and study, and to assist the NPL Chapters with the implementation of the strategic plan. The draft RFP has been sent to NHLCO Executive Director Robert Black to fill in the factual and substantive portions of the RFP, as well as address some legal concerns. NHLSP will follow up with Mr. Black and the NHLC regarding this draft RFP in the next quarter.

In addition, Susan assisted with the NHLCO by drafting a Non-Disclosure Agreement to cover discussions regarding development in New Mexico on lands selected by the Navajo Nation pursuant to the Settlement Act. The NDA is currently going through the Section 164 Review Process, which is anticipated to be completed in the next quarter.

5. Federal Legislative Policy and Advocacy for Navajo Relocatees: During this period, OIG shared three draft reports on different aspects of ONHIR’s operations with the Nation. Greg Smith of Hobbs Straus Dean & Walker (HSDW) assisted in the development of responses to the draft reports, in coordination with DOJ. The firm also coordinated communication with OIG and conducted research in response to questions from OIG.

Also during this quarter, the House Interior Appropriations Subcommittee proposed the rescission of \$15 million in “excess” funding held by ONHIR. HSDW worked hard, in close coordination with Rep. O’Halloran, to secure a floor amendment that struck the rescission from the bill. Subsequently, HSDW have been working to ensure that the same rescission is not in the Senate bill, including arranging a conference call for the Speaker, President, and Chairman Otto Tso to convey directly to Senator Udall and his staff the importance of re-purposing those funds to address relocation and freeze impacts. HSDW also developed supporting documentation for this work, including letters and briefing papers.

Rep. O’Halloran requested a simplified plan that he could work from to fight for rehabilitation funds, including but not just limited to the \$15 million. HSDW worked with Navajo leadership to develop such a draft plan, which was used in the Udall call, as well as with Rep. O’Halloran’s staff.

The Navajo Thaw initiative is closely related to the relocation advocacy work in DC. HSDW continued to communicate with Navajo Thaw staff about integration of efforts, status of projects, and potential use of COVID funding. HSDW have also provided comments on the practicality of pursuing Navajo Thaw’s proposed \$4 billion ask. HSDW continues to respond to occasional questions and inquiries from NHLC members and other Navajo leadership about the availability of CARES funds for use in relocation and construction freeze impacted areas.

6. HPL Navajos/ Accommodation Agreement Signers: NHLSP responded to questions about CARES Act funding for the HPL.

### **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 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: As indicated in last quarter's report, this Project was significantly delayed due to the COVID-19 pandemic and contract issues with outside counsel. This created additional challenges because the Project will require significant education for leadership and community members, and the general requirements to participate in the carbon credit market through the California Air Resources Board (CARB) will change in November. On August 27, the group met to discuss restarting the Project. DNR provided additional comments on the draft Carbon Development and Marketing Agreement (CDMA) for review and mark-up. There is a need for the Department to re-engage leadership on the Project. As of this report, NRU has not received a mark-up version of the CDMA, nor seen additional correspondence on the matter. NRU reviewed the Request for Qualifications and letter of intent regarding the Nation's present obligations to the consultant.

2. Department of Water Resources: The Department of Water Resources (DWR) was involved in numerous discussions regarding the Nation's allocation of CARES Act funds. The projects under DWR highlighted the historically underfunded nature of water infrastructure projects, in particular those related to livestock wells and water hauling. Not only did the Nation face a crisis related to accessible, potable water for people to protect themselves during the pandemic, but also the systems that could have facilitated some of the relief efforts were not at a functional capacity when the pandemic hit.

- CARES Act Projects pursuant to CJY-67-20: One hundred thirty million, five thousand, ninety-five dollars (\$130,005,095.00) was appropriated to DWR for water projects dedicated to mitigate or respond to the pandemic. DWR relied on Emergency Procurement for all goods and services related to these projects, and a memo was signed with DOJ and OOC concurrence. As of this report, DWR is compiling scopes of work for the Subrecipient Agreement between the Nation and the Navajo Tribal Utility Authority (NTUA) for approximately forty million dollars (\$40,000,000.00). NTUA water projects under this Subrecipient Agreement include well replacement and renovation, and extension and connection to existing water supply lines for families. The Subrecipient Agreement requires detailed scopes of work with timelines to ensure the projects are completed by December 30. While this is an understandable requirement for transparency and audit purposes, it created an administrative burden on DWR to compile detailed scopes of work for significant projects. Additional Subrecipient Agreements are anticipated for review next quarter.
- Navajo Gallup Water Supply Project (NGWSP): Regional projects designated as "Essential Activities" continued during the COVID-19 restrictions with appropriate health and safety guidelines. A meeting was held on September 16 with the Bureau of Reclamation (BOR), Bureau of Indian Affairs, and numerous Navajo Nation departments including DWR. There are higher-level delays related to the Value Planning Study, Ability to Pay Study, and other cost-related determinations due to the Project exceeding congressional appropriations. The Project includes significant design and construction costs, in addition to operation, maintenance, and repair (OM&R) costs that will become



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the responsibility of the NTUA and/or the Nation upon transfer of the facilities. Presently, BOR is responsible for OM&R of completed facilities. As of this report, a memorandum of agreement (MOA) between the Nation and NTUA for OM&R of the Cutter Lateral and related reaches is under joint-review.

- To'Hajiilee Chapter Water Crisis: The significant lack of potable water for the To'Hajiilee Chapter is not a new issue; however, it was exacerbated by the COVID-19 pandemic and compounded by the fact that the only operational well is expected to fail by Spring 2021. CARES Act funds were appropriated to address the crisis and legal issues are now staffed between the Nation, the County, and the Water Authority. The hope is to construct and convey Navajo-provided water to the Chapter within the CARES Act expenditure timeline. We have had weekly calls with the County to discuss funding, the work yet to be completed and the various agreements that will be required. We are currently reviewing a proposed MOU with the County and a draft water agreement with Jicarilla Apache Nation.

3. Intergovernmental Compact with Hopi: This Compact relates to the collection of eagles on Navajo Nation lands by the Hopi Tribe. An Annual Meeting with the Joint Commission established by the Navajo-Hopi eagle collection compact has been scheduled. This meeting provides the parties an opportunity to discuss any issues that may have developed this year with respect to the collection. The COVID-19 shutdown has made coordination more difficult. However, the Nation issued collection permits and did not receive a response from Hopi during the collection season.

4. Proposal to Study the Chaco Canyon area: The Nation received notification from the Dept. of the Interior (DOI) on July 27 regarding a request for proposals from tribes to receive federal funding to conduct a cultural study of the Chaco Canyon area. The request is specifically for Navajo and Pueblo cultural experts. NRU participated in a call with HHPD, RDC, and NLD to discuss the proposal. HHPD opposed the idea (which DOI proposes in its letter) that the tribes (Pueblo and Navajo, primarily) work together to issue one report. HHPD's main concerns are that there are too many tribes (nearly 20) to realistically expect a contractor to work with all of them to develop a unanimous report. HHPD pointed out that each tribe is federally recognized as a separate sovereign government and found it offensive that DOI did not acknowledge this in the letter and would suggest that the tribes submit one proposal. Two separate proposals for preparing the cultural resources investigation were submitted by the Nation and by the Chaco Heritage Tribal Association (CHTA), an unincorporated association of representative Pueblos and the Hopi Tribe, so DOI awarded a portion of the award to each applicant. The Nation was awarded \$434,356.00 for the cultural resources investigation.

5. Navajo Parks and Recreation Department: In conjunction with the Navajo Reopening Plan, all Navajo Tribal Parks remained closed to non-Navajo tourists, unless otherwise determined by the respective Park Manager. Tribal Park closures had a significant impact on the Navajo Parks and Recreation Department (NPRD) and the vendors and tour operators that rely on seasonal tourism. NPRD lost revenue through entrance fees and also faced jurisdictional limits with respect to enforcing health and safety guidelines and pandemic-related restrictions on Navajo and non-Navajo visitors, and the vendors and tour operators lost a season of income. NPRD continued with some construction and improvement plans at various park locations under the designation of "Essential Activities" and in accordance with health and safety guidelines. A contractor for construction of a new administration building in Window Rock, was identified and completion is anticipated for the end of 2021. This building will replace the condemned structure located near the Navajo Nation Zoo and Museum loop.

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- CARES Act Funds for Vendors and Tour Operators Hardship, and Tribal Park Safety pursuant to CJY-67-20: \$828,637.00 was appropriated to NPRD for hardship assistance and tribal park response to the COVID-19 pandemic. NPRD budgeted the allocation in two parts: (1) expenses related to measures taken for the prevention of COVID-19 for staff, visitors, and businesses; and (2) assistance to communities and sole proprietors related to hardship caused by park closures. The second allocation was distinguished from the small business and artisan grants available through the Division of Economic Development (DED).
- Antelope Point and the Quadrilateral Agreement: The Quadrilateral Agreement was a significant point of discussion this quarter. The Agreement, and related MOU and Bridge Agreement, brought about questions beyond its scope – namely, the 3,720-foot elevation line that is the reservation border. Scrutiny of the elevation line is not new; however, it became clear that some do not accept the fact that the elevation line is beyond the scope of the Agreement. Ultimately, the Council passed Resolution CS-70-20 requesting the federal agencies to extend the termination date for one (1) calendar year to September 2021. The related Legislation No. 0227-20, which would establish a Quadrilateral Agreement Task Force, is in Committee. NPRD’s role with respect to the Agreement is limited. The business site lease for Antelope Point Holdings is managed by the DED. NPRD manages the entrance points as part of the Antelope Canyon Tribal Park. It was determined that if the Agreement expired, the surrounding Tribal Park boundaries and border of the reservation would remain intact. Other complaints aimed at the Agreement relate to development. The Agreement includes a Development Concept Plan, which to date only resulted in the marina and concession area. Additional development, including chapter-specific projects, would be limited because of the Tribal Park boundaries.

6. One-Stop Shop Initiative: For the past several months, GLDD and NLD have had several meetings regarding their one-stop-shop initiative, which is intended to consolidate the various leasing processes across the Nation into one office. RDC has also had several leadership meetings on the one-stop-shop initiative; however, the tribal divisions and departments involved (including NLD, GLDD, and DED) have yet to agree on a uniform plan as the initiative involves a significant restructuring, including the reassignment and elimination of certain positions. RDC continues to schedule leadership meetings on this topic.

7. Proposed NNWO Acquisition: DNR/NLD had submitted legislation for the Council pertaining to the proposed acquisition of a building in Washington, D.C. to house the Navajo Nation Washington Office (“NNWO”). DNR had planned to utilize the Land Acquisition Trust Fund (“LATF”) for the proposed acquisition, however, the LATF’s Income balance was insufficient to fund the acquisition and the Council had not yet authorized use of the LATF’s Principal balance. DNR approved the proposed acquisition, President Nez signed the Purchase Agreement, and DNR requested OOC release funds from the LATF for an earnest money deposit towards the proposed acquisition.

The proposed acquisition must be recommended by BFC and approved by RDC. Additionally, Council approval is required to expend LATF Principal. DOJ recommended a single legislation be drafted to include all required approvals of the acquisition and expenditure of the LATF Principal balance. DOJ also recommended that the statute and regulations governing the LATF be amended to reflect approvals and expenditures based on a fiscal year rather than a calendar year. This change would make the statute and regulations consistent with the Nation’s accounting processes and with generally accepted accounting principles, and would eliminate confusion as to when the approving parties have met or exceeded their approval limits when using the LATF.

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8. San Juan Southern Paiute – Electricity: NLD was contacted by counsel for SJSP regarding SJSP’s efforts to have utilities installed at various locations in the Navajo Mountain area where they plan to place or have placed the mobile homes that are the subject of the recent Naatsis’áán Chapter and the Navajo Utah Commission resolutions (presenting concerns regarding encroachment by SJSP without permission from NLD and grazing officials). Because the Nation requires an individual to have an approved homesite lease, NLD is recommending that homesite lease be obtained before NTUA will provide access to electricity and water.

9. Department of Agriculture:

- 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. Since the initial meeting, additional information regarding an agreement with the U.S. Census Office has not been provided. The permit to occupy describes \$598,226.16 to be paid, but does not have any other defined terms. The permit also designates payments be sent to the “Fair Account....” OOC is not proceeding without a 164 process to identify important factors before establishing accounts for this lease.
- James v. DGC12: (On-going). Brian and Irvin entered a combined motion of appearance before OHA on behalf of the District 12 Grazing Committee (“DGC”). The DGC passed a resolution making a recommendation to cancel one grazing permit. Petitioner filed a handwritten complaint with OHA and later obtained legal counsel. The appeal puts forth violations of due process as the main cause for rescinding the DGC resolution. Brian and Irvin are working on an Answer to the original complaint. NRU is awaiting a Pretrial Conference date.
- Tapaha v. NNFO and NNDA: A business owner challenged a decision by DOA about a contract. This is a procurement challenge and the case relates back to the Petitioner’s procured services as a Public Relations consultant. At the time, the contract was initiated, but halted and re-advertised in an effort to get a different cost for service. The Petitioner is seeking to challenge DOA’s decision to halt the original contract. The original cost of service was not a written agreement but was agreed to orally. Brian entered a Motion of Appearance on behalf of the Nation’s Fair Offices and DOA, and is in the process of obtaining a dismissal.
- San Juan River Farm Board: We received a request from Chairperson Nez to look into whether it is lawful for RDC to suspend the San Juan River Farm Board’s (SJRFB) meetings until a Plan of Operation is developed and approved by RDC. NNDA is experiencing issues with the Farm Board as a result of their non-compliance with directives from NNDA. The SJRFB have held closed meetings and are not allowing two (2) SJRFB members to participate. SJRFB have not selected a Secretary to take meeting minutes and currently SJRFB President Dineh Benally has been taking minutes. The SJRFB also removed a SJRFB member without authority to do so. NRU has had calls with OLC and NNDA to discuss the authorities of RDC and Farm Boards in general.

10. Hemp: (On-going).

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- Hemp Regulations: To date regulations for the cultivation of hemp have not been developed. NRU awaits direction from NNDA on development of regulations.
- Environmental Concerns: The Navajo Nation Environmental Protection Agency (“NNEPA”) received several complaints regarding environmental violations that have occurred and/or are occurring at each of the hemp farm operations (“farm or farms”) overseen by Dineh Benally in the Shiprock, Hogback, and Cudei areas. In response, NNEPA personnel visited several of these farms and conducted cursory site inspections in which numerous environmental violations have been found. However, NNEPA personnel were either not able to gain full access to these farms and/or onsite farm personnel would not provide requested information. As a result, NNEPA issued an Order to Cease and Desist Activity and Compliance Order. NRU has had several calls with USEPA Attorneys regarding compliance. NNEPA was finally able to access the hemp farms and complete site inspections. A comprehensive report is forthcoming.
- Citizen Calls: DOJ filed a civil suit against Mr. Benally for improperly cultivating industrial hemp which is currently prohibited. A more detailed update on the litigation is on page 3 of this report. NRU has been following-up with individuals who contacted DOJ with complaints about Mr. Benally’s actions in the Hogback area. All are being informed to submit any documents and statements.
- Recommendation of RDC for Cancellation of LUP: BIA presented to RDC on September 15 about the process to cancel Land Use Permits. BIA indicated that they would act on a recommendation from SJRFB or RDC to cancel Land Use Permits for individuals cultivating hemp/marijuana. However, it is unlikely that all any action will be taken from the SJRFB on this issue so NRU followed up with RDC to inquire whether it intends to proceed with a plan to make recommendations to BIA regarding LUP cancellations. We had some discussions with OLC about how the LUP hearings might work, and indicated that DOJ is willing to assist to facilitate the process. Although there is a court order to stop hemp cultivation activities, there has been continued non-compliance regarding hemp/marijuana cultivation.

11. Navajo Division of Transportation (NDOT):

- Arizona Department of Transportation (ADOT) – IGA: The purpose of the IGA between NDOT and ADOT is to specify each Party’s 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, maintain the system and be responsible for repairs to lighting components, including poles and luminaries. RDC approved the IGA on September 2, BFC approved it on September 15, and the IGA was signed by President Nez on September 30.
- Federal Aviation Administration CARES Act Grant Award: NDOT applied for and received CARES Act funding for the airports located on the Nation. NDOT was awarded \$20,000 in maintenance for each of the airports in Window Rock, Chinle, Tuba City, and Shiprock. NDOT was also awarded \$415,974 in funds for redesign of the Chinle airport.

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12. Navajo Area Uranium Mines (AUM) Work: The few activities related to NAUM work designated “Essential Activities” were the Structures Program and the Voluntary Alternative Housing for the Red Water Pond Road community because both provide families with safe and sanitary housing. Toward the end of the quarter, the Superfund Program designated more “Essential Activities” so long as they adhered to health and safety protocols reviewed and approved by the Program. A letter was drafted for the Program to distribute to its regulatory partners and associated contractors.

- Voluntary Alternative Housing (VAH) for the Red Water Pond Road (RWPR) Community: A significant challenge with VAH has been the time between its initial implementation and present applicability. Eligibility for VAH is at the sole discretion of the United States Environmental Protection Agency (USEPA), and requires a household to be eligible as of July 1, 2011, while also considering the present household composition. In order to make an appropriate determination, USEPA requested documentation from those potentially eligible households who have not yet selected a VAH option. For the remaining families that would like to select the purchase of an existing home off-reservation option, the deadline is December 1. A non-time-sensitive but important consideration to discuss with USEPA is the return to RWPR, including potential moving assistance. While policies and laws governing Navajo residents returning to the community are a strictly Navajo matter, construction is anticipated to take several years and extend the duration of VAH from other temporary relocation efforts. This issue is an ongoing discussion topic.
- The Ten (10) Year Plan: On February 28 and August 18, the USEPA conducted formal consultations with the Nation. The August 18 consultation included presentations from the Nuclear Regulatory Commission, Indian Health Services, Bureau of Indian Affairs, and the Agency for Toxic Substances and Disease Registry. The Plan is an overview of NAUM work on the Nation, which includes assessments of additional mine sites. A finalized version of the Plan should be available by the end of the calendar year.
- Diné Uranium Remediation Advisory Commission (DURAC) and Position Statement: On September 24, the DURAC held its first meeting since the COVID-19 pandemic. Agenda items included a report on the waste disposal methods study and restart of public hearings on the Position Statement (Uranium Clean-Up) set forth in Legislation No. 0380-19.

13. 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 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 of 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 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. NRU continues to participate in regular conference calls regarding work being done by the Phase Two Trust for investigation and remediation of these uranium mines.

14. Implementation of Tronox Settlement Funds: (On-going). Several of the Tronox mine sites are moving quickly toward preparation of Action Memoranda, which officially document the cleanup decisions for CERCLA removal sites. 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.

This quarter involved researching and revising a comprehensive list of Navajo Nation ARARs to be used for uranium mine clean-ups. The draft ARARs table will be used as a template for incorporation in clean-up decisions. The table is all-inclusive, and is intended to be tailored to the circumstances of each individual mine site. It is most likely to be used to develop Action Memoranda for several Tronox mine clean-ups in the Eastern Agency later this year. We are also determining ways in which Navajo fundamental law can be couched as an ARAR by providing specifics on how it applies to uranium mine clean-ups.

15. 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 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 Nation would be liable.

This Quarter, April Quinn participated in a government-to-government consultation with U.S. EPA and expressed the Nation's legal concerns. April also drafted the Nation's comments on the Proposed Rule which were reviewed by Navajo EPA and submitted to President Nez for his review and signature.

16. Arizona Corporation Commission Rate Cases: 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. A motion was made in the rate case to extend all deadlines by 60 days, which would make President's testimony due October 2nd. The ACC granted the 60-day extension. The President's testimony was filed with the ACC on October 2nd.

The Nation and APS agreed to have discussions outside of the rate case. APS wants to know what the Nation wants out of the rate case, what are priorities are, etc. This all focuses on what the Nation wants to see as far as an economic transition for the Nation once the Four Corners Power Plant shuts down. OPVP designated April as the point of contact for these discussions and Michelle Henry from DNR as the alternate.

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17. SRPs Request for Proposals: The Salt River Project (SRP) issued an RFP to purchase up to 200MW of power from solar projects; projects are being proposed both on and off the Nation; any project developed on the Nation would use 200MW of our 500MW along the NGS transmission lines; if SRP selects a project that will be built on the Nation, we would have to negotiate both a land lease and a transmission agreement with the company who will build the solar project. SRP expects this to be done by the end of the year because they want to sign a Power Purchase Agreement with the company either at the end of this year or early next year.

SRP requested earlier this year that the Nation determine a transmission rate to charge for the projects on the Nation. The Nation determine a rate by consulting several experts in the electric transmission industry, including the Western Area Power Administration (WAPA) and U.S. Bureau of Reclamation, which was submitted to SRP in May. Recently, SRP notified the Nation that its proposed price for transmission rates would not be cost competitive with projects that could be built off the Nation. SRP would not negotiate as to the range of transmission rates it was willing to pay. Instead, SRP proposed to use its own transmission lines for the projects, which would deprive the Nation of the opportunity to earn revenues from projects using its allocated transmission capacity. The Nation rejected SRP's proposal and submitted an alternative price structure which is still being discussed by the parties.

18. NTEC: NTEC attempted to apply to BIA to become a Tribal Energy Development Organization. This would allow the Nation to approve energy agreements with NTEC rather than BIA. NTEC submitted the application to BIA without the Nation's knowledge. BIA just assumed that the Nation knew about the application; however, after learning that the Nation was unaware of it, BIA and their Solicitor re-examined their regulations and determined that the Nation needed to submit the application to BIA, not NTEC. BIA rejected NTEC's application. There was also a work session with RDC and NTEC to discuss the issue, and it appears that NTEC did not coordinate with the Land or Minerals Departments prior to submitting an application to BIA.

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

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

1. FY 2021 Comprehensive Budget & Continuing Resolution: Instead of passing the FY 2021 comprehensive budget, Council passed, and President took final action to approve, a continuing resolution (CR). OMB set up the CR budgets based upon 25% of each program's budget on October 1, 2019 as opposed to on September 30, 2020. Programs made changes to their budgets during the year, such as adding new positions, hiring temporary workers, increasing wages due to step increases and position reclassifications, etc. But those changes were not reflected in the CR budgets. As a result, most programs will have a personnel budget shortfall and may have to lay off employees during the CR period unless they have substantial

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personnel savings due to vacancies or unless they are able to make budget transfers. TFU has advised OPVP, OMB, DPM, and OOC on the personnel budget impacts of the CR based upon the manner in which CR budgets were set up. DPM predicts that the Executive and Legislative Branches will have to lay off up to 443 employees during the first quarter of FY 2021 as a result of shortfalls in CR personnel budgets. Programs that have already experienced layoffs or that will experience layoffs in the near future should make immediate budget transfers. OMB and DPM should also work together to study whether the majority of the projected layoffs could be prevented if OMB would rework the CR budgets to be based upon 25% of programs' FY 2020 budgets at the end of FY 2020 as opposed to at the beginning of FY 2020. Finally, TFU is hopeful that the Council will strive to pass a comprehensive budget resolution as soon as possible.

2. Timely expenditure of coronavirus relief funds: According to Title V of the CARES Act with regard to Coronavirus Relief Funds, costs must be incurred by December 30, 2020 and funding recipients must return unexpended funds. In an attempt to ensure that the Nation expends its CARES Funds on time, Council approved reversion provisions in CJN-47-20 and CJY-67-20. The funding for any project that has not made enough progress to demonstrate that it will be fully completed by December 30, 2020, will be re-allocated to the Hardship Assistance Expenditure Plan through Naabik'iyati' Committee resolution. Legal questions remain about how these provisions will be implemented, depending on whether funding is currently obligated under contracts for goods and services or under subrecipient agreements.

3. Audit Response Letter for FY19 Annual Audit: TFU assisted the AG in drafting an update to the Attorney Audit Response Letter to Moss, Adams, LLP, for the FY19 Annual Audit.

4. Investment committee: Worked with outside counsel to draft a forbearance letter agreement with NNGE and an IC resolution approving it; drafted a resolution for consideration by the Investment Committee, regarding the Finance and Accounting Scholarship Project for the 2020/21 school year; assisted the Investment Section in completing forms related to reclamation of taxes for the Nation's International Equity Investments, including IRS tax forms and a limited Power of Attorney designation to JPMorgan Chase; and reviewed a proposed BFC resolution giving OOC staff the authority to conduct business with the U.S. Department of Interior's Special Trustee for American Indians.

5. Office of the Navajo Tax Commission (ONTC): Advised the ONTC regarding applicability of the Navajo Nation Sales Tax to royalty fees collected by franchisor, Burger King Corporation, from franchisee who is operating within the Nation; advised the ONTC on the Navajo Nation Liquor Regulations and options for penalizing a licensee for violations; and advised the ONTC, OPVP, and NNC on opposing the Arizona liquor license application of the Family Dollar Store in St. Michaels; drafted letters from OPVP to the state and county, and assisted OLC in drafting NNC legislation opposing the application.

6. Retirement Services (NDRS): Advised NDRS on 401(k) Plan matters involving Plan participants, beneficiaries of deceased participants, and QDROS; reviewed a contract modification for services provided by Wells Fargo to the Navajo Nation 401(k) Plan; reviewed a proposed Request for Qualification statement, to help NDRS choose a new balance forward record keeper for the Navajo Nation's Deferred Compensation Plan; advised NDRS and the Retirement Plan Administrative Committee (RPAC) concerning the proposed Enhanced Retirement Program for the Navajo Nation Retirement Plan; drafted several resolutions for consideration by the Retirement Savings Plan Administrative Committee (RSPAC) concerning



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proposed changes to the Navajo Nation 401(k) Plan based on changes allowed under the federal CARES Act; and drafted RPAC resolutions to related to the proposed Enhanced Retirement Plan.

7. Office of the Controller (OOC): Reviewed sole source procurement memorandum related to the proposed contract modification of the service contract with Moss Adams; completed two reviews of proposed contract modification of the service contract with Dine Protection; completed two reviews of proposed service contract with Baker Tilly; reviewed sole source procurement memo and completed two reviews of proposed service contract with Noon & Associates. Advised OOC on how to correct the deficiencies and drafted an emergency procurement memo to replace OOC's original sole source procurement memo; reviewed proposed service contract with Formax; reviewed sole source procurement memorandum and proposed service contract with Loan Servicing Software, Inc.; worked with NRU to advise OOC and DNR regarding legal requirements to approve land acquisitions and to utilize the Land Acquisition Trust Fund income and principal with respect to proposed acquisition of a Washington, D.C. building for the NNWO; and worked with NRU to advise OOC and DNR regarding county property taxes using the Agricultural Infrastructure Fund or the Parks and Recreation Enterprise Fund.

8. Office of Management and Budget (OMB): Reviewed and provided significant edits to OMB's draft fiscal year 2021 Budget Instruction Manual; reviewed proposed service contract with MGT Consulting Group.

9. Meetings: TFU attorneys attended the following meetings: 1) all Special and Regular Meetings and Work Sessions of the BFC; 2) all Special and Regular Meetings of the Naa'bik'iyati' Committee and Council related to CARES funding; 3) all meetings of the BFC, Naa'bik'iyati' Committee, and Council related to the FY 2021 budget; 4) four meetings of the Retirement Plan Administration Committee; 5) two meetings of the Investment Committee; and 6) two meetings of the Treasury Tribal Advisory Committee.

10. Covid-19 Activities: TFU worked on the following matters related to COVID-19: Assisted the Office of the Controller by revising and finalizing the following documents drafted by OOC related to the Navajo Nation CARES Funds: 1) Subrecipient Agreement and budget forms to be used by OOC in managing distribution of CARES Act subawards from the Navajo Nation; 2) Grant agreement with NNGE; Small business and artisan assistance grant agreement; 3) Terms and Conditions for use of OOC's CARES Act Portal, assisting entities applying for, receiving, and reporting on use of CARES Act funds; 4) OOC guidance on when an entity is a contractor versus a subrecipient; 5) Helpful tips on the expedited expenditure review process; 6) Step by step process for NN CARES Funds subrecipients; 7) Subrecipient disbursement schedule; 8) Small business grant closeout process flow chart; 9) NN subrecipient / contract process flow chart; 10) OOC guidance and FAQs on CARES funding; 11) OOC Policies on Payroll Support Program; and 12) Memo on not claiming IDC on Coronavirus Relief Funds.

Advised OOC on tax implications for recipients of Small Business and Artisan grants from Navajo Nation CARES Funds allocated through CJY-67-20;

Advised and assisted OOC, OMB, and NDOH with the NDOH delegation of authority to OOC such that OMB could designate OOC as the "responsible party" in the budget transmission for the \$2.5 million of CARES Funds allocated to NDOH through CJN-47-20 for financial systems;

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Advised OOC on matters related to the Payroll Support Program and special duty pay;

Assisted OLC in drafting proposed revisions to legislation 0197-20 approving the CARES Fund Chapter Distribution Expenditure Plan. TFU continues to work with OLC, OOC, OMB, and other NN departments to review new legislation to approve expenditure plans related to the NN CARES Fund;

Presented trainings to the to the Kayenta Administrative Service Center staff and the Chapters they serve, to the Eastern Administrative Service Center staff and the Chapters they serve, and to the Western Agency Council and Western Agency Chapter Officials and staff on the federal CARES Act, including its applicability to the Navajo Nation and Chapters;

Attended Regular and Special Meetings and Work Sessions with OPVP, BFC, Naa'bi'iyati' Committee, and Council regarding the Coronavirus Relief Funds;

Finalized the proposed Fund Management Plan for the Donations Fund pursuant to Council Resolution CJY-52-20, for use of the donations made to the Navajo Nation in response to COVID-19; and

Worked with Donations Branch of the Health Command Operations Center to identify donations that were restricted for specific purposes and programs and assisted to prepare a spreadsheet documenting restricted donations.

11. Training: Attended the Native American Finance Officers Association training, *Understanding Coronavirus Relief Fund Reporting Requirements*.

### **Water Rights Unit (WRU)**

The Water Rights Unit (WRU) has been led by Principal Attorney Kate Hoover since August 5, 2019. The Assistant Attorney General position has been advertised and will be filled on October 26, 2020. 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: (AZ) 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 was 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. The Ninth Circuit has scheduled virtual oral argument for October 16.

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2. Other Colorado River Matters: 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, WRU participated in the TTP meeting held on August 12, during which Reclamation gave a status update on the 7D Review process. Reclamation expects to have a draft report completed by the end of September 2020, which they will release for public review.

3. Rio Grande Basin. Augustin Plains Ranch (APR). APR filed an appeal with the 7<sup>th</sup> Judicial District Court of New Mexico, case no. D-728-CV-2018-00026. On August 23, 2019, the Seventh Judicial District Court granted the summary judgment motion of the New Mexico Environmental Law Center, in which WRU had joined, and dismissed the Augustin Plains Ranch matter with prejudice. On September 23, 2019, an appeal was filed by APR. On Nov. 26, OSE filed a cross-appeal. On January 23, 2020, the Cross-Appeal by OSE was voluntarily dismissed. The Navajo Nation had no objection to the dismissal since the issues raised in the Cross-Appeal had the potential to weaken the legal arguments made by the Navajo Nation in the 7<sup>th</sup> Judicial District Court. The briefing schedule has been set and APR is required to submit its Brief-in Chief by October 26, 2020. On September 11, WRU filed a Notice of Appearance. 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 began on September 14. The Court heard oral argument last Quarter 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 September 14 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 filed a Conditional Motion to Stay the Trial Pending Special Action Review of the Denial of the Hopi Tribe’s Motion to Set Aside Procedural Order of the Special Master on August 12, which was denied by Judge Brain on August 20. Hopi then filed a special action with the Arizona Court of Appeals to extend the trial indefinitely to allow for an in-person trial. The Court of Appeals heard the Hopi Tribe’s motion to stay the trial on August 26, but then denied the Hopi Tribe’s Special Action Petition in its entirety. The U.S. has concluded with its experts at this point. The Hopi Tribe began its presentation of expert witnesses on September 29.

*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; their reports are due in January of 2021. 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 rejected by the Special Master in her June 29 Order). Nevertheless, the Special

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Master has sought to address these types of use without requiring specific attributes for each use, such as assigning a quantity of water for use within a grazing district. So far such alternate approaches have been rejected by most of the other parties. The Nation has significant plans for future DCMI water development, much of it within the Sihasin funding plan that will support a claim based on a future population projection by the Nation's demographic expert.

5. 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. This Quarter, the WRU retained a riparian/wetlands expert to develop claims associated with riparian areas, including collecting medicinal plants. WRU is working with NN Fish & Wildlife, to develop its claims for recreational uses of water on the LCR lakes, and for fisheries in LCR lakes and streams. WRU has retained a renewable energy expert to evaluate future economic development, and as noted above, last Quarter retained an economist to look more broadly at development to foster a future Navajo permanent homeland. The date for filing the amended SOC is was extended three months, and is now due October 7.

*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.

SW Navajo TAG. WRU regularly attends the monthly TAG meetings. No legal issues arose at the meetings this Quarter. However, WRU did learn that due to wells which have been recently drilled having a high TDS content, it is going to be difficult to provide a sufficient water supply to the IHS Dilkon Health Center.

6. 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

7. 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 brief the Navajo Utah Commission and Navajo leadership on recent developments.

Utah TAG. WRU regularly attends the monthly meetings. WRU provided updates on the status of NUWRSA. WRU also answered questions about CARES Act funding and legal restrictions on the use of the funding. WRU worked with TFU to provide consistent advice on the eligibility of projects and to provide the most current guidance provided by the US Treasury. Additionally, WRU obtained updates on the construction projects within Utah that are on-going.

8. 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 Mr. Pollack 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.
9. Implementation of the Navajo Nation San Juan River Basin Settlement. Navajo-Gallup Water Supply Project (NGWSP). The Cutter Lateral is expected to go online and begin delivering water to Navajo communities in the Eastern portion of the Navajo Reservation by June 2021.
10. 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. There were several 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. WRU participated in the focus calls to identify potential legal issues. The Nation requested a one-month delay in proceeding with the Value Planning meetings, which are now scheduled to begin in November. WRU will continue to provide advice to the Nation's representatives in the Value Planning exercise as requested.

Ability-to-Pay OM&R (ATP) Methodology. Reclamation released a Deliberative Draft of the ATP Study on April 24.

San Juan Generating Station (SJGS) Reservoir 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. Investigation of this alternative is ongoing.

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.

Cutter Lateral Operations, Maintenance, and Replacement (OM&R) Contract. WRU determined that the Nation should be a signatory to the contract. 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. On August 5, Reclamation responded that it must defer discussions of the OM&R transfer contract and ATP waiver until the Nation and Reclamation complete the value planning process and make progress on the cost overrun issue.

Twin Lakes Excess Capacity Draft Contract Between NTUA and the Bureau of Reclamation. DWR requested a review of the contract by WRU to ensure there are no issues for the Navajo Nation. Two public negotiation meetings between NTUA and Reclamation were held on August 20 and September 24. A third public negotiation meeting is scheduled for October 27.

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MOA Between the Navajo Nation and NTUA For the Process to be Followed for the Planning, Design, Construction, and Operation of Water System Infrastructure Related to NGWSP Reaches 24.1, 2.1JAN, 24.1Lybrook, 25, 26.1, 26.2, and 26.3 and Eastern Navajo Water Supply Project Phases 2,3, and 4. The Navajo Nation Water Management Branch will be responsible for planning, design, and construction of the listed facilities. Once the facilities are constructed, they will be turned over to NTUA for operation. WRU is reviewing this contract along with NRU.

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. On September 25, WMB made edits to the Expenditure Plan and the supporting resolution. WMB has requested another review of both documents by WRU, so they can start moving the legislation through the proper channels.

11. 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. 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. The next meeting is scheduled for October 10. There was no activity this Quarter. Animas La Plata Project. No activity this Quarter. Lower Rio Grande Basin (NM). No activity this Quarter.

12. NMOSE Matters. City of Farmington. WRU filed its protest to Farmington's readvertised permit application on May 22. The Hearing Officer held a virtual scheduling conference on June 22, set a discovery schedule, and set the matter for hearing December 8-9. During this Quarter, WRU served Interrogatories on OSE, and deposed the owners of the subject water rights permits on September 22.

13. Other Activities: NN Water Rights Commission—WRU provided a litigation update to the Commission on September 9. 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) only the Chief Justice has submitted the name of selected candidate. WRU has been advised that selections have been proposed by legislative staff for consideration of the Speaker; we have heard nothing, despite a follow-up request to the President's counsel, from OPVP. Proposed appointments to the Commission must be approved by the RDC.

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 has reserved 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. The To'hajiilee Chapter President has been meeting with various entities in order to secure rights-of-ways for a water pipeline. NRU is assisting with both the rights-of-way issue and a contract to secure a water supply from JAN for the To'hajiilee community.

14. San Juan Southern Paiute: WRU previously worked with counsel for the San Juan Southern Paiute Tribe (SJSPT) and the Nation’s outside counsel 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. Last 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.

15. 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; 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. Mr. Pollack contacted the Navajo Nation Historic Preservation Department and the Fish & Wildlife Department soliciting comments and this Quarter filed a motion to intervene 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

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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 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.