



THE NAVAJO NATION

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FY 2018 Fourth Quarter Report
(July, August, September 2018)

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I. EXECUTIVE SUMMARY

A few of the Department of Justice's ("DOJ") key accomplishments and notable activities from this quarter include the following:

- The Nation, along with the other tribes of the Bears Ears Inter-Tribal Coalition, as well as our environmental, NGO, and corporate co-plaintiffs, secured an important victory in the Bears Ears litigation by ensuring that the case will be kept in the Federal District Court for the District of Columbia, and also secured a ruling that the plaintiffs will receive formal notice from the U.S. when land-disturbing activities occur within Bears Ears National Monument lands excluded from protections by President Trump.
- DOJ hosted a visit from the Minister of Justice and Attorney General of Canada, the Honorable Jody Wilson-Raybould, who is First Nations. The Minister of Justice was able to meet with the President, Vice President, Speaker and Members of the 23rd Navajo Nation Council, the Chief Justice, the AAGs of DOJ, and DOJ staff for a full day in Window Rock in July.
- The AG, Chief Prosecutor, and other Navajo public safety partners met with the U.S. Attorney for Utah and the Utah Attorney General to discuss how to strengthen partnerships to address public safety issues in Utah in a meeting coordinated by Honorable Delegate Crotty, Chairwoman of the Sexual Assault Prevention Sub-Committee of the Naabik'íyáti' Committee.
- The AG attended and provided remarks at the convening of the Conference of Western Attorneys General held at Santa Ana Pueblo in July. The event was attended by 22 state Attorneys General. The AG and AAGs for DOJ were able to meet with and develop good relations with some of these Attorneys General and their staff.
- DOJ and Office of the Prosecutor filed a number of white collar crime cases and made progress on ongoing prosecutions:
 - We secured a conviction of the former Dilkon Chapter Vice President for multiple counts of forgery
 - A former Ka'ai'bii'to Chapter employee pled no contest to fraud and forgery charges
 - The former Mexican Springs Chapter Community Service Coordinator and Office Specialist were each charged with 22 counts of fraud
 - The Ramah Chapter President was charged with theft of \$6 million
- The trial to adjudicate water rights in the Little Colorado River Basin in Arizona commenced on September 11
- The Nation's Gold King Mine litigation, now consolidated with New Mexico and Utah's cases in a Multi-District Litigation (MDL) case, has resumed with the appointment of a new District Court Judge who has also appointed a Special Master. Defendants have refiled their motions to dismiss and the Nation has coordinated with Utah and New Mexico to respond in opposition to those motions.
- The Nation assisted the individual Navajo farmers impacted by the spill in identifying competent counsel, Egolf + Ferlic + Harwood, to represent them in litigating their individual claims. In early August, 295 of these individual claims were filed, and the individual farmers' claims have been consolidated with the larger MDL case.

- The Nation’s lawsuit against Wells Fargo was dismissed, but the Nation has the option to refile its complaint or appeal the dismissal, which we will strongly consider.
- DOJ helped negotiate a settlement with Hopi Tribe and the United States to return over 300 ancestors to their resting spot in Canyon de Chelly. The underlying litigation has been dismissed.
- Oral arguments for San Juan County’s appeal of the Nation’s victory in the redistricting case have been scheduled for November 14 in Denver. Litigation Unit AAG, Paul Spruhan, will deliver oral arguments on behalf of the Nation.
- DOJ hosted three summer law clerks, hired two licensed attorneys, and hired a new legal secretary in the Fourth Quarter.
- One of DOJ’s tribal court advocates was accepted to and enrolled in UNM Law School. We look forward to her return as an intern and attorney!
- The Office of the Prosecutor retained all legal staff hires and hired two records clerks. Four legal staff members sat for the Navajo Nation Bar Exam in August 2018 and four summer law clerks were assigned to district offices.

II. CRITICAL ISSUE

Identifying Critical Funding for Office of the Chief Prosecutor

During the Fourth Quarter, the Office of the Chief Prosecutor, with the assistance of the Office of the Attorney General, secured federal funding for victim advocate services. As the federal agency is determining the legal mechanism to provide the funds, OCP and OAG will continue working to bring these essential services to the Navajo Nation.

III. PROJECT(S) STATUS

This quarter, DOJ received 709 Requests for Legal Services and completed 595. 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.

Some of our notable projects are highlighted below. 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.

A. Office of the Attorney General (OAG)

OAG (and DOJ) is led by Attorney General Ethel B. Branch. OAG also consists of Acting Deputy Attorney General Cherie Espinosa, two Legal Secretaries, and three Support Staff. OAG oversees the six DOJ units, the Navajo-Hopi Legal Services Program, and the Offices of the Prosecutor and Juvenile Justice. In this quarter, notable projects by OAG include:

1. Title 17 Amendment Work Group. The Work Group—a collaboration of public safety partners—meets monthly in two-day drafting sessions, but in August the

Work Group completed its review of Title 17 (the Criminal Code) and criminal provisions in Title 14 (the Traffic Code). The Work Group secured successful passage of White Collar Crime amendments in the Fall Session of FY18, and honorable Chairwoman Amber Crotty is sponsoring Phase I of the Comprehensive Criminal Code Amendments (the Violent Crime, Sex Crimes, Alcohol, and Controlled Substances amendments to Title 17). The Phase I provisions have been with Legislative Counsel for 3 and a half months and the Work Group is hopeful the legislation will soon be issued for the 5-day public comment period. These amendments will advance key reforms that will establish victims' rights for all crimes, deter repeat offenders, and ensure reasonable statutes of limitations. The Work Group has also completed its review of the Criminal Traffic provisions of Title 14 and the Animal Offenses, Livestock Theft, Property Crimes, and Procedural provisions of Title 17. These will be circulated for a 30-day comment period with public safety partners and interested parties. The Work Group continues to await the Supreme Court's response to its proposed amendments to the Rules of Criminal Procedure, for which the public comment period closed 7 months ago. These changes are critical to minimizing delays in service of summons and in eliminating inordinate administrative burdens unique to our court system.

2. Navajo Nation Public Corruption Task Force. July marked the 1-year anniversary of the establishment of the Task Force, which has made significant progress in fleshing out the challenges to a smooth, efficient, and effective response by the Nation to reports of white collar crimes or public corruption. The Task Force is close to finalizing a shared strategy for how to coordinate collective Nation resources to better respond to these reports, and is developing recommendations on how to amend the Navajo Nation Code and the Personnel Policies Manual to empower the Nation to better respond to reports of white collar crime and public corruption, and to eliminate key challenges to efficient and effective investigations and prosecutions.
3. Weekly Meetings. OAG conducts weekly meetings with the AAGs, Chief Prosecutor, and NHLSP to review the progress made during the week and to ensure internal coordination within DOJ.
4. Head Start Under Enrollment. OAG, working with outside counsel, has been addressing multiple issues regarding Navajo Head Start. During the fourth quarter, the Navajo Nation appealed the reduction of funding due to chronic under-enrollment designation by the federal funding agency. In addition, DOJ staff appealed a disallowed cost due to lack of matching funds and is working with Head Start on corrective action plans for failure to follow Navajo Nation laws and policies in contracting by the Navajo Head Start program.

B. Litigation Unit (LU)

LU is led by Assistant Attorney General Paul Spruhan who manages two Attorneys and one Legal Secretary. LU handles the Nation's internal and external litigation. With the amount of court filings LU does, the Unit is in need of another Legal Secretary position or the creation of a paralegal position. LU has one attorney vacancy and is currently reviewing applications. This quarter's notable projects include:

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

Navajo Nation v. Pic-n-Run concerns a 2005 gas spill under the Pic-N-Run station. U.S. Environmental Protection Agency issued an order under the Resources Conservation and Restoration Act against a number of entities involved in the spill, but not their insurers. All but one insurance company denied coverage, and therefore there is little money to pay for the clean-up of the site, and gas from the spill remains under the site. The Nation filed a complaint in 2013 against all of the principals who were involved in the spill, and their insurance companies. The Nation alleged trespass, violations of the business site lease, and other claims for damages against the principals. For the insurance companies, the Nation sought an order stating they had the obligation to pay for those damages under the insurance policies. Several of the insurance companies filed motions to dismiss in the Chinle Court arguing the Nation lacked jurisdiction to adjudicate their obligations to their insured. The Chinle Court issued an order denying two of those motions. Those insurance companies then filed petitions for a writ of prohibition with the Navajo Supreme Court. The Supreme Court denied review of the petitions, stating that the companies could file those challenges after the case was over in Chinle as an appeal. EMC, one of the companies, recently filed a complaint in the Federal District Court of Arizona seeking an injunction stating the Chinle Court lacked jurisdiction. There are also several motions from other insurance companies still pending in the Chinle Court, and that court has scheduled oral argument on those motions in the next few months. We are representing the Nation in both courts, and intend to respond to the federal lawsuit to defend the sovereignty of the Nation.

2. Recon Oil Trespass

Two trespasses committed by Recon Oil in 2015 and 2016 were appealed by the company to the Office of Hearings and Appeals where they are still pending. In the meantime, Recon filed for bankruptcy in the federal bankruptcy court in Arizona. It sought to force the Nation to process contracts with Navajo DOT, though it owed money to the Nation. This quarter the bankruptcy judge converted the Chapter 11 bankruptcy to a Chapter 7 bankruptcy, which resulted in the appointment of a trustee to oversee the operations of Recon. That trustee indicated that he would dismiss the OHA trespass appeals, and issued a notice stating so. If there are no objections by September 17, the two appeals will be dismissed. The Nation will be filing a Proof of Claim in the bankruptcy to collect the \$75,000 in fines assessed by the Division of Natural Resources for the trespass, along with lost royalties and the costs of reclamation. With the dismissal of the trespass appeals, these cases will finally be resolved and the trespasses will remain in place.

3. LU continues to provide trainings on employment grievances to Nation programs. LU also represents personnel actions pending before the Office of Hearings & Appeals (“OHA”), Navajo Nation Labor Commission, Navajo District Court, and the Navajo Supreme Court. Numerous hearings and pleadings were managed by LU this quarter.

C. Human Services and Government Unit (HSGU)

HSGU is led by AAG Kandis Martine who manages six Attorneys, two Tribal Court Advocates, and three Legal Secretaries. HSGU is our largest Unit because they assist 8 Divisions/Departments consisting of over 65 programs. The Unit has one Attorney vacancy due to the assignment of Cherie Espinosa as Acting DAG. This quarter, notable projects include:

1. Civil Rights of Individuals with Disabilities Act of 2017
HSGU advises all programs on 638 contracting requirements and in this quarter has worked extensively with four programs on contract renewals as well as fourteen programs for successor annual funding agreements. In addition, the Navajo Nation opted to contract for construction projects pursuant to PL. 93-638 Subpart J for multiple contracts. HSGU is working with programs and OMB to develop and submit construction contract proposals.
2. DODE – Annual Compliance Policy
The Office of Dine’ Accountability and Compliance (“ODAC”) continues the process of streamlining the reauthorization procedures required under the Grant/Contract Conversion Maintenance Handbook. On July 13, 2018, HSGU assisted ODAC in updating the Board of Education on the Policy. ODAC, with assistance from HSGU, also conducted additional meetings with Board Members. After these meetings, the Board instructed ODAC to reincorporate the Board into the reauthorization process. The Policy was adopted by the Board of Education on August 17, 2018. HSGU has recommended to ODAC that they present at the local level before submission to the Health, Education and Human Services Committee (HEHSC). HEHSC has final authority for approval.
3. DODE – Borrego Pass School Retrocession
On June 15, 2018 the Borrego Pass School came before the Navajo Nation Board of Education to be reauthorized under the Grant/Contract Conversion/Maintenance Handbook. After a lengthy discussion the Board of Education denied the reauthorization and voted to retrocede the Borrego Pass School back to the BIE. On September 6, 201, Naabik’íyáti Committee retroceded the school to the BIE. Currently, the BIE is in discussions with OPVP on the transitioning of the school to the BIE and the effects of retrocession on the school board.
4. AUSA AZ Use of Writ of Habeas Corpus ad Prosequendum
The AUSA for Arizona has begun using this writ to obtain custody of prisoners within Navajo custody. The writ of Habeas Corpus ad Prosequendum allows a federal judge to compel the appearance of an individual who is imprisoned in a different jurisdiction. It was New Mexico’s use of this writ that led to the development of the Navajo detainer process. The basis of Navajo’s objection to the use of the writ was, and continues to be, the “bad

men” clause of the 1868 treaty which requires the federal government to provide notice and proof of potential criminal liability to the Nation before we are required to turn over “bad men among the Indians.” HSGU provided analysis of the writ to the AG and, after meeting with the AUSA for Arizona, developed guidelines for the use of the writs.

D. Natural Resources Unit (NRU)

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

1. Proposed Fence Agreement with Ute Mountain Ute Tribe

The Ute Mountain Ute Tribe (UMUT) and the Navajo Nation (NN) have an overlapping border along or near the border of Colorado and New Mexico (Overlapping Boundary). The UMUT sent the Nation a draft fence agreement to address grazing, fencing and roads along the Overlapping Boundary. The proposed agreement sets forth protocols for the capture of stray or trespassing livestock and for the return of such livestock to its proper owner, when possible, accounting for damage to Tribal property and resources that is caused by trespassing livestock. NRU provided updates to OPVP and the Office of the Speaker on the fence agreement. NRU provided comments to the draft agreement and forwarded to legal counsel for UMUT. NRU received responses from the UMUT and it appears there are a number of issues that need to be negotiated before this agreement can be finalized. We continue to discuss this agreement with UMUT, and are also consulting with Department of Ag staff, BIA staff, and local grazing officials on the extent of impacts the proposed fence agreement will have on Navajo tribal members.

2. Proposed Hopi Partitioned Land Policy

We have been assisting the Navajo Hopi Land Commission Office (NHLCO) with the development and finalization of a Policy that would govern the use of the revenues generated from those lands taken into trust pursuant to 25 U.S.C. §640d-10 and subsequent agreements. The Policy proposes that all funds generated under §640d-10 are to be used solely for the benefit of Navajo families living on the Hopi-Partitioned Lands on December 22, 1974. The Policy establishes the fund purpose, administration of the funds, accounting procedures and how funds are to be expended. We will be providing a presentation to the NHLC at a leadership meeting.

3. ONHIR Funding Issue

ONHIR recently contacted the Department of Fish & Wildlife (DFW) regarding a joint MOU between ONHIR, DFW, and the local chapter. Pursuant to the MOU, ONHIR was to receive 25% of the fees from the sale of hunting permits on New Lands to manage on behalf of the Nahata Dził for a wildlife enhancement program until it became LGA certified. ONHIR asserted that the last time they received payment of these funds was in 2004. After doing some research, it was discovered that: (1) the chapter became LGA certified prior to the MOU being signed, which rendered the part of the provision involving

ONHIR moot and (2) in 2004, ONHIR asked DFW to manage those funds and directly fund all projects in the area, which DFW has since done.

4. Gold King Mine Removal Response Cooperative Agreement

On July 5th, the Nation received notification from USEPA on reimbursement requests submitted in February and September 2017 for the Gold King Mine removal response costs. The Nation submitted a request on behalf of chapters, NECA and NTUA to USEPA for reimbursement of costs totaling \$592,856.44; of that amount \$253,948.32 was approved and \$342,783.79 was disallowed. The disallowed costs were for NTUA and Shiprock Chapter. The disallowed costs pertaining to NTUA were costs previously submitted to USEPA for reimbursements and denied. NRU met with NTUA to assist in identifying any possible additional documentation – NTUA was not able to identify additional documents. The \$253,948.32 in approved costs was to be added to the GKM Cooperative Agreement within 30 days of the July letter, but the Nation did not receive the funds until August 30.

5. TAS Application for Surface and Groundwater's Water Quality Standards Program and 401/404 Certification Program

Several federal environmental laws, including the Clean Air Act (CAA), Clean Water Act (CWA), and Safe Drinking Water Act (SDWA), authorize USEPA to treat eligible federally recognized Indian tribes in a similar manner as a state (TAS) for implementing and managing certain environmental programs. In 2006, Surface and Groundwater (SG) originally submitted a TAS application under the CWA for the Navajo Nation (NN) as a whole for its Water Quality Standards Program (WQS) and its 401/404 Certification Program. Atkinson Trading Post has objected to the Navajo Nation having jurisdiction, however, previously USEPA took the position that the jurisdictional matter is a congressional delegation. In follow up meetings, USEPA appears to be reversing its prior determination and not wanting to move forward with the application for the Cameron area. Because of this, the Nation requested a government-to-government consultation before a decision is rendered.

6. BNSF 401/404 Permit

BNSF Railroad was doing some site work on one of their railway bridges that included dirt excavation due to erosion. They did not apply for a 401/404 permit from SG prior to starting the work. As a result, the Nation sent them a notice detailing the violation and asking them to comply by obtaining a permit. While BNSF ceased doing work, they have taken the position that the railway bridge is not on Navajo trust land and therefore the Nation does not have jurisdiction. Instead, BNSF has asserted that the state of New Mexico has jurisdiction. The Nation informed BNSF the railway bridge was on Navajo trust land. In response, BNSF initially hired an environmental consultant, who argued that BNSF was exempt under certain provisions of the CWA. However, when it was pointed out that this was not the case, and that the provisions she cited did not apply to BNSF, BNSF responded by hiring an attorney. The attorney then argued that New Mexico's Environmental Department had maps showing that the land is on fee land. We are continuing to work through this issue. SG has stated that they had a similar issue with BNSF in 2014, where one side of the railway was on Navajo trust land and the other wasn't, and that BNSF

ultimately complied by obtaining a 401/404 permit. In this case, we have asked the Navajo Land Department to provide us a determination regarding that area to confirm whether the land at issue is indeed trust land. If it is, BNSF will need to comply by obtaining a 401/404 permit.

7. Monument Valley Navajo Tribal Parks

The Oljato Chapter requested to utilize the Monument Valley Welcome Center as their Chapterhouse in April 2018. The old chapter house had been demolished due to uranium being found in the concrete. NRU is working with Navajo Parks and Recreation Department to determine how to relinquish some of the land to the chapter so they can construct their chapter house. A follow up meeting occurred in mid-July and the Chapter was told to submit a land withdrawal application with the Navajo Nation Land Department. The Chapter will also need to complete a survey of the proposed land withdrawal area at the Monument Valley Tribal Park. The Chapter has also indicated that they will also be withdrawing other lands along the right-of-way for future development.

8. Burial Disputes

Certain chapters (Round Rock, Many Farms, Thoreau and Baca Chapters) are refusing to bury their own people within their chapter cemetery unless they were registered voters with the chapter. According to the NLD, a letter was sent out to these chapters by Mr. Kenneth Johnson, with Community Chapter Development, to attempt to resolve the issues. Mr. Johnson informed the chapters that Navajo law provides that “any member of the Navajo Nation, regardless of place of residence or place of death, may be buried in a Navajo Nation cemetery”. 13 N.N.C §1901. Land designated for chapters for burial purposes is a Navajo Nation cemetery and the chapters should not restrict burial to registered chapter members because it would violate Navajo law.

E. Economic/Community Development Unit (ECDU)

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

1. Administrative Service Center’s Plan of Operation

ECDU assisted Administrative Service Center (ASC) with the drafting and presentation of its Plan of Operation. It took ASC more than six (6) times to obtain approval of the Resources and Development Committee (RDC) before it was finally passed. Due to the political nature of the Plan of Operation, ASC could not decide which route it wanted to take with respect to supervision of the community service coordinator (CSC) of non-Local Governance Act (LGA) certified chapters. The approved Plan of Operation allows Chapter Officials to supervise the CSCs at non-LGA certified Chapter. ECDU will be assisting ASC in providing training to chapters on the new Plan of Operation.

2. Forcible Entry Detainer Action – Davis Chevrolet Business Leasing Site

For the past year, ECDU has worked with the Western Regional Business Development Office (RBDO) to remove seven trailers and their residents/owners from land originally withdrawn for commercial purposes. ECDU was able to finalize all actions with or against the residents. ECDU settled with four of the trailer residents/owners and received default judgements against two of the residents/owners. The residents are all to be removed from the property over the next six months with the last resident to be out by February 28, 2019. This will clear the way for a business lessee to develop the site.

3. DED Sales Tax Funds

ECDU assisted DED with the review and drafting of Memoranda of Agreement between Navajo Nation Gaming Enterprise and Navajo Technical University. The purpose of the MOA is to transfer DED's Sales Tax Funds to NNGE and NTU for the design and infrastructure development of a hotel in Shiprock, and design and construction of the Advance Manufacturing Facility in Crownpoint, respectively.

F. Water Rights Unit (WRU)

WRU is led by AAG Rodgerick Begay. Mr. Begay supervises three Attorneys and two Legal Secretaries in WRU. WRU represents the Navajo Nation's interests in state and federal courts, including five general stream adjudications. In this quarter, notable projects include:

1. Little Colorado River Basin

The two contested cases involving the Hopi water claims and the Navajo water claims continue to consume a significant portion of WRU work. On September 11, 2018, the trial for the first phase of the Hopi claims commenced. Originally scheduled for six weeks, the trial is now expected to last four months. This extension impacted the schedule for the second phase of Hopi's claims wherein the trial was moved from July 2019 to December 2019. Last quarter, the Nation's filed its Amended Statement of Claimant for certain water categories (Navajo first phase). *In re Hopi Reservation HSR*, 6417-203, a hearing on the summary judgement motions was held on July 18. On August 16, the Special Master granted in part and denied in part the LCRC motion. The Special Master determined that the Executive Order setting aside Moenkopi Island did not give rise to *Winans* rights. The Court did not find sufficient evidence to determine the Hopi Tribe's assertion of a state prior appropriative rights and also concluded that the Hopi could not assert a state appropriative water right arising during the same period for allotments held in trust by the U.S. In addition, work has begun on updating the Nation's claims for the second phase because the Amended Statement of Claimant for the second phase is due in January 2019. WRU is working on the Hopi first phase, Hopi second phase, and Navajo second phase.

2. San Juan River Basin (UT) - Utah Water Rights Settlement

This quarter, WRU and contract counsel spent a significant amount of time addressing various matters. In September, a significant step was reached when the "Bishop Letter" was obtained signifying that the settlement conformed to the criteria for Indian water rights

settlements. Now the team is looking for a legislative vehicle to move the settlement forward in Congress.

3. San Juan River Basin (NM)

In this quarter, all four appellants, including the State of New Mexico and others, filed for an appeal to the New Mexico Supreme Court. The Court granted five certiorari petitions and recently set forth a briefing schedule which WRU and Stanley Pollack will address in the next quarter. As of now, we are confident that the Court will uphold the settlement.

4. Zuni River Basin (NM)

This quarter, WRU has been working with our technical staff on the development of a hydrologic model in evaluating the Zuni Tribe's proposal and its impacts on the Nation. Concurrently, the model is expected to assist in the development of a Navajo proposal.

5. Rio San Jose (NM)

From the third quarter into the fourth quarter, there has been more activity by WRU in the Rio San Jose. WRU has been involved in settlement discussions and has attended a few meetings this quarter. The Pueblos have requested a mediator and discussions have been held on that. The Pueblo's proposal is currently under review by all parties. The Navajo proposal is expected to be revealed in the next quarter.

G. Navajo-Hopi Legal Services Program (NHLSP)

NHLSP is led by Principal Attorney Susan Eastman who manages one Legal Secretary. NHLSP is located in Tuba City, Arizona and is charged with representing relocatee applicants before the Office of Navajo-Hopi Indian Relocation (ONHIR).

1. Notices of Final Agency Action issued by ONHIR

ONHIR issued Notices of Final Agency Action upholding its denial determination for nine individuals. The six-year statute of limitations to file an appeal of an agency adverse action in federal district court runs from the date the agency issued the Final Agency Action.

2. Assistance to Certified Applicants

There are multiple situations where certified applicants have moved into relocation homes without electricity or water utilities. NHLSP has been assisting in the follow up on these matters, however, a concern is that ONHIR is allowing relocation clients to move into homes prior to utilities being provided when the Navajo-Hopi Settlement Act requires relocatees to be provided with "decent, safe, and sanitary" homes.

3. Federal Appeals of ONHIR Denial Determination

About 20% of district court appeals decided in the past two years have succeeded - a very modest success rate, but better than the agency appeals that almost universally affirm eligibility denials.

H. Tax and Finance Unit (TFU)

1. Phoenix Indian Center – Department of Interior Navajo Trust Fund

TFU is working with OOC and the Department of the Interior (“DOI”) Office of Special Trustee (“OST”) to obtain a drawdown from the Navajo Trust Fund held at DOI of up to \$806,509, which is the Nation’s share of funds DOI received in settlement of DOI’s lawsuit against Barron Collier Company (“Collier”). In 2012, Collier defaulted on its annual interest payments, and the Nation stopped receiving drawdowns from the Navajo Trust Fund. In 2014, DOI sued Collier, and in 2017, DOI entered into a Settlement Agreement with Collier under which DOI received settlement funds. OST has specific procedures for requesting drawdowns from the Navajo Trust Fund, including a BFC Resolution authorizing the drawdown. TFU drafted legislation to authorize the drawdowns totaling \$489,435.00 with \$341,110.00 to reimburse the Navajo Nation for prior appropriations to the Phoenix Indian Center, Inc.

2. Closure of the IRS Examination

On July 17, 2017, the IRS began an examination of the Nation’s employment taxes related to classification of workers as employees or independent contractors for tax years 2014, 2015, and 2016. The IRS examination was generated due to the Nation’s non-compliance with the 2011 Closing Agreement between the Nation and the IRS in which the Nation agreed to classify all members of boards and commissions as employees, rather than as independent contractors, for federal employment tax purposes. The Nation agreed to make a settlement payment to address the negative review findings and has continued the process of reclassifying members of the remaining boards and commissions for federal employment tax purposes and has organized related trainings for the Executive, Legislative and Judicial Branches.

3. Offsets by the U.S. Department of Treasury (“Treasury”).

The U.S. Treasury (“Treasury”) over the last several years has made offsets of approximately \$1.1 million against awards from the federal government to some of the Nation’s programs. Over \$1 million of the offsets were caused by the Centers for Medicare and Medicaid’s (“CMS”) wrongful attribution of debt for insurance claims when tribal members insured by the Nation’s Employee Benefits Plan received medical care from IHS or other federally-funded facilities. The Indian Health Care Improvement Act, 25 U.S.C. § 1621e(f), limits the federal government’s right to recover from a tribally self-insured plan for services rendered at or referred by a federally-funded facility. DOJ continues to work with Treasury, CMS, Employee Benefits, and the Nation’s third-party administrator for employee benefits, Hawaii Mainland Administrators (“HMA”), to reach a permanent solution to this issue. In the near future, CMS will release an additional refund of \$905,954.42.

4. Recovering Ramah Chapter's Lost \$1 Million Investment

TFU is working with ECDU and outside counsel to recover Ramah Chapter's lost \$1,000,000 investment in Woodbridge Mortgage Investment Fund. On January 5, 2017, the Ramah Chapter President (who is being prosecuted for theft of Chapter funds, including these funds) invested \$1,000,000 in the Woodbridge Mortgage Investment Fund 4, LLC. On December 12, 2017, following an SEC investigation of Woodbridge's misleading marketing materials, Woodbridge filed for Chapter 11 Bankruptcy in the District of Delaware. The Nation, on behalf of the Ramah Chapter, is an unsecured creditor and considered a "unit holder" within the unsecured creditors pool. On August 22, 2018, the Bankruptcy Court approved Woodbridge's Disclosure Statement for the Chapter 11 Plan of Liquidation. The Nation has voted to accept the Liquidation Plan, which will result in a partial recovery of the lost funds.

I. Office of the Prosecutor and Juvenile Justice

The Office of the Prosecutor manages and oversees the prosecution of Adult Criminal cases and Delinquency and Children in Need of Supervision (CHINS) cases for twelve Judicial Districts across the Navajo Nation. This includes working with other law enforcement agencies, Family Services, federal agencies, and such to ensure the successful investigation and prosecution of alleged violations of the Navajo Nation criminal law. In this quarter, the Office filed 2622 criminal cases and 128 juvenile cases.

The Chief Prosecutor and Deputy Chief Prosecutor spent much of July 2018 preparing a grant application for the OVC-Tribal Set Aside for victim services. In a coordinated effort with the Judicial Branch, Navajo DPS-Criminal Investigations, and DSS Strengthening Families Program, the Navajo Nation submitted an application for Phase I of the tribal set-aside. No updates have been received regarding whether the Navajo Nation application has been selected to move onto Phase 2.

The Chief Prosecutor and Deputy Chief Prosecutor regularly participate in ongoing meetings on subjects impacting the work of the Office of the Prosecutor including the Public Corruption Task Force, Title 17 Amendment Sessions focusing on Livestock, Theft, and Procedure provisions. With regard to prior projects, the Office of the Prosecutor succeeded in obtaining a copy of the latest uniform bail schedule, however, there is no indication that the Corrections Department is actually utilizing the bail schedule. Additionally, the Petition to Amend the Rules of Criminal Procedure has had no action since its filing in January. The public comment period ended February 23, but the comments have yet to be publicly released by the Judicial branch.

The Chief Prosecutor also organized a white collar crime investigation training, which took place on August 30, 2018 in Window Rock. Presenters from the Arizona US Attorney's White Collar Crime Division, FBI White Collar Crime Unit, and IRS Criminal Investigations presented the training to staff from the Navajo Nation's WCCU, Ethics and Rules Office, and Office of the Auditor General. Sharing Navajo/Federal contact information was very beneficial along with the practice tips provided by each presenter.

Those attending the training expressed great interest in attending another training related to white collar crime.

IV. BUDGET STATUS

Program	Funding Sources	Number of Personnel	Number of Vehicles	FY 2018 Personnel	% Used	FY 2018 Operating	% Used
Attorney General (***)	CF	46	2	717,210.52	83.70%	633,346.40	75.41%
Prosecutor	GF	23	2	1,750,629.00	92.79%	155,022.00	63.22%
Juvenile Justice	GF	10	2	627,112.00	81.88%	272,569.00	57.90%
Navajo-Hopi Legal Service	GF	2	0	276,965.00	88.50%	22,359.00	54.80%
(*) Fixed Cost Litigation	GF/CO	0	0	0.00	0.00%	1,149,555.31	98.00%
(**) Water Rights Litigation	Special Revenue/ CO	7	1	706,886.01	98.00%	1,980,875.59	92.00%
Navajo-Hopi Part Lnd Rent	GF	0	0	0.00		120,400.00	100.00%
TOTAL:		88	7	4,078,802.53	444.87%	4,334,127.30	541.33%

(*) Fixed Cost Litigation (N01000) – This is a continuation account since 1993 to present. BY BFAU-34-18 Received a Budget Reallocation in Fixed Cost Accounts in the amount of 500,000.00 for The Navajo Generating Stations (NGS)

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

(***) \$29,009.87 Carry over from FY 2017 Consultant Contract; Received FY'2017 IDC Carryover Funds in the amount of \$1,148,843.00

V. OPERATIONAL & PROCESS IMPROVEMENT INITIATIVE STATUS

DOJ's internal taskforce consisting of the Attorney General, Deputy Attorney General, Assistant Attorney Generals, Chief Prosecutor, and the Principal Attorney for NHLSP discuss and address ways to make DOJ more efficient. Part of this has been the creation of a scanning document contract to ensure the legal documents of the Nation are protected. A multi-year project will begin with the new contract initiated in the fourth quarter.