



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

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**FY 2017 Fourth Quarter Report**  
**(July, August, September 2017)**

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## I. EXECUTIVE SUMMARY

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The Department of Justice (“DOJ”) consists of the Office of the Attorney General (“OAG”) which oversees the following: 1) Litigation & Employment Unit; 2) Human Services & Government Unit; 3) Natural Resources Unit; 4) Economic/Community Development Unit; 5) Tax & Finance Unit; and 6) Water Rights Unit. The Office of the Attorney General also oversees the Navajo-Hopi Legal Services Program and the Office of the Prosecutor/Juvenile Justice.

An action approved by the Navajo Nation Council and approved by the President does not make the action legal. Prior Navajo Supreme Court decisions lend credence to that statement. Our law expresses that the Attorney General is the Chief Legal Officer of the Navajo Nation and DOJ is charged to provide legal services to our government. Our law further expresses that DOJ provide those services in accordance with the highest standards of legal ethics. At times it may seem that DOJ’s statutory and professional duties result in legal opinions which may seem adverse to the politics of the Navajo Nation. As a result, our leaders sometimes have negative words about DOJ in public and private settings. We hope such expressions cease because we only want to assure our governmental actions are safe from legal challenge.

On February 5, 1982, the former Navajo Tribal Legal Office became the Department of Justice. In effect, this year marks DOJ’s 35<sup>th</sup> Anniversary. In honor of this, DOJ had a float in the parade. In the next quarter, DOJ intends to host a public event to formally celebrate our anniversary.

As previously reported, DOJ’s Litigation & Employment Unit secured a favorable decision from the Ninth Circuit Court of Appeals in the *Window Rock Unified School District, et. al. v. Reeves, et.al.* In this quarter, DOJ received notice that the School Board, composed entirely of or mostly of Navajos, voted to file an appeal to the U.S. Supreme Court. Essentially, our own citizens are challenging the sovereignty of the Navajo Nation. The Arizona Attorney General has provided notice that the state will file an amicus brief in support of the School District.

DOJ also previously reported that, through the Navajo-Hopi Legal Services Program and contract counsel, we had appealed several rulings by OHNIR Hearing Officer Harold J. Merkow. In the last three years, Merkow has denied 110 of 113 relocatee applicant appeals, which represents a denial rate of more than 97 percent. Pursuant to a motion filed by Jeremiah Oster, one of DOJ’s own attorneys, one of our appeals to the U.S. District Court of Arizona was successful as the Court issued an order finding Merkow’s decision to be in error and arbitrary.

Like most programs, budgets and budget hearings consumed many DOJ resources this quarter by requiring our attendance at all Committee budget hearings and at the Navajo Nation Council session on the Comprehensive Budget. For FY 2018, DOJ was fortunate to receive an increase in our overall budget in comparison to the FY 2017 budget. However, each of our programs will be functioning at an average of less than eight percent (8%) for operating expenses.

Nevertheless, DOJ is grateful to our political leaders for the budget allocated and approved. Our self-imposed hiring freeze has been lifted and recruiting efforts are underway. September 18<sup>th</sup>, Attorney Lillian Bales started in the Economic/Community Development Unit.

As commonly known, DOJ is housed in two separate buildings: 1) the old Club Building; and 2) the Butler Building. The Butler building houses nineteen (19) employees comprising of the Economic Community Development Unit, Water Rights Unit, Tax & Finance Unit, and the Office of the Chief Prosecutor. Recently, there have been more instances of water and plumbing issues. One recent incident took almost two weeks to repair. We may need a new building or assistance in acquiring the other half of the Club Building.

On July 7<sup>th</sup>, DOJ conducted a Litigation Update for all Officials from OPVP and Council. On July 31<sup>st</sup>, DOJ received a second training from the Department of Personnel Management on conducting Qualification Assessments. On the same day, DOJ held a luncheon for Chief Justice Allen Sloan.

In this quarter, DOJ provided trainings on Water Law, the Local Governance Act, Westlaw, Federal Case law updates, and Navajo Grazing Law. Next quarter, DOJ anticipates to provide trainings on Homesite leasing, Procurement, and researching Navajo law.

## **II. CRITICAL ISSUES**

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### **A. Building Needs for the Office of the Prosecutor**

Chief Prosecutor Gertrude Lee has worked diligently to get hire Prosecutors for each District. Chief Prosecutor, Deputy Chief Prosecutor, and nearby licensed Prosecutors continue to provide coverage for understaffed Districts. Further coverage will be necessary as it is anticipated that the Pueblo Pintado District will begin operation in the next quarter. As a result, the Prosecutor's Office submitted an unmet needs request to obtain two tribal vehicles. As previously reported, the staff has been using their personal vehicles to cover other Districts.

In February, the Chief Prosecutor placed work orders with the Facilities Maintenance Department to build barriers between prosecutorial staff and the public in the Crownpoint, Tuba City, and Kayenta Districts. In April, an intoxicated individual wandered into the Crownpoint Office and frightened the Staff. Thankfully, the Police responded and removed the individual. In August, the Tohajiilee/Alamo District Office was burglarized and many items were taken. In Dilkon, the Prosecutor's Office operates within a small section of the Police Department.

### **B. Overall Staffing Shortage & Budget**

DOJ has not been fully funded for many years and as a result, DOJ generally submits prorated budgets. For FY18, DOJ concentrated on providing full funding for our existing staff and partially funding our vacant positions. This was necessary because of the

budget we received. Although we are thankful for the increase in comparison to last year's budget, DOJ remain underfunded.

In FY17, OAG self-imposed a hiring freeze in order to benefit from personnel savings in order ensure the existing OAG staff were funded to the end of the fiscal year. Unfortunately, we also lost four great attorneys. By August, we had seven vacancies and our FY18 proposed budget reflected that those vacant positions would be funded for only five (5) months. Six of those vacancies are for attorney positions and with the demanding work we receive from all of our clients, those vacancies significantly affect our responsiveness and overall productivity.

As reported, the Navajo-Hopi Legal Services Program (NHLSP) is continuing to represent Navajo relocatees in administrative hearings before the Office of Navajo-Hopi Indian Relocation (OHNIR). Over the last three years, OHNIR has had a denial rate of 97%. NHLSP is evaluating which denials will be appealed to the Arizona Federal District Court. Several have been filed already and as previously noted, the NHLSP recently obtained a victory in one of their appeals. Regardless of whether ONHIR closes soon, many of these cases will likely continue for many years.

For the Office of the Prosecutor, the OAG is impressed with the recruiting efforts of Chief Prosecutor Gertrude Lee. However, it's agreed that many of our larger districts need multiple Prosecutor positions in order to ensure the prosecutorial sector of the public safety system is operating to a high degree. We need more prosecutors and resources for our staff.

### **III. PROJECT(S) STATUS**

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This quarter, DOJ received 747 Requests for Legal Service and completed 593. This does 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.

The projects mentioned below are notable projects and do not reflect all projects that DOJ is currently working on. As all projects have legal and confidential elements, this report only provides a high level summary. For additional information on any project, please request a private briefing.

#### **A. Office of the Attorney General (OAG)**

OAG (and DOJ) is led by Attorney General Ethel B. Branch. OAG also consists of Deputy Attorney Rodgerick Begay, 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 include:

1. Title 17 Amendment Work Group. OAG continues to conduct monthly meetings with public safety partners to amend and strengthen our criminal code.
2. Navajo Nation Public Corruption Task Force. OAG conducts monthly meetings designed to strategize against public corruption. HSGU assists OAG and the Task Force as it relates to fidelity bond claims.
3. Weekly and Monthly Meetings. OAG conducts weekly meetings with the Assistant Attorney Generals, Chief Prosecutor, and NHLSP on the progress made during the week. OAG also instituted monthly management meetings to address changes to internal policies for DOJ.
4. Cyberbullying. With the assistance of outside counsel, parts of the existing Criminal Code are proposed to be amended to include provisions against cyberbullying. The proposed amendments have been assigned legislation number 0366-17 and is sponsored by Delegate Brown and Delegate Hale.
5. FY18 Budget. The AG and/or the DAG attended all sessions regarding DOJ budgets.
6. Pledge Documents for Navajo Transitional Energy Corporation (NTEC). OAG and TFU had numerous meetings with NTEC in 2017. NTEC requested guidance on executing the remaining loan documents with Key Bank. Legislation 0254-17 entered the legislative process but it did not contain adequate language as presented by NTEC to DOJ. The legislation is pending before the Navajo Nation Council. TFU prepared proposed amendments in order to address DOJ's concerns which we anticipate will be considered at Council.
7. Step Increase / Bonus Review Committee (SIBRC). Initially, DPM considered and approved all requests for step increases, merit pay bonuses, and other bonuses. In early 2017, the Health, Education and Human Services Committee passed resolution HEHSCJA-02-17 replacing DPM with the SIBRC. The DAG was appointed as the DOJ representative. Numerous meetings have been held. Notwithstanding the progress made by the SIBRC progress, Legislation 0263-17 was introduced indicating that if the SIBRC does not consider a request within thirty (30) days, the bonus request will be automatically approved. SIBRC also finished the first draft for the "other bonus" policy which is anticipated to be presented before HEHSC for consideration and approval in the next quarter.
8. Informational Technology (IT). OAG's Senior Programmer Specialist (SPS) led efforts to obtain quotes for new equipment such as laptops for our attorneys. The SPS also completed a year-long project of migrating and combining two old servers into one new server.

**B. Litigation Unit (LU)**

LU, formerly the Litigation and Employment Unit, is led by Assistant Attorney General Paul Spruhan who manages three Attorneys, one Tribal Court Advocate, and one Legal Secretary. LU handles internal and external litigation by representing the Navajo Nation government in hearings before the Navajo Labor Commission, Navajo District Courts, Navajo Supreme Court, and the State/Federal Courts. LU also provides presentations to governmental clients on many subjects including the disciplinary action process. With the amount of work done by LU, the Unit is in need of another Legal Secretary position. At present, LU has one attorney vacancy and is expecting to lose another outstanding attorney (Mr. Colin Bradley). In this quarter, notable projects include:

1. Arranging and defining the legal strategies for anticipated appeals to the U.S. Supreme Court for two cases: *Window Rock Unified School District, et. al. v. Reeves, et.al.*, and in *Public Service Company of NM v. Barboan and Approximately 15.49 Acres of Land*.
2. *Navajo Nation v. San Juan County*: LU reviewed pleadings, participated on conference calls, and attended several Utah Navajo Commission meetings to update the Commission on status of case.
3. *Carter v. Washburn*: LU reviewed the Opening Brief filed by the Goldwater Institute.
4. LU represented the Navajo Department of Credit Services in small claims actions brought against defaulting parties. As of September 21<sup>st</sup>, three hearings were held in three separate cases in which the Navajo Nation obtained favorable outcomes. LU is preparing for hearings for 4 separate cases on September 27, 2017.

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

HSGU is led by Assistant Attorney General 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 one attorney vacancy in the Unit will be filled the week of Council's Fall Session. In this quarter, notable projects include:

1. Assistance to the Navajo Nation Gaming Enterprise on insurance matters which entail periodic meetings with the Gaming and casino attorneys and Human Resource staff. HSGU attended a meeting held on August 16, 2017.
2. Sexual Offense Registration and Notification Act (SORNA). HSGU participated in two SORNA meetings this quarter.
3. Managed Care Organization. HSGU attended multiple meetings regarding the creation of a Managed Care Organization by the Naataani Development Corporation.

4. IDC Recovery for TANF. HSGU has been working on the issue of indirect cost recovery of the Nation's TANF program of approximately \$17.2 million.
5. Navajo Nation Telecommunication Siting Regulation and Leasing Procedures. HSGU is a participant in a workgroup on amending the Regulations and the Procedures.
6. Department of Family Services (DFS). HSGU attended work sessions regarding revisions to the DFS manual and court forms. The revised manuals will be submitted for review and eventually presented to HEHSC for approval.
7. Indian Child Welfare Act (ICWA). HSGU assists the Navajo Children and Family Services and contract counsel with five pending ICWA actions pending in State and Navajo Courts.
8. Navajo Head Start (NHS) Contracting Matters. Due to an administrative change at NHS, HSGU is receiving many questions from the new contracting workers.
9. Division/Department of Education (DoDE). HSGU reviewed revisions to the Plans of Operation for the DoDE administration and also nine programs within the Department. HSGU returned the drafts back to DoDE which are expected to be resubmitted next month in compliance with DOJ's recommendations.
10. 638 Contract Programs. HSGU reviewed many documents as the 638-funded programs prepared their contract renewal and Successor AFA proposals for CY 2018. The Office of Management and Budget (OMB) issued a schedule for the programs to have their respective proposals ready for submission by September 30<sup>th</sup>.
11. Actuarial Consultant Contract. HSGU participated in an interview panel for an actuarial consultant services sought by both the Risk Management and Workers' Compensation Program. The contract is being presented to the Navajo Nation Insurance Commission for approval on September 18, 2017.
12. Risk Management Program.
  - a. General and Automobile Liability/Property Damage Claims/Cases. HSGU maintains direct contact with the Navajo Nation insurance defense counsel, insurance adjusters, the Risk Management personnel and federal agencies (FTCA) their respective Assistant United States Attorneys on a daily basis (written or oral), including but not limited to assisting in legal research, preparation of pleading, etc., attendance at meetings, motion hearing preparation and attendance, trial assistance, and other related assignments.

- b. Federal Tort Claims Act (FTCA) cases. Five (5) new claims were processed for handling under the FTCA within this quarter. Additionally, two (2) federal lawsuits were filed within this quarter.
13. Child Support Enforcement Cases. HSGU attends and reviews all cases in all five agencies. HSGU also assists and prepares Child Support Enforcement Officers. During this quarter, HSGU has filed over 300 Motions for Hearings that need to be presented to the Office of Hearings and Appeals.

**D. Natural Resources Unit (NRU)**

NRU is led by Assistant Attorney General Veronica Blackhat who manages six Attorneys, one Tribal Court Advocate, and two Legal Secretaries. Primarily, NRU provides legal assistance to the Division of Natural Resources. However, NRU is also involved in many other matters affecting our natural resources and our environment. Currently, NRU has 1 attorney vacancy (1 other vacancy will be filled the last week of October) and 1 legal secretary vacancy. In this quarter, notable projects include:

1. Bears Ears National Monument. NRU is part of the DOJ team working to prepare for litigation against the Trump Administration if they take action to rescind or reduce Bears Ears National Monument. NRU has also been attending the Bears Ears Commission meetings and advising the Navajo Commissioners during those meetings.
2. Animal Control Law amendments. Glenda Davis, director of the Animal Control Program, wishes to update Title 13 to make animal control laws more robust on the Nation. NRU and Ms. Davis completed a draft which has gone through the 164 process but has not yet been introduced as legislation.
3. Uranium. NRU assisted in a letter from OPVP to Senator McCain requesting the Senator's support in expediting the cleanup of the uranium mines.

Along with outside counsel Jill Grant, NRU is working on implementation of the Phase 2 settlement with the United States.

NRU also participates in meetings with the Navajo Uranium Working Group. This included a training conducted by NRU on the U.S. CERCLA and Navajo Nation CERCLA.

NRU is also active in the U.S. EPA Navajo AUM Coordination Group along with Navajo Superfund and the Navajo Abandoned Mine Lands Program.

The Tse Tah Cell continues to raise many issues. Meetings were held during the quarter and additional meetings will likely be held in the next quarter.

4. 2011 IRS Closing Agreement. NRU participated in meetings with the Tax & Finance Unit, DNR, DOA, OOC, OMB and DPM staff to discuss the implementation of the 2011 IRS closing agreement regarding worker classification for the District Grazing Committee, Eastern Navajo Land Board, and Farm Board members. The DOA has tentatively scheduled a reservation wide meeting on September 26, 2017 to discuss implementation of the IRS closing agreement with the DGC, FB, and ENLB members.
5. NPL Eligibility Criteria. The eligibility criteria for NPL grazing permits were approved by the Intergovernmental Relations Committee in 2010 (IGRJN-110-10). Several issues have been raised and NRU has been involved.
6. Construction Contracts for NDOT. Currently, NDOT utilizes the Engineers Joint Contract Documents Committee (EJCDC) forms. NRU has been working with NDOT on the development of construction contracts for the Division.
7. Navajo Generating Station. Attorney April Quinn of NRU has dedicated a substantial amount of time addressing the many primary and ancillary issues surrounding NGS. This includes the planning for the proposed shut down of NGS on December 22, 2019.
8. Burials. Chapters are passing resolutions restricting burials in community cemeteries to registered voters. The Navajo Nation Code clearly states at 13 N.N.C. § 1901 that “Any member of the Navajo Nation, regardless of place of residence or place of death, may be buried in a Navajo Nation cemetery.” The Navajo Nation Code does not require that someone be a registered voter to be buried in a cemetery on Navajo Nation Trust Lands. Although some matters were eventually resolved, this is likely to become a political issue as well.
9. Gold King Mine. NRU continued working on the Gold King Mine Cooperative Agreement second installment drawdowns. The total approved cumulative budget and project costs to support the Gold King Mine removal response cooperative agreement is \$716, 350.

**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 June, ECDU lost two outstanding attorneys which created two attorney vacancies. On September 18<sup>th</sup>, Attorney Lilian Bales began work in ECDU. The other vacancy is expected to be filled in the next quarter. In this quarter, notable projects include:

1. New Mexico Capital Outlay. ECDU participates in reconciliation meetings (internal and external) regarding funding by the State of New Mexico and Capital

Outlay Projects.

2. Title 26 Amendments. ECDU attended meetings in June and July focused on reviving discussions to amend Title 26. ECDU anticipates that more meetings will occur in the next quarter.
3. Administrative Service Center (ASC). ECDU is providing assistance ASC relating to its Plan of Operation (POO), MIP, training and matters related to Chapters. This appears to be a critical matter as ECDU and OAG receives more allegations of mismanagement of funds by Chapters.
4. Arizona Gaming Compact. ECDU serves as the DOJ's representative in the negotiations of the Arizona Gaming Compact. There are numerous meetings such as the Gaming Taskforce(GTF), Tribal Leaders, Tribal Teams (Attorney, Lobbyist and Staff), Inter-Plenary and Plenary sessions. Since the last quarter, negotiations have been very slow. However, starting October 6<sup>th</sup> there will be weekly Tribal Teams meetings and Inter-Plenary meetings in order to prepare for the upcoming 2018 Legislative Session.
5. Community Housing Infrastructure Department (CHID). Following a decision by the U.S. Department of Energy not to award the Nation 2017 Weatherization Assistance Program Funds, ECDU assisted CHID in preparing its appeal for award of funds, at a hearing presided over by the Department of Energy's Deputy Assistant Secretary for Energy Efficiency. The hearing took place in Golden, CO, on August 22, 2017, with CHID Manager Marlon Stevens, and Assistant Attorney General LaTonia Johnson making presentations.

**F. Tax and Finance Unit (TFU)**

TFU is led by Assistant Attorney General Jana Werner who manages two Attorneys and one Legal Secretary. TFU provides legal assistance to the Navajo Tax Commission, Office of the Controller, Office of Management & Budget, Retirement Services Department, and the Investment Committee. TFU also attends the Budget & Finance Committee meetings on a regular basis. In this quarter, notable projects include:

1. Attending all FY18 Comprehensive Budget Hearings at the Budget and Finance Committee, Nabikiyat'i Committee, and the Council Session.
2. IRS Audit and the 2011 IRS Closing Agreement. Several DOJ Units have been assisting the Nation with the IRS Audit. However, TFU is the primary unit leading this effort.
3. Amendments to the Procurement Code. In 2016, DOJ formed an internal task force to begin amendments to the Procurement Code and its Regulations. In 2017, the Budget & Finance Committee formed a sub-committee to address

amendments as well. While several DOJ Units are assisting, TFU is leading this effort. In this quarter, TFU has compiled all of the proposed amendments by DOJ attorneys. DOJ is scheduled to present the proposed amendments to the sub-committee on September 28.

4. Due to TFU assistance, the U.S. District Court of New Mexico authorized an additional payment of \$1,171,180 as part of the net settlement in *Ramah v. Jewell*, to the Navajo Nation.
5. Uniform Local Tax Code and Model Chapter Ordinance. TFU finalized the Uniform Local Tax Code to allow LGA-certified chapters to impose taxes after advance authorization by the Council and to allow LGA-certified chapters to enact their Model Chapter Ordinance. ONTC has identified a sponsor for the legislation which may enter the legislative process in the next quarter.
6. Amendments to the Auditor General's Plan of Operation. TFU continues to participate in the review and recommendations to the proposed amendments.
7. U.S. Department of Treasury Offsets. TFU, with the assistance of contract counsel Holland & Knight, are reviewing possible wrongful offsets. TFU expects to obtain the first CMS reimbursement of \$322,000.

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

WRU is led by Assistant Attorney General Stanley Pollack who manages three Attorneys and two Legal Secretaries. Mr. Pollack is expected to retire in October 2017 but will continue to assist WRU as contract counsel. WRU represents the Navajo Nation's interests in state and federal courts, including five general stream adjudications. In this quarter, notable projects include:

1. San Juan River Basin. The Navajo Nation is working with the United States and other parties to develop a litigation strategy for the remainder of the adjudication. WRU has participated in teleconferences with the United States and other parties regarding the Echo Ditch decree to determine the best path forward in dealing with this decree. WRU participated in a Status Conference on August 23, to hear the State of New Mexico's proposed plan to move forward. WRU reviewed and concurred in the submission of a proposed Order drafted by the US as directed by the Court setting a briefing schedule to address whether the Court should modify its fifth Case Management Order.

The four separate appeals of the order approving the settlement of the Nation's water rights claims in the San Juan River Basin have now been fully briefed. The matter has been referred to the Court's calendar and a panel to consider the case has been assigned. Oral argument was requested but has not been scheduled. WRU also participated in monthly meetings to discuss implementation of the settlement.

2. Zuni River Basin. WRU filed the Zuni River Basin Status Report on June 1, 2017. Development of the hydrologic model is nearing completion and WRU anticipates that a fully-calibrated model capable of running water use scenarios to determine potential impairment to the tribes during the next quarter.
3. Little Colorado River Basin (AZ). The adjudication is now squarely focused only on the claims of the Navajo Nation and the Hopi Tribe. Previously, the understanding of the parties was that the adjudication of the Hopi claims would go first, followed by the claims of the Navajo Nation. However, with the appointment of a new Special Master, the Hopi Tribe and the non-Indian parties promoted a litigation schedule that would force the Navajo Nation to prepare its case while at the same time litigating the Hopi claims. The Navajo team has met several times this quarter.
4. Colorado River Basin (AZ): Navajo Nation v. Department of the Interior. WRU is awaiting a decision from the Ninth Circuit on the Nation's appeal.
5. San Juan River Basin (UT). WRU is working without outside counsel Ryan Smith of Brownstein Hyatt Farber and Schreck to secure support for the Navajo Utah Water Rights Settlement Act (NUWRSA) in Congress. WRU has participated in monthly teleconferences with representatives of the Federal Negotiation Team and the State of Utah to discuss the NUWRSA. On September 8, WRU gave an update on the NUWRSA to the Navajo Utah Commission in Window Rock. WRU continues to work to revise the settlement legislation to address concerns identified by the US. It is anticipated that the Senate Committee on Indian Affairs will hold a hearing on the legislation in the next quarter.

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

NHLSP is led by Principal Attorney Susan Eastman who manages one Attorney and 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 (OHNIR).

This quarter, NHLSP in-house and outside counsel represented 15 applicants in 13 administrative appeal hearings before OHNIR Hearing Officer Harold J. Merkow. NHLSP prepared 16 clients for hearing and interviewed 33 witnesses. Six (6) post-hearing briefs were submitted to the Hearing Officer and ONHIR.

According to ONHIR's statistics, there are 48 active administrative appeals remaining as of September 2, 2017, and ONHIR plans to conclude administrative appeal hearings by the end of December 2017. Administrative appeal hearings for applicants represented by counsel are scheduled to conclude as of October 6, 2017; the remaining hearings will be for self-represented applicants.

Hearing Officer Merkow has denied the appeals of 4 more Navajo applicants since the last quarter. Out of 116 administrative appeals brought by counsel before Hearing Office Merkow since October 21, 2014, Mr. Merkow has denied the administrative appeals of 113 of these applicants, and ONHIR has certified as eligible only three (3) applicants represented by counsel in this same time period. This represents a denial rate in excess of 97%.

NHLSP client files remain under review for federal appeal. We currently have thirteen (13) cases for sixteen (16) Plaintiffs pending against ONHIR in the federal District Court of Arizona, and we will continue filing additional federal appeals where warranted.

NHLSP also attended meetings of the ONHIR Transition Team, ONHIR, and the BIA to discuss ONHIR's anticipated closure in 2018. The August 9th meeting included GAO team members. The next meeting is scheduled for Monday, September 18, 2017. NHLSP also continues to participate in the ONHIR Transition Team conference calls held with NHLC Executive Director Wenona Benally, Roman Bitsui, OPVP Counsel Karis Begaye, and Navajo Nation lobbyists Greg Smith and Jackson Brossy in Washington, D.C.

## **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 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 2,211 criminal cases and 112 juvenile cases.

The Chief Prosecutor and Deputy Chief Prosecutor regularly participate ongoing meeting on subjects impacting the work of the Office of the Prosecutor including the Title 17 Amendment Sessions. In the last quarter, the Office of the Prosecutor has participated in revisions regarding the Rules of Criminal Procedure, Violent Crime and Sex offenses. The Chief Prosecutor has been actively involved in the Public Safety System Fund initiative by attending meetings and providing requested budgets. The Chief Prosecutor and White Collar Crime Unit regularly participate in the Public Corruption Task Force meetings comprised of various executive offices having a role in combating public corruption. This quarter, the Chief Prosecutor organized a meeting with law enforcement leadership to discuss sexual assault reporting in the Ft. Defiance District after Ft. Defiance IHS expressed concern regarding follow-through from police and prosecution of sexual assault offenses.

The Office of the Chief Prosecutor continues to ensure full participation of the Office of the Prosecutor in the Tribal Access Program. During this quarter, the Office of the Prosecutor completed all necessary CJIS training, has three ORI# with the federal government for three of the District Offices and is considered a non-law enforcement

criminal justice agency, which will give the office access to national criminal justice information. The Office of the Prosecutor submitted its vetting documents and is nearly finished with the process. Once the Office of the Prosecutor has capability to run criminal background checks, it will start with running background checks on all current employees and start the process for any new hires. The Chief Prosecutor has had ongoing meetings with DPM-OBI and IMS to ensure we keep the lines of communication open as Office of the Prosecutor positions are designated as sensitive. The TAP rollout was pushed back from the week of September 18th to the week of November 13th.

The Chief Prosecutor is focusing on creating a pipeline for Navajo law advocates by developing a partnership with Navajo Technical University's law advocacy program. During the fourth quarter the Chief Prosecutor met with NTU President Elmer Guy and organized several conference calls to discuss the creation of an NTU clinical law program that would include a Prosecutor Clinic. The Chief Prosecutor also drafted for consideration by the Navajo Nation Supreme Court an Amended Order regarding the practice of law students in Navajo Court to include law advocacy program participants. The Navajo Board of Bar Commissioners has also been invited to provide comment on amendments to the current order.

The Chief Prosecutor and the Deputy Chief Prosecutor organized training for all staff. On August 18, all of the legal secretaries met for one day of training in Chinle, AZ. At their one-day session they had the following sessions: Creating a uniform filing system, SharePoint training, discussion of the draft legal secretary handbook, IT Security Training, JustWare Update, and case management and preparing case files for trial. On August 31st, all of the office supervisors met in Flagstaff to discuss district issues and had a session on what makes a good supervisor. The legal staff all met for one day on September 1st where workshops were provided on: Case preparation – Children's court cases, Case preparation – Criminal Cases, Witness Preparation, How to Prepare for Motion Hearings, ABBA (provided by DOJ Attorney Kandis Martine), and group discussion of bail issues on the Navajo Nation.

**IV. BUDGET STATUS**

**# Quarter Budget Information**

Funding Source <b>General Funds etc</b>	Number of Personnel #	FY 2017 Personnel \$ amt	% Used	FY 2017 Operating \$ amt	% Used
OAG	46	\$4,089,197.0 0	88.25%	\$125,563.00	88.17%
Prosecutor	23	\$1,660,924.0 0	77.30%	\$223,050.00	54.38%
Juvenile Justice	10	\$610,329.00	69.45%	\$152,468.00	81.02%
NHLSP	3	\$312,957.00	83.75%	\$18,100.84	76.30%
Fixed Cost Litigation	0	0	0	\$18,100.84	99.00%
Water Rights Lit.	7	\$7,064,741.6 0	83.00%	\$10,285,631.1 1	83.00%

Funding Source <b>External Funds</b>	Number of Personnel #	FY 2016 /15 Personnel \$ amt	% Used	FY 2016/15 Operating \$ amt	% Used
		\$	%	\$	%

**V. OPERATIONAL & PROCESS IMPROVEMENT INITIATIVE STATUS**

DOJ formed an internal task force consisting of the Attorney General, Deputy Attorney General, Assistant Attorney Generals, Chief Prosecutor, and the Principal Attorney for NHLSP. The group meets on a monthly basis to assess how DOJ could improve our operations. In this quarter, the group met on July 31<sup>st</sup>, August 29<sup>th</sup>, and September 25<sup>th</sup>.