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FY 2018 Third Quarter Report
(April, May, June 2018)

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I. EXECUTIVE SUMMARY

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

- We filed a Motion to Partially Dismiss the 1992 Consent Decree that imposed incredibly short hold time limitations on the Nation's detention facilities in Tuba City and Chinle that have since been replaced by new, permanent facilities. Our Motion seeks to dismiss this provision, along with a number of other now moot or obsolete provisions of the Consent Decree.
- We preserved an important Tenth Circuit ruling that Navajo Nation partial ownership of allotment was sufficient to block condemnation of the allotment in *Public Service Co. of New Mexico v. Barboan* by securing denial of certiorari from the Supreme Court.
- We worked closely with other public safety partners to complete comprehensive revisions to Title 17, the Nation's criminal code. Specifically, the amendments will address Violent Crimes, Sex Crimes, Weapons, Alcohol, and Drugs. Honorable Delegate Crotty will be the lead sponsor on this legislation, which is currently with Legislative Counsel. These amendments will advance key reforms, such as the establishment of victims' rights for all victims of crime on the Nation, as well as extensions and waivers of statutes of limitations for more serious crimes such as sexual assault, aggravated assault, and sex crimes against children. The amendments will also establish tiered sentencing designed to deter repeat offenders.
- We collaborated with the Native American Rights Fund and the Native American Voting Rights Coalition to host a Navajo Nation Voting Rights Hearing in To'Nanees'Dizi where we and other Coalition members gained greater insights into the challenges Navajo voters face in federal, state and county elections, and also learned of best practices that certain county recorders are implementing that can and should be implemented across counties in the 2018 midterm election. We are working closely with the Coalition to ensure such cross-county and cross-state implementation.
- We successfully closed the IRS's examination of the Nation's employment taxes related to classification of workers as employees or independent contractors for tax years 2014, 2015, and 2016.
- We aggressively recruited legal professionals as well as summer law clerks. Due to this recruitment, DOJ hired four (4) new attorneys, three (3) summer law clerks and an administrative legal secretary. DOJ is finalizing selection of a second legal secretary and two (2) attorneys this month. OCP hired an Attorney, a Juvenile Presenting Officer and a legal secretary.

If you would like further detail, please request a private briefing. Additional accomplishments are addressed below in the Projects section of this Report.

II. CRITICAL ISSUES

A. Building needs for the Office of the Prosecutor

During the Third Quarter, OCP hired for three positions. Currently, that office has only three vacancies. As a result, building needs continue to be a critical matter for OCP. Facility space that is safe and secure as well as sufficient for staffing and documents is critical at this time.

B. DOJ Budget

DOJ's FY18 budget consists almost entirely of personnel costs. With the indirect costs funds, DOJ initiated two projects currently – the re-wiring of the Butler Building for better connectivity and a scanning project of five bins of documents. DOJ lacks adequate space for the retention of legal documents and this persistent issue has led to a large undertaking of scanning necessary documents to protect the Navajo Nation's legal interests.

III. PROJECT(S) STATUS

This quarter, DOJ received 769 Requests for Legal Services and completed 611. 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 includes Acting Deputy Attorney General Cherie Espinosa, two Legal Secretaries, and three Support Staff. OAG oversees DOJ, the Navajo-Hopi Legal Services Program (“NHLSP”), and the Offices of the Prosecutor and Juvenile Justice (“OCP”). DOJ includes the following six units: 1) Litigation Unit; 2) Human Services & Government Unit; 3) Natural Resources Unit; 4) Economic and Community Development Unit; 5) Tax & Finance Unit; and 6) Water Rights Unit.

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. The Work Group secured successful passage of White Collar Crime amendments in the Fall Session

of FY18 and is now working on additional rounds of amendments. The Work Group's proposed Violent Crime, Weapons, Sex Crimes, Alcohol, and Controlled Substances amendments to Title 17 have completed 30-day comment periods with the full range of public safety partners and interested parties within our government. Delegate Crotty has dropped the legislation, which is under review by Legislative Counsel and will be issued for the 5-day public comment period in the near term. 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, which 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 last quarter. 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 marks 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 will soon finalize a shared strategy for how to coordinate collective Nation resources to better respond to these reports, and will finalize its recommendations on how to amend the Navajo Nation Code to empower Task Force participants to better respond to reports, and to eliminate some of the key challenges to more 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 with DOJ.
4. Head Start Under Enrollment. OAG, working with outside counsel, has been addressing multiple issues regarding Navajo Head Start. During the quarter, the Navajo Nation successfully defended the Navajo Nation's right to an appeal process prior to the federal funding agency reducing Navajo Head Start funding and enrollment. Currently, OAG is working on the actual appeal due to chronic under-enrollment designation by the federal funding agency, a disallowed cost due to lack of matching funds and 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, one Tribal Court Advocate, 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 still has one attorney vacancy but is reviewing applications currently. 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 back 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. Texas v. Zinke Litigation

The Nation attempted to intervene in the Texas v. Zinke lawsuit pending in the Federal District Court for the Northern District of Texas. That lawsuit concerns several states, including Texas, and several individuals, seeking to have the federal court declare the Indian Child Welfare Act unconstitutional. We filed a motion to intervene with a motion to dismiss the case. The Court ruled against the Nation on the motion to intervene, stating that the Nation was adequately represented by the United States defendants and several tribes had previously intervened. We will continue to monitor the case, and we have the option to appeal that decision now or at the end of the case.

3. Navajo Nation v. San Juan County Litigation

We are participating on behalf of the Nation in the appeal of the *Navajo Nation v. San Juan County* litigation, which concerns the redistricting of school board and county commissioner districts in San Juan County, Utah. The federal judge in the district court ruled the existing districts invalid, and ordered new elections with new districts that will allow Navajos to vote for candidates that better reflect the interests of the Nation's communities in the County. The County appealed that decision, and we will

be filing a response brief in the Tenth Circuit Court of Appeals to argue that the appellate court should affirm the lower court decision. The individual Navajos who were plaintiffs in the lower court separately made a similar filing.

4. 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 five 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 in part 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 redrafted statutory provisions conferring additional protections/rights to individuals with disabilities at the request of Delegate Hale. The initial legislation was drafted by the Native American Disability Law Center and potentially opened the Navajo Nation to future liability while also amending the Navajo Nation Bill of Rights without a referendum. HSGU and LU attorneys provided recommended language to address the government concerns while also addressing the needs of individuals with disabilities. The legislation is to be re-introduced.
2. Whippoorwill Chapter Fidelity Bond Claim
On January 4, 2018, the preliminary Proof of Loss was submitted for a \$500,041.58 plus loss the Chapter sustained as a result of ten (10) individuals (Chapter Officials and employees) who manipulated the accounting system to use restricted funding for unnecessary and unauthorized travel reimbursements and advances. HSGU responded to requests from the forensic accountants/adjusters hired by the carrier for production of documentation to support the Navajo Nation’s claim. A response was issued on April 9, 2018, but the carrier requested additional documentation that supports each reimbursement check (367 or more) fraudulently issued. HSGU is working with multiple government agencies and the Chapter in responding to these multiple requests from the carrier.
3. NNTRC Section 106
The FCC issued the Final Rule *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT. Docket No. 17-79 on May 2, 2018. This streamlines the wireless infrastructure siting review process to facilitate 5-G wireless networks. The FCC Final Rule excludes small cell deployment from compliance with Section 106 of NHPA and environmental review under NEPA on non-tribal lands; clarifies the section 106 tribal consultation process; removes environmental assessment requirement for facilities located in flood plain areas; and establishes a 45-day period for the

Commission to respond to environmental assessments. Initially it was unclear whether the Final Rule would apply to tribal lands. The Nation convinced the FCC to concede on numerous issues and limit the applicability to non-Tribal areas.

4. Retrocession of Alamo School Board as a Grant School

Concerns have been raised that the Navajo Alamo School Governing Board is mishandling school funds. In order to address financial discrepancies and the allegations, DODE moved to intervene and retrocede the school back to BIE. On May 24, 2018, HSGU issued a memo with instructions regarding the intervention of Alamo School. On May 31, 2018 BOE adopted a Resolution to retrocede the Alamo Navajo School back to BIE. There is current legislation introduced to retrocede the school. The current lack of rules regarding when a retrocession should occur continues to create issues for the Department of Diné Education. HSGU is continuing to work to provide legal advice on the development of such a process.

5. ARRA Funding - Memorandum of Agreement with NTUA

In 2011, the Navajo Nation and the Navajo Tribal Utility Authority entered into a memorandum of agreement wherein the Navajo Nation agreed to support NTUA in its application for ARRA funding and the Nation was to receive twelve (12) strands of ARRA-funded fiber from NTUA in exchange for the Nation's support. There is confusion on whether the MOA is set to expire on June 21, 2018. The confusion arises out of a 2013 Non-disclosure Agreement and cover letter. HSGU has determined that the MOA is perpetual and communicated such to NTUA. The Nation has provided support to NTUA by facilitating the acquisition of approvals and clearances, aiding in partnerships with other parties and providing certain waivers for telecommunication rights of way. HSGU believes the Nation is entitled to the 12 strands of fiber and will work with all parties to ensure that the twelve (12) strands of fiber are provided to the Navajo Nation.

6. Native American Disability Law Center Requesting Entrance to Navajo DOC Facilities

The Native American Disability Law Center requested access to the Navajo Nation's Department of Corrections facilities for monitoring purposes to ensure individuals with disabilities continue to receive the necessary services. A meeting was held between the parties to discuss a possible resolution including a site visit to one of the new DOC facilities. Additional follow up discussions will occur after the site visit.

7. Child Support Cases

HSGU managed more than three hundred (300) hearings this past quarter. During the quarter more than two hundred (200) orders were filed with the Office of Hearings and Appeals for all five agencies. HSGU is working diligently with the client and the Office of Hearing and Appeals to address not only current cases but also a backlog of cases.

8. ICWA Cases

HSGU worked on multiple transfers under the federal Indian Child Welfare Act which recognizes the Navajo Nation judicial branch's jurisdiction to adjudicate these matters. This quarter, HSGU filed four petitions for transfer and is currently working on an additional transfer from the state of Wyoming. During these petitions for transfers, HSGU

also works with the state officials as well as Guardian ad Litem to ensure smooth transitions take place. Continuous education of state officials and others within the state court system is necessary to ensure that Navajo Nation sovereignty and tribal court jurisdiction is understood.

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. NRU hired a new attorney and is finalizing the hire of its legal secretary vacancy. 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. In this quarter, notable projects include:

1. McKinley County Tax Assessment

On June 8, 2018, the Department of Agriculture notified NRU that McKinley County had listed the Navajo Nation Fee Lands as part of their scheduled auction to occur on June 26, 2018 for failure to pay taxes. Prior to this, DOJ and DOA had met with McKinley County Assessor on February 22, 2018, to address grazing fees, taxes being imposed on cattle and the way the County does appraisals. The County increased the tax appraisal to non-agricultural land which is appraised at a higher value. DOA is protesting that determination; however, no decision by the County has been made yet. DOA was to meet again with assessor’s office to compare maps and boundaries as the county map boundaries differ from DOA ranch boundaries. The Nation, through the Land Department was paying the taxes but Land Department is saying they aren’t paying taxes for the DOA. The DOA has no money budgeted for paying taxes on land. Apparently, the Nation has not paid its taxes on the Fee lands since 2013. Thus, the County has listed our fee lands located within the County for auction.

2. Repatriation

NRU assisted in the development of a memorandum of understanding between the Navajo Nation and the Hopi Tribe for the purpose of repatriating individual remains and funerary objects. 172 individuals have been identified along with 53 boxes of funerary objects and 296 vessels at BMAP. For Salt River, 84 individuals and 193 funerary objects have been identified. A proposed MOU between Hopi and Navajo has been drafted to avoid any disputes between the tribes and is being finalized. A site visit is planned for June 18, 2018 at Black Mesa mine to identify a reburial site.

3. Monument Valley Navajo Tribal Park

NRU is assisting Oljato Chapter and Parks and Recreation in devising a plan for a chapter house. Previously, the Monument Valley Welcome Center was requested by the chapter, however, after reviewing the potential cost and construction as well as how well suited the Welcome Center would be for the purposes of a chapter house, a relinquishment of land by Parks and Recreation to Oljato Chapter most likely will be utilized as the legal avenue for the chapter to take in order to construct a new facility. NRU will continue to assist on the potential relinquishment.

4. Navajo Nation Peace Officer Standards and Training Certification Act
Proposed amendments to Title 17 were submitted to the Natural Resources Unit for review. The purpose of the Act is to establish a Commission that would set minimum qualifications for certification of peace officers, prescribe standards for training, develop policies and procedures for police standards, address complaints against officers and make recommendations to leadership. NRU and HSGU provided a response determining that the proposed Navajo Nation Peace Officer Standards and Training Certification Act conflicts with current Navajo Nation law. The mechanism to commission certified law enforcement officers already exists and creating another commissioning body is unnecessary. DOJ recommended if the NN POST is to proceed forward, concurrent legislation should be drafted repealing 2 N.N.C. §1352. In the alternative, the information contained in the NN POST could be shared with the NNDPS Executive Director for inclusion in their plan of operations, thus eliminating the need to pass the NN POST.
5. Land User Consent Requirement for Service Line Agreement
A District Grazing Committee member issued a consent on behalf of a land user due to a concern of non-compliance. However, NRU issued advice regarding the necessary consents required in this situation. In some cases, District Grazing Committee members were consenting if they knew that the land in question was not permitted to anyone or if there was no grazing permit for the area in question, which they are not authorized to do. NRU determined that the grazing permittees must consent for themselves and the District Grazing Committee or its member cannot consent on a permittees behalf. *Dennison v. Tucson Gas & Electric*, 1 Nav. R. 95 (Sup. Ct. 1974).
6. Navajo Nation Ute Mountain Ute Fence Agreement
NRU provide revisions on a proposed fence agreement with the Ute Mountain Ute Tribe. The Ute Mountain Ute Tribe and the Navajo Nation share a common, and at times overlapping, border for several miles along or near the border of Colorado and New Mexico, Colorado and Utah and in New Mexico (“Shared Boundary”). The proposed agreement would address grazing, fencing and roads along the Shared Boundary by setting 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. Complications/Concerns: There are provisions indicating that if livestock is impounded and the owner retrieves the livestock, they will be liable to the other Tribe to the extent mandated by the livestock laws of the other Tribe. NRU is researching the Ute Mountain Ute tribal laws with respect to livestock and impoundment in order to provide further guidance on this matter.
7. Navajo Generating Station
The Nation is continuing its conversation with the Salt River Project (“SRP”) related to the NGS Extension Lease and the decommissioning of NGS. NRU has participated in those discussions and provided legal assistance, as necessary. Additionally, the Nation is also moving forward with its efforts to find a potential new owner for NGS. As a component of these efforts, the Nation has issued a Request for Proposals.

8. Clean Power Plan

The Clean Power Plan was challenged by various industry groups and twenty-four states. The U.S. Supreme Court took the unusual step of issuing a stay on the Clean Power Plan until the litigation was resolved. The new federal administration then took office and the U.S. EPA took steps to rescind the Clean Power Plan. DOJ worked on drafting the Navajo Nation's comments on the proposed rescission. In sum, the power plants on the Navajo Nation have already reduced their carbon emissions adequately based on other environmental requirements and no further reductions should be required. The Navajo Nation requested a government-to-government consultation with U.S. EPA regarding this matter.

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 ("DED"), Division of Community Development ("DCD"), and the 110 Chapter governments. However, ECDU is also involved in other matters such as gaming. ECDU filled its open attorney position this quarter. In this quarter, notable projects include:

1. Bankruptcy of Woodbridge Mortgage

The Ramah Chapter President invested Funds contrary to Navajo Nation laws and policies. The Chapter President deposited \$1,000,000.00 with Woodbridge Mortgage. Woodbridge Mortgage filed for bankruptcy. Working with outside counsel, a claim was filed as a creditor. The Ethics & Rules Office ("ERO") has filed a complaint re the actions of the Ramah Chapter President; the matter is also under investigation by the White Collar Crime Unit ("WCCU") of the Office of the Prosecutor.

2. Upper Fruitland Chapter Senior Center

Upper Fruitland Chapter is an LGA-certified chapter which may enter into its own construction contracts. This project was started over a year ago with Capital Projects Management Department ("CPMD"), but the Chapter insisted upon administering the contract itself, and withdrew from working with CPMD. The State has informed the Navajo Nation that it will not accept a contract between a Chapter and contractor and will also not reimburse the Chapter. The State funding was not issued to the Chapter. After a number of meetings, it was agreed that Upper Fruitland Chapter would not include the State funding in its construction contract, and it would work with NAAA to use the State funding for goods as allowed by the State Funding.

3. Chapter Misconduct

ECDU continued to receive notice of possible misuse of funds at the Chapter level. It appears that there is an increase in either misconduct at the chapter level or an increase in reporting of misconduct at the chapter level. In an effort to assist ECDU and DCD when receiving notice of allegations of misconduct, ECDU created a chapter misconduct checklist for ECDU and DCD. The checklist outlines requirements including providing

notice to various Navajo Nation entities, obtaining documentation to assist in verifying the misconduct, reviewing the Chapter's MIP and bank accounts, and filing a Fidelity Bond Claim. This checklist will allow ECDU and DCD to carry-out the necessary steps and to be able to assist Office of the Auditor General, ERO, and WCCU when it is conducting an investigation and moving forward with a possible filing of civil and/or criminal complaints.

4. Revision of Glen Canyon Dam Area Agreements

The agreements governing the development of the Glen Canyon Dam Area ("GCDA") provide for management by the Navajo Nation and the National Park Service ("NPS"). These agreements are set to expire in 2020. In reviewing these agreements, ECDU has recognized that the agreements need to be updated and modernized. ECDU met with NPS, DED, and DNR to discuss amendments to the agreements. ECDU presented proposed amendments to the agreements, which mostly reflects support for continued economic development of the GCDA and setting standards for future action by both parties.

5. Proposed Settlement with Antelope Point Holding

Antelope Point Holding ("APH"), current lessee of a business site lease on the Navajo Nation's portion of GCDA, is in default of its business site lease because of the amount of annual rent that is due to the Navajo Nation and APH's failure to develop in accordance with its lease. The lease will expire in 2022, but APH would like an extension. ECDU has been working with outside counsel and DED on the negotiation to resolve the default. There has been a settlement offer and counteroffers proposed.

6. Non-compliance of Business Site Leases

ECDU has been assisting DED with a number of leases that are in non-compliance, including situations where there is no valid lease or permit, the lease is in default for non-payment of annual rent and illegal home sites are built on business premises. ECDU is assisting and advising clients by drafting and negotiating settlement agreements, pursuing forcible entry detainer actions and terminating leases.

7. Navajo Nation Gaming Distribution Fund

Pursuant to the Navajo Nation Gaming Distribution Fund ("GDF"), the Office of the Controller ("OOC") has the authority to issue Internal Procedures. The current Internal Procedures required amendments to clarify areas that would allow the process to be more efficient. ECDU worked with multiple Navajo Nation offices to draft amendments to the Internal Procedures. Upon completion, the Budget and Finance Committee and Health, Education and Human Services Committee requested amendments to the GDF's Fund Management Plan to allow for net gaming revenues to pay for the utilities and telecommunication for agency centers of Head Start and Navajo Area on Aging Agency. ECDU is working on the requested additional amendments.

F. Water Rights Unit (“WRU”)

WRU is led by Assistant Attorney General 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. The San Juan River Basin (NM)

The action was originally filed in 1975 by the State of NM to determine the water rights for all claims in the San Juan River. In 1977, the Nation moved to intervene in the case and has been a party since then. There are two sub-proceedings. The first, Navajo *Inter Se* (Subfile AB-07-01), resulted from the parties reaching a Navajo water rights settlement in 2009. In 2013 the state District Court approved the settlement. Thereafter, four appeals filed by objectors challenging the settlement were filed. In this quarter, the NM Court of Appeals dismissed all four appeals. However, all four appellants, as well as the State of New Mexico and other parties, have sought certiorari in the New Mexico Supreme Court. WRU has participated in a second sub-proceeding regarding the La Plata section of the San Juan River since 2006. WRU attorneys are also counsel of record in a challenge of a water permit application filed with the New Mexico Office of the State Engineer, *In re City of Farmington*, (16-040). WRU also provides legal advice regarding the implementation of the Navajo settlement and to the NIIP (Navajo Indian Irrigation Project) Task Force, and participates in the San Juan River Recovery Implementation Program, and the Animas-La Plata Project Operation and Maintenance Association.

2. Zuni River Basin (NM)

WRU attorneys are counsel of record in the Zuni River Basin Adjudication, *United States v. State of New Mexico, et al.* CIV 6:01-0072-MV-WPL, U.S. District Court, D. New Mexico (filed in 1999). In 2001, the United States filed water rights claims on behalf of Zuni, the NN, and Ramah. Also in 2001, WRU moved to intervene on the Nation’s behalf. The main case also has two sub-proceedings that WRU participates in. The sub-proceeding focusing on the claims of the Nation (Case 12-cv-1298 MV/WPL) and the sub-proceeding for the Zuni Tribe (Case 07-cv-00681-MV-WPL) are proceeding on separate tracks. Settlement negotiations between the two tribes, the United States and the State are focused primarily on reaching consensus on a hydrologic model for the basin that could be used both to evaluate impacts of development of the tribes’ claims and as a tool to administer a future decree.

3. Rio San Jose Basin (NM)

WRU attorneys are counsel of record in *State of New Mexico ex rel. State Engineer v. Kerr-McGee Corp., et al.*, CB-83-190-CV & CB-83-220-CV (Consolidated). The main case arose initially from a federal court trespass action

in 1982 which got deferred to a state court general stream adjudication in 1984. In 1987, WRU filed the Initial Statement of Claimant on behalf of the Navajo Nation. In 2004, a sub-proceeding of the main case was created to address the Acoma and Laguna Pueblo water rights claims. Presently, WRU is involved in settlement discussions in the matter. WRU will be evaluating the latest proposal dated June 8, 2018. The proposal was created after the April 17th proposal was summarily rejected by the federal government as being too expensive.

4. Little Colorado River Basin (AZ)

WRU attorneys are counsel of record with the law firm of Sacks Tierney (“ST”) in the LCR Adjudication, *In re the General Adjudication to Use Water from the Little Colorado River System and Source*, Civil Case No. 6417, Superior Court for Apache County. The main case arose from a filing in 1978 by the Phelps Dodge Corporation seeking to determine the water rights of all claimants to the LCR basin. In 1984, the Nation moved to dismiss but it was denied. In 1985, the Nation filed its statement of claim in the LCR. This case now has four very active sub-proceedings: 1) *In re Hopi Tribe* (6417-201); 2) *In re Hopi HSR* (6417-203); 3) *In re Navajo Nation* (6417-300); and 4) *In re Lower Little Colorado River Subwatershed* (6417-400). WRU attorneys also participate in Arizona Southwest Navajo Technical Advisory Group (TAG) meetings addressing on-going water development efforts.

5. Colorado River Basin (AZ)

This basin is divided into the upper and lower basin of the Colorado River. While there are no litigation activities in the upper basin, WRU participates in the Ten Tribes Partnership which covers issues in the upper basin. In the lower basin, WRU attorneys are counsel of record with the McElroy law firm in *Navajo Nation v. Department of the Interior*, No. CV-03-00507-PCT-GMS. In 2014, the U.S. District Court of AZ dismissed the case which was appealed to the Ninth Circuit. In December 2017, the Ninth Circuit affirmed the dismissal of the NEPA claim but reversed the dismissal of our breach of trust claim. WRU attorneys also participate in the Western Navajo Pipeline TAG in efforts to identify additional opportunities to advance the Nation’s water rights claims.

6. San Juan River Basin (UT)

WRU attorneys have been in negotiations with the State of Utah since 2003 to settle the Nation’s water rights claims in the San Juan River Basin in Utah. In 2016, the Navajo Nation Council approved a settlement. In the same year, a settlement legislation was introduced in Congress and reintroduced in 2017. WRU attorneys also participate in Utah TAG meetings addressing on-going water development efforts.

G. 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 (“ONHIR”).

Federal Litigation

There are multiple federal appeals being managed by outside counsel currently. During the quarter, outside counsel challenged ONHIR for failure to publish a divorced spouse policy in the Federal Register and due to the challenge ONHIR agreed to settle with the provision of benefits to the relocatee. Outside counsel proposed a consent decree for settlement purposes and is finalizing negotiated terms. In the 9th Circuit Court of Appeals, outside counsel filed multiple appellate briefs in regards to principal issues such as arbitrary and unsupported credibility findings, disregard of testimony establishing earnings and failure to apply proper legal standard for residency.

H. Tax and Finance Unit (“TFU”)

1. Disallowed Cost – Navajo Head Start

The HHS Office of Head Start issued a disallowed cost decision to the Nation on May 29, 2018. The disallowed cost was for a lack of matching funds with a potential liability to the Nation of \$799,437.66. TFU will file an appeal raising the issue of whether unrecovered indirect cost may be used as matching funds.

2. 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 the settlement funds. OST has specific procedures for requesting drawdowns from the Navajo Trust Fund, including a BFC Resolution authorizing the drawdown. TFU is working with OOC and OST to provide the necessary documentation to OST.

3. 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 IRS concluded its exam in May, 2018, and assessed the Nation \$2,221,907.99 in employment taxes, penalties, and interest for the misclassification of members of the District Grazing Committees, Farm Boards, and Eastern Navajo Land Board.

4. 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.

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 2608 criminal cases and 147 juvenile cases.

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 Title 17 Amendment Sessions and on the Animal Control Amendments. The Chief Prosecutor has coordinated several meetings with the US Attorney’s Office for the Districts of Arizona and New Mexico to discuss violent crime on the Navajo Nation. The meetings are open to law enforcement only (Federal/Tribal Prosecutors, NPD, NNCI, FBI/Marshalls) during which discussions take place regarding who and what is driving violent crime in a specific community. This quarter we concluded the meetings on violent crimes with our federal partners as the Chief Prosecutor coordinated the remaining meetings for Tuba City, Kayenta, Shiprock, Ramah, Crownpoint, and Tohajiilee/Alamo areas. The Chief Prosecutor also met with Jeff Sessions, Attorney General for the United States, and offered testimony at the New Mexico US Attorney’s Office Tribal Consultation.

IV. BUDGET STATUS

TABLE A							
Program	Funding Sources	Number of Personnel	Number of Vehicles	FY 2018 Personnel	% Used	FY 2018 Operating	% Used
Attorney General (***)	CF	46	2	1,672,916.58	61.98%	828,764.49	54.45%
Prosecutor	GF	23	2	1,750,629.00	69.14%	155,022.00	51.90%
Juvenile Justice	GF	10	2	627,112.00	56.88%	272,569.00	42.61%
Navajo-Hopi Legal Service	GF	3	0	276,965.00	67.66%	22,359.00	53.80%
(*) Fixed Cost Litigation	GF/CO	0	0	0.00	0.00%	602,132.88	99.00%
(**) Water Rights Litigation	Special Revenue/CO	7	1	706,886.01	93.00%	1,980,875.59	90.00%
Navajo-Hopi Part Lnd Rent	GF	0	0	0.00		120,400.00	100.00%
TOTAL:		89	7	5,034,508.59	348.66%	3,982,122.96	491.76%

(*) Fixed Cost Litigation (N01000) – This is a continuation account since 1993 to present.

(**) 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 FY2017 IDC Carryover Funds in the amount of \$1,148,843.00

V. OPERATIONAL & PROCESS IMPROVEMENT INITIATIVE STATUS

Initially, DOJ formed an internal taskforce consisting of the Attorney General, Deputy Attorney General, Assistant Attorney Generals, Chief Prosecutor, and the Principal Attorney for NHLSP. Although the identity of the taskforce changed, the members for the monthly Management Meetings remain the same. The purposes of the meetings also remain the same which is to discuss and address ways to make DOJ more efficient.