



NAVAJO NATION DEPARTMENT OF JUSTICE

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FY 2016 Second Quarter Report  
(January, February, March 2016)

TABLE OF CONTENTS

	<u>Page No.</u>
I. EXECUTIVE SUMMARY	2
II. CRITICAL ISSUES	4
III. PROJECT STATUS	5
IV. BUDGET STATUS	10
V. OPERATIONAL & PROCESS IMPROVEMENT INITIATIVE STATUS	11

## I. EXECUTIVE SUMMARY

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

### A. Office of the Attorney General

On January 15, 2016, the Attorney General provided a presentation to the Office of the President and Vice-President regarding DOJ’s Strategic Plan (“Plan”). The Plan was also presented to the Law and Order Committee on February 25, 2016. To recap, it is DOJ’s overall goal to restore the faith of the People in our government. We believe that this overall goal can be accomplished by ensuring that our People have access to: 1) Justice; 2) Services; and 3) basic necessities. It follows that in order to accomplish these goals, DOJ must, at the very least, be fully staffed.

The Plan was also presented to our staff on January 20, 2016 to ensure that our staff has a thorough understanding of the Plan. In fact, the format of the weekly meetings has changed. As previously reported, we hold weekly meetings with all Assistant Attorney Generals, the Deputy Chief Prosecutor, and the Navajo-Hopi Legal Services Program to provide updates on each of their respective Unit/Program’s work and accomplishments towards meeting the Plan goals. Additionally, each is expected to report on the recruiting and hiring efforts of DOJ.

During Q2, we are pleased to report the promotion of three attorneys and the hiring of 2 new attorneys. More specifically, we promoted Cherie Espinosa as Acting Assistant Attorney General for the Tax & Finance Unit, Jaime High as Deputy Chief Prosecutor, and Susan Eastman as the Principal Attorney for the Navajo-Hopi Legal Services Program.

Recruitment continues to be a top priority for DOJ. During Q2, DOJ has been communicating with the area law schools. DOJ has even provided presentations specifically for recruitment efforts at several of the area law schools including: Arizona State University, University of New Mexico; University of Colorado-Boulder; and the University of Denver. DOJ received applications from 6 attorney candidates in Q2 in response to these recruiting efforts. DOJ intends to participate in as many job fairs as possible in the upcoming months. In fact, DOJ will have a booth set up at the upcoming Federal Indian Bar Conference in April 2016 and the Attorney General will speak on a Career Panel hosted by the National Native American Law Students Association at that conference.

In anticipation of DOJ’s recruitment efforts, DOJ requested the Department of Personnel Management to conduct training to allow DOJ to do qualification assessments for all of the new applicants. The training was held on January 4, 2016, but as of the date of this report, DPM has not approved DOJ’s assumption of this responsibility. DOJ needs that approval as soon as possible.

On January 29, 2016, the Office held a mandatory training for all DOJ attorneys and advocates on the subject of Construction contracts. A second training will be planned so that more attorneys/advocates become familiar with AIA and EJCDC contracts.

#### B. The Department Justice

The following six (6) units are often referred to as “DOJ”: 1) Litigation & Employment Unit; 2) Tax & Finance Unit; 3) Human Services and Government Unit; 4) Natural Resources Unit; 5) Economic/Community Development Unit; and 6) Water Rights Unit. Each unit is led by an Assistant Attorney General (“AAG”) who directly supervises the unit Attorneys, Advocates, and Support Staff. During this second quarter, DOJ hired two (2) new attorneys: Allison Parks in the Natural Resources Unit; and Christopher Schneider in the Human Services and Government Unit. Currently, there are nine (9) total vacant Attorney positions for those six units.

During Q2, DOJ received Requests for Legal Services (“RFS”) and 164 document review requests totaling 676; of those, 564 were completed in Q2. These numbers do not include the additional 21 completed by Acting Deputy Attorney General Rodgerick Begay or the multiple requests the Attorney General has responded to. The total number also does not include the time our Attorneys and Advocates spend attending Council/Committee/ Subcommittee/Taskforce/and other Client-related meetings, court appearances, preparing for litigation, and addressing all communications via phone calls, correspondence, and emails. This also does not include providing assistance to the entire Navajo Nation Three Branch Government and the 110 Chapter governments on matters not recorded as RFS or 164 document reviews.

#### C. Office of the Prosecutor & Juvenile Justice

The Prosecutor’s office is currently being led by Deputy Chief Prosecutor Jaime High who continues to serve as Acting Chief Prosecutor. The Prosecutor’s Office is tasked with enforcing certain provisions of the Alchini Bi Beehazaani Act, certain provisions of the Traffic Code in Title 14, and all of the criminal complaints filed under Title 17. According to the Judicial Branch’s first quarterly report, there were a total of 9492 cases for criminal, criminal traffic, dependency, delinquency, and child in need of supervision cases filed in the 12 district courts. As a result, these courts hold between 180-240 hearings per week on these subject areas alone.

Four of the bigger districts (Window Rock, Chinle, Crownpoint, and Tuba City) do not have a permanent prosecutor. None of the district Prosecutor’s office have tribal vehicles and therefore all of the Prosecutors and Juvenile Presenting Officers are using their personal vehicles to travel to multiple districts to cover as many cases as they possibly can. Unfortunately, this still leads to inadequate coverage and has led to cases being dismissed by Judges. Any dismissal resulting from inadequate staffing has a direct impact on DOJ’s goal of providing our People with access to justice and services.

#### D. Navajo-Hopi Legal Services Program

The Navajo-Hopi Legal Services Program provides legal services to Navajos and Hopis affected by the Navajo-Hopi Settlement Act of 1974. With the retirement of Ms. Betsy Snow, Ms. Susan Eastman has been promoted to lead the Program. We expect to fill the position Ms. Eastman vacated by the end of the third quarter. With the assistance of contract counsel, the Program attended 7 hearings this quarter.

## II. CRITICAL ISSUES

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#### A. Staffing for the Office of the Prosecutor

The Prosecutor's Office hired one person during the second quarter but still has the following vacancies: 3-Attorneys; 3-Prosecutors; 3-Juvenile Presenting Officers; and 1-Legal Secretary. Two of the main hindrances for recruiting is housing and salary. At the moment, personnel are expected to use their low salary to travel great distances to work. Local housing would help. The Attorney General will attempt to meet with as many of the Nation's entities to try to resolve this issue in the next quarter.

Another hindrance for hiring Prosecutors is that the position requires a Bachelor's Degree. It's commonly known that our area higher education schools offer Associate's Degrees in legal advocacy which allows individuals to take the Navajo Bar Exam in order to practice law on the Navajo Nation. Some of these individuals have applied for our Prosecutor positions but have been deemed unqualified by DPM. In a recent meeting, DPM expressed that by lowering the qualifications for Prosecutors, it could impact the salary. This suggests that by lowering the qualifications for Prosecutors to hire advocates with A.A. degrees, we could be decreasing an already low pay rate. The Attorney General will continue to meet with DPM to address this issue.

#### B. DOJ Staffing and Vacancies

DOJ lost one attorney this quarter and expects to lose Dave Taylor by the end of the next quarter. We hired 2 new attorneys in Q2: Allison Parks who is assigned to the Natural Resources Unit; and Christopher Schneider who is assigned to the Human Services & Government Unit.

Currently, DOJ has the following vacancies: 9 attorneys and 1 advocate position. We have mentioned our recruiting efforts above and will not repeat them here except to say that we will continue our aggressive recruiting efforts.

#### C. Staffing for the Litigation & Employment Unit

Since the beginning of the fiscal year, the Attorney General has been restructuring all outside attorney contracts. One of the reasons for doing so is to assess which litigation matters can be handled in-house by DOJ (primarily by the Litigation & Employment Unit). As DOJ plans to handle more litigation matters, the Attorney General has assigned an Advocate position and an Attorney position to the Unit. The Unit recently filled the Advocate position by hiring Colleen Silversmith. Currently, there is one attorney vacancy for the Unit.

### III. PROJECT(S) STATUS

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In this second quarter, DOJ received 676 Requests for Legal Services (“RFSs”), and 564 of them were completed. Most RFSs are routine documents and do not include the other work completed by our Attorneys and Advocates. The projects described below are examples of legal services provided by DOJ for our Nation but are not necessarily tallied in the number expressed above. The number also 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.

Each of DOJ’s Attorneys and Advocates submit quarterly reports to the Attorney General. Each quarterly report summarily describes the projects that are being worked on by each of them. Essentially, while the following projects are being mentioned below, it does not represent the entire listing of projects highlighted by each attorney/advocate from their quarterly reports. The highly confidential projects are also not listed. It follows that the confidential portions of the projects provided below are also not provided in this report. If the Office of the President and Vice-President would like any further details on any of DOJ’s projects, please let us know and we can provide a briefing.

#### A. The Gold King Mine Spill

As previously reported, DOJ contracted the legal services of Hueston Hennigan. While the Firm continues to deal with the U.S. E.P.A., DOJ continues to be involved as legal representatives for the Navajo E.P.A. Office. DOJ assisted in the preparation of an application for a Cooperative Agreement under which the US EPA will pay for past and future response costs incurred by the Nation as a result of the spill. On March 20, 2016, the U.S. EPA approved an initial award of \$157,756.00. We negotiated for better terms and conditions of the award and accepted the award on Wednesday, March 30, 2016.

#### B. Reform of the Navajo Preference in Employment Act

Members of the Health, Education, and Human Services Committee formed a Subcommittee to discuss a comprehensive reform to the Navajo Preference in Employment Act. The Litigation & Employment Unit has been attending meetings for this subcommittee in Q2.

#### C. Navajo Nation v. National Park Service

This case arises from the National Park Service’s (NPS) “unauthorized taking” of human remains from the Canyon De Chelly monument. The Navajo Nation filed suit against the NPS and the Federal District Court of Arizona ruled against the Nation indicating that it did not have jurisdiction until the National Park Service makes its final determination of cultural affiliation. The Nation appealed to the Ninth Circuit Court of Appeals and on June 10, 2015, Assistant Attorney General Paul Spruhan for the Litigation & Employment Unit of DOJ, argued for the return of the remains. As of December 29, 2015, there has not been a ruling. The Attorney General and the LEU AAG will hold their inaugural negotiation session with the United States on March 31, 2016.

**D. Window Rock Unified School District v. Reeves**

The Window Rock and Pinon School Districts filed to enjoin the Navajo Labor Commission from hearing cases under the Navajo Preference in Employment Act. The federal district court of Arizona ruled that the Labor Commission lacked jurisdiction. The Nation filed an appeal and on September 17, 2015, Assistant Attorney General Paul Spruhan of the Litigation & Employment Unit of DOJ, argued before the Ninth Circuit. The 3-Judge Panel stayed consideration of the case pending the outcome of the U.S. Supreme Court case, *Dolegncorp v. Mississippi Choctaw*. However, with the death of Justice Scalia, it is unclear how the court will deal with the issue. In any event, the Ninth Circuit has indicated that when the *Dolegncorp* decision is rendered, the parties will have the opportunity to brief the effect of that case on the instant case.

**E. Board of Education for the Gallup-McKinley Schools v. Henderson**

Similar to the Window Rock School District case, the Gallup School District also challenged the effect of the Navajo Preference in Employment Act. The Litigation & Employment Unit filed a motion to dismiss and the U.S. District Court of New Mexico granted our dismissal. The School filed an appeal to the Tenth Circuit but the case was sent to the mediation office of the Tenth Circuit. The deadline for the School's opening brief was extended to allow the School to meet with the Health, Education, and Human Services Committee.

**F. Navajo Nation v. Urban Outfitters**

The Litigation & Employment Unit within DOJ is assisting outside counsel on this case involving Urban Outfitter's use of the word "Navajo" on its products which we argue is an infringement on the Navajo Nation's trademark. The Federal District Court recently ruled that Urban Outfitters cannot file a counterclaim against the Nation seeking to cancel its trademarks due to the Nation's sovereign immunity. On December 21, 2015 the Nation prevailed in withstanding a motion for summary judgment filed by Urban Outfitters. The Court determined that the Navajo Nation had both Article III standing and statutory standing under the Indian Arts and Crafts Act ("IACA") to bring its trademark and false advertising lawsuit and so the Navajo Nation may pursue claims that Urban Outfitters Inc. violated federal law and infringed its trademarks by using tribal names to identify and sell products without qualifying the goods' actual origin. The Nation filed its own motion for summary judgment and awaits a ruling on this matter by New Mexico Federal District Court Judge Bruce Black.

**G. Hopi Tribe v. USEPA**

The Nation is a party to an agreement to reduce haze pollution from the Navajo Generating Station. The USEPA adopted that agreement for its rule. The Hopi Tribe and others sued the USEPA in the Ninth Circuit to challenge the rule, and indirectly, to challenge the agreement. There are four cases consolidated into one wherein the Nation, through the Litigation & Employment Unit, has filed as intervenor supporting USEPA's rule.

**H. Navajo Nation v. U.S. Department of Labor**

The US DOL audited the Navajo Nation Workforce Development and alleged over \$7.9 million of disallowed costs. The Nation hired REDW, an outside auditing firm, to provide a report. After the report the submitted, DOL reversed all but \$175,000 of the disallowed costs claim. In Q2, the Litigation & Employment Unit negotiated a settlement wherein the Nation will be paying less than \$175k.

**I. Navajo Nation Division of Natural Resources v. Recon Oil, Co.**

Recon was issued a notice of trespass and civil assessment for the unauthorized use of dirt from a home site lease in Chinle. Recon filed an appeal to the Office of Hearings and Appeals requesting a stay of the civil assessment. The Litigation & Employment Unit filed a motion opposing the stay and has sent interrogatories and requests for production to Recon. There has been no decision on the request for stay and there has been no hearing date set yet.

**J. Audit Assistance**

Several DOJ attorneys across several DOJ Units continue to assist their assigned Divisions/Departments/Programs with audit matters, which include but are not limited to, assisting clients with audit letters, findings, or implementing corrective action plans. In most instances, this is a time consuming task that can have complicated issues attached. One of the notable concerns is the audit of the Nation's EPA's Superfund granted by the US EPA. DOJ has dedicated a considerable amount of time this quarter responding to the US EPA and preparing for March 2016 meeting with the US EPA.

**K. Insurance Claims**

Through the Human Services & Government Unit within DOJ, legal assistance is provided to the Navajo Nation Insurance Services Department, the Navajo Nation Risk Management Program, the Navajo Nation Worker's Compensation Program and Group Benefits Office. There are a variety of issues on claims for and against the Nation. With the assistance of outside counsel, DOJ attends to the 44 pending court cases that arise from such claims.

**L. Department of Family Services Title XX Contract with the State of New Mexico**

A recent audit of the NM's Title XX contract with the federal government, the State determined the contract needed to be amended. As a result, the Department of Family Services ("DFS") has met with NM to address the revisions. Through the Human Services & Government Unit, DOJ is assisting DFS in negotiating and finalizing the revisions.

**M. Tuba City and Kayenta Detention Centers**

The Human Services & Government Unit participated in a teleconference with USDOJ and OIG regarding the corrective action plan (CAP) developed in relation to the alleged "oversized" detention facilities. The CAP is expected to run 3-4 years and at its conclusion, will prevent payback of \$32 million to USDOJ. This project is on-going.

**N. Fire Stations**

The Human Services & Government Unit assisted with the Memorandum of Agreement which will provide that the Nation pay San Juan County to continue with the operation of the three fire stations in San Juan County. The MOA is currently in the 164 review process. The Unit continues to assist the Nation in preparing for the Nation's operation of these stations.

**O. Indian Child Welfare Act Cases; DSR Cases**

DOJ, through the Human Services & Government Unit, either directly handles or supervises outside counsel in litigation involving the ICWA. Currently, DOJ is involved in six (6) ICWA cases throughout the United States.

The Human Services & Government Unit also assists the Department of Self-Reliance ("DSR") with their legal needs. In some cases, a customer who is denied benefits or has their benefits terminated by DSR, will appeal DSR's decision to the Office of Hearings & Appeals. There 3 cases currently still open.

**P. Homesite Lease Regulations**

The Navajo Land Department held several public hearings and attended several meetings with the Resources and Development Committee. Comments were solicited from affected programs such as the BIA, Historic Preservation, Fish & Wildlife, and Navajo EPA. DOJ recently met with NLD to address the comments. DOJ expects more work to be completed before the regulations are presented to RDC for approval.

**Q. Uranium Claims against the US**

In April 2015, the Natural Resources Unit (with outside counsel assistance) participated in a preliminary partial settlement with the U.S. wherein the US has agreed to conduct Removal Site Evaluations at 16 high priority sites on the Nation. Accordingly, the US DOJ transferred \$13.2 million to an environmental response trust. Since that time, DOJ has participated in several meetings and correspondence in relation to a "global settlement" to address all 523 abandoned uranium sites on the Nation. While a global settlement is favored, the Nation is moving forward in negotiating a phase 2 which we hope to complete in the next 5 months. The Unit participated in a recent meeting on January 27, 2016 with the U.S.

**R. USEPA's Carbon Rule**

On October 23, 2015, the US EPA published its final Clean Power Plan ("CPP or "final rule"). Before and after this time, DOJ, through its Natural Resources Unit, spent a significant amount of time with various entities of the Nation in addressing the final rule. The U.S. EPA also released a draft federal implementation plan and is proposing to find it "necessary or appropriate" for the Nation to adopt the federal plan. In January, DOJ assisted with the submittal of the Nation's comments to the draft federal plan. DOJ also attended a meeting in Washington, D.C., to discuss concerns about the CPP and the draft Federal Plan with the U.S. EPA, SRP, and APS.



**S. Tronox Settlement Implementation**

The Natural Resources Unit participated in two meetings this quarter regarding the implementation of the billion dollar Tronox Settlement. DOJ suggested that the U.S. EPA hire an efficiency expert to assist the U.S. on planning and spending for the proposed multi-year project. DOJ also suggest that the Nation hire its own expert to oversee the U.S. EPA's administration of this fund.

**T. New Mexico Executive Order regarding Capital Outlay**

Pursuant to Intergovernmental Agreements with the Nation, the State of New Mexico provides funding to the Nation for capital outlay and infrastructure projects. The State had identified several concerns which led to the State issuing an executive order which placed Special Conditions on the Nation. The goal of DOJ is to assist the Nation's various departments and programs to ensure that the Nation is complying with those Conditions. The Economic/Community Development Unit is spearheading this effort. In a related matter, the Unit is also participating in the Reversion Task Force in order to assist the Nation with limiting reversions of all funding.

**U. Little Colorado River (LCR)**

There have been no settlement discussions since 2012. In the past four months, the Water Rights Unit attorneys have met with attorneys for the major parties and it does not appear that settlement discussions will revive soon. Despite this, DOJ assisted President Begaye and Speaker Bates in their joint letter to Senator McCain and Governor Ducey on November 17, 2015 requesting to resume settlement discussions regarding both the LCR and the Colorado River. In response, the Senator and Governor will convene a meeting on March 30, 2016 to discuss the possibility of a settlement.

**V. New Mexico v. United States**

There was no activity in Q2 for the N.M. State District Court case.

In the N.M. Court of Appeals case, Objectors to the Nation's settlement filed four separate appeals challenging the District Court's entry of the settlement decrees. In March 2016, the Water Rights Unit filed a motion to strike in case No. 33,535. The Unit has also drafted answering briefs for the other 3 appeal actions which are due on April 5, 2016.

**W. Utah Water Rights Settlement**

The Water Rights Unit participated in two work sessions for the Navajo Nation Council and also provided briefings to the Office of the President and Vice-President. The Navajo Nation Council approved a draft of the settlement on January 26, 2016. Two actions challenging the settlement have been filed. The first action was filed by the Shiprock Chapter and the second by Vincent Yazzie. Despite these actions, the Unit met with the State of Utah on March 16<sup>th</sup> and there is a follow up meeting scheduled for April 18<sup>th</sup>.

Numerous internal DOJ meetings were also held resulting in the engagement of two outside counsel teams to provide an independent review of the settlement.

**X. Bears Ears**

DOJ, through the Natural Resources Unit, attended a meeting with the Bears Ears Inter-Tribal Coalition on September 4, 2015 to draft the proposal for the creation of the Bears Ears National Monument (1.9 million acres in southern Utah proposed to be a national monument under the Antiquities Act). The Coalition delivered the proposal to the Obama Administration on October 15, 2015, and provided copies to Congressman Bishop and Congressman Chaffetz. The Congressmen released the Utah Public Land Initiative Discussion Draft on January 20, 2016. This matter is on-going.

**Y. Red Barn Acquisition**

The Natural Resources Unit worked with the Navajo Hopi Land Commission Office and their outside counsel, Lewis Roca Rothberger, to close on three properties located near Sanders, AZ. The properties were finally closed on March 10, 2016.

**Z. Land Acquisition Act**

The Natural Resources Act is working with the Navajo Land Department, Division of Natural Resources, and the Office of the President and Vice-President to amend the land acquisition policy. The current policy was drafted in the 1950s and no longer meets the needs of the Nation. A new law is being drafted and is expected to be ready for Council at the Spring Session. Concurrently, DOJ will be drafting the regulations as well.

**IV. BUDGET STATUS**

**A. Funding and Expenditure**

Program	Funding Sources	Number of Personnel	Number of Vehicles	FY 2016 Personnel	% Used	FY 2016 Operating	% Used
Attorney General (***)	CF/CO	40	2	3,036,741.66	31.25%	127,817.83	31.53%
Prosecutor	GF	23	6	1,348,652.00	30.46%	114,585.00	31.03%
Juvenile Justice	GF	10	5	633,179.00	24.71%	108,876.00	22.85%
Navajo-Hopi Legal Services Program	GF/CO	3	0	251,101.51	20.71%	18,449.38	60.70%
(*) Fixed Cost Litigation	GF/CO	0	0	0.00	0.00%	3,663,486.75	94.00%
(**) Water Rights Litigation	Special Revenue	7	1	6,303,148.00	82.00%	4,569,486.00	69.00%
<b>TOTAL:</b>		<b>83</b>	<b>14</b>	<b>11,572,822.17</b>	<b>189.13%</b>	<b>8,602,700.96</b>	<b>309.11%</b>

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

(\*\*) Water Rights Budget – Pursuant to Resolution CMY-47-02 on May 20, 2002. This is a continuation account since fiscal year 2003.

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## **V. Operational & Process Improvement Initiative Status**

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DOJ has formed an internal Operational & Process Improvement Initiative Task Force to assess how we can improve our operations and processes to increase efficiency, reduce costs, and provide better service to our clients. We will complete our initial assessment and develop our strategy for improvement in Q3 of FY2016.