OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Status of the Office of Navajo and Hopi Indian Relocation's Grazing Responsibilities and Activities on the New Lands

Report No.: 2020-WR-016-E

September 2021

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Memorandum

SEP 21 2021

To: Deb Haaland
Secretary of the Interior

From: Mark Lee Greenblatt
Inspector General

Subject: Final ONHIR Review – *Status of the Office of Navajo and Hopi Indian Relocation's Grazing Responsibilities and Activities on the New Lands*
Report No. 2020-WR-016-E

This report is part of a series of reports to help decision makers plan for the future of the Office of Navajo and Hopi Indian Relocation (ONHIR). We launched our review in December 2019 with an initial report that provided an overview of ONHIR's background and functions (Report No. 2019-WR-039). Attachment 1 includes a list of prior reports in the series.

Our objective for this review was to determine the status of ONHIR's grazing responsibilities and activities on 352,000 acres of Navajo Nation land in Arizona to which ONHIR refers as the New Lands. Specifically, we sought to answer the following:

1. What is the status of ONHIR's determinations of grazing capacities?
2. What is the status of ONHIR's administration of permits related to grazing?
3. What is the status of ONHIR's enforcement of grazing regulations?
4. What congressional considerations exist in the event of ONHIR's closure or transfer of duties?

Due to the COVID-19 pandemic, we had to limit our fieldwork. In particular, we reviewed relevant laws, regulations, procedures, and documents but had to limit our site visits and interviews.

About This Report Series

ONHIR's FY 2019 appropriation required a transfer of funds to our office to review ONHIR's finances and operations in preparation for its possible closure.

We are issuing a series of reports that describes ONHIR's responsibilities, functions, and current operations. Each report addresses a key topic and the related considerations for ONHIR's closure or transfer of duties to a successor agency or agencies.

Background

ONHIR is an independent Federal agency responsible for implementing the relocation of Navajo people and Hopi people living within each other's boundaries as a result of U.S. Government partitioning of tribal land. ONHIR reports directly to the President of the United States and is overseen by both the U.S. Office of Management and Budget and the U.S. Congress. Pursuant to the Navajo-Hopi Land Settlement Act of 1974 (Pub. L. No. 93-531), as amended, a presidentially appointed Commissioner serves as the head of ONHIR, but this position has been vacant since 1994. A Senior Executive Service Executive Director who has been acting under delegated legal authority manages the agency.

Livestock Grazing on the New Lands

Amendments to the Act in 1980 authorized the U.S. Government to take a total of 400,000 acres into trust for the Navajo Nation. To date, 387,000 acres have been acquired pursuant to the Act. The United States holds the legal title, and the tribe holds the beneficial interest. ONHIR's role is to administer the land until the relocation of Navajo people and Hopi people off each other's designated land is complete.

Land selected in Arizona includes 352,000 acres that ONHIR refers to as the "New Lands."[1] This acreage now makes up the Navajo Nation's Nahata Dziil Chapter (a unit of local tribal government). As part of its obligation to manage this trust land for the benefit of the Navajo Nation, ONHIR issues permits to Navajo ranchers to graze their livestock on 14 range units on the New Lands. ONHIR regulations pertaining to this topic define a range unit as a designated tract of land for grazing administration; grazing must take place in common with all other permittees on a particular range unit.

The New Lands also includes ONHIR's Padres Mesa Demonstration Ranch. The range units and the Ranch together occupy just over 339,300 acres of grazing rangeland. The remaining acres (just over 13,000) of the New Lands are mostly tribal trust land along the Arizona part of the Arizona–New Mexico border and south of the established Navajo Reservation.

ONHIR is responsible for (1) determining grazing capacity, (2) issuing grazing permits and special land use permits (discussed later), and (3) regulating and enforcing those permits. ONHIR's Padres Mesa Demonstration Ranch manager and crew assess range conditions and make grazing capacity determinations, while an ONHIR range technician—overseen by ONHIR's New Lands manager—is responsible for most permit administration and enforcement activities. ONHIR has established regulations that define how it meets these responsibilities and ensure the trust land is managed appropriately and for the benefit of the Navajo Nation.

[1] In contrast, the Navajo Nation refers to all lands in Arizona and New Mexico selected and acquired in trust pursuant to the Act as "new lands," totaling about 387,000 acres. In its response to our draft report, the Navajo Nation stated that there is no legal difference between any lands taken into trust pursuant to the Act. This report uses the term "New Lands" per ONHIR's definition.

Sustainable Rangeland Management

ONHIR regulations serve a dual purpose: in addition to aiding in the resettlement of the Navajo people physically residing on Hopi land to the New Lands and elsewhere, the regulations specifically seek to preserve the forage, land, and water resources on the New Lands. As a result, the Navajo practice sustainable management on the New Lands. The concept of sustainable management bears in mind the ecological, economic, and social impacts of livestock production and integrates conservation principles to ensure the rangeland remains healthy over time for the benefit and well-being of the community and local economy. ONHIR's administration and enforcement of its grazing regulations is one of three overlapping components that together promote the overall sustainability of the New Lands rangeland. The other two components—ONHIR's maintenance of livestock water systems and fencing and ONHIR's ranching practices put forth by its Padres Mesa Demonstration Ranch—are further discussed in separate reports.[2]

ONHIR's grazing regulations on the New Lands support sustainable practices to minimize overgrazing of livestock, which can eliminate some plant species and weaken others. (Plant recovery and growth rate are slowed when root structures are weakened.) Thus, ONHIR limits the number of livestock allowed on each range unit to allow grazed plants to recover and regrow.

On the New Lands specifically, the 14 range units each function under a sustainable range unit management plan (RUMP). The RUMPs—written for each range unit but using a standard format—are agreements between the permittees and ONHIR that promote the preservation and sustainable use of the range. (See Figure 1 for an example of sustainable rangeland on ONHIR's Padres Mesa Demonstration Ranch.) The RUMPs were last revised in 2016, and they include the following details:

- Goals for improving vegetation and incentives for meeting the goals
- A requirement that grazing capacity determinations be made at least annually and that permittees must graze livestock accordingly
- A grazing plan and schedule
- A range monitoring schedule
- Wildlife management practices
- Responsibilities of ONHIR and the permittees for range and livestock improvements, such as fences, gates, windmills and pipelines, and troughs

[2] See (1) OIG Report No. 2020-WR-016-F, *Status of the Office of Navajo and Hopi Indian Relocation's Range Maintenance Responsibilities and Activities on the New Lands,* issued September 2021, and (2) OIG Report No. 2020-WR-016-D, *Status of the Office of Navajo and Hopi Indian Relocation's Padres Mesa Demonstration Ranch,* issued September 2021.

Figure 1: Cattle Grazing on the Padres Mesa Demonstration Ranch's Sustainable Rangeland

Source: Office of Inspector General.

Grazing Capacity

ONHIR assesses livestock grazing capacity determinations for 339,384 acres, which includes the 14 range units (276,558 acres), the Padres Mesa Demonstration Ranch (41,576 acres), and pastures around the Ranch that are used for temporary, seasonal grazing (21,250 acres). ONHIR makes grazing capacity determinations—that is, it calculates the number of livestock allowed on each range unit—twice a year, typically in June and December, and publishes them in range reports. Specifically, ONHIR's Padres Mesa Demonstration Ranch manager and crew assess range conditions and determine grazing capacity by reviewing forage (grass and shrub vegetation) data, precipitation data, and drone footage. Once all data are compiled and calculations made, the ranch manager finalizes the range report and sends it electronically to the range technician. They then schedule meetings with the permittees to discuss the results.

ONHIR measures capacity for each permitted location in terms of the number of animal units that can graze there for 1 year (referred to as "animal units yearlong"). An animal unit is equal to one cow or bull, or one cow and calf under the age of 6 – 7 months. An animal unit can be converted to apply to sheep, goats, and horses.[3] The total livestock tally of the 14 range units as of April and October 2019 is shown in Figure 2. ONHIR's yearlong grazing capacity determination as of June 2020 is shown in Figure 3.

[3] One sheep or goat equals 0.25 animal unit, and one horse equals 1.25 animal units.

Figure 2: Total Livestock Tally of the 14 Range Units

Livestock Tally As Of	Cattle	Sheep	Goats	Horses
April 2019	3,292	256	59	395
October 2019	3,688	233	79	395

Figure 3: New Lands Grazing Capacities, as of June 2020

		Number of Animal Units Yearlong			
Range Name	**Acres**	**Dec 2018**	**June 2019**	**Dec 2019**	**June 2020***
Padres Mesa	41,576	209	319	258	480
Blue Bird	34,830	79	158	156	335
Barth Lake	28,455	106	239	186	300
Middle Well	22,865	109	186	164	330
Hard Scrabble	22,715	106	217	177	330
Hogan Well	21,225	115	240	120	203
Antelope Well	19,955	87	154	148	281
North Well	19,040	94	181	166	287
Navajo Springs	17,354	88	167	130	202
Rim Range	17,242	128	161	126	240
East Mill	16,763	158	166	121	247
Kelsey	15,505	52	67	61	143
Little Silversmith	14,418	118	149	117	267
Parker Draw	14,043	92	167	136	236
Little Chambers	12,148	68	139	90	118
Totals	**318,134**	**1,609**	**2,710**	**2,156**	**3,999**

* There was an increase in grazing capacity determinations in June 2020 due to above-average forage growth in the prior winter and spring seasons.

Note: In addition to the 318,134 acres shown in this table, ONHIR also determines grazing capacities for 21,250 acres around the Padres Mesa Demonstration Ranch that are used for temporary, seasonal grazing. For these acres, capacity determinations are made for 1 year or for 1 month, depending on the type of acreage.

Permit Administration Related to Grazing Activities, as of May 2020

ONHIR's administration of grazing permits on the New Lands includes issuance and transfer of permits, adjustments of permits to match forage availability, permit reissuance and cancellation, and retention of documents relating to permits. Although ONHIR may establish a minimal acceptable grazing fee, it does not assess or collect fees on the permittees' home range units, an approach that aligns with Navajo Nation policy. During a period of drought, ONHIR may charge nominal fees to allow permittees to graze outside their home range units. In fiscal years (FYs) 2018 and 2019, ONHIR's cost for permit-related activities (including enforcement, which is discussed in the next section) was approximately $42,000 annually.

ONHIR's New Lands grazing regulations allow for three types of permits for incentivized grazing: term, temporary, and association temporary.

There are 84 term permits, 4 of which are inactive, as 3 of the permittees are deceased and 1 is not interested in using the term permit for grazing purposes. To be eligible for a term permit, an individual must be an enrolled member of the Navajo Nation, be a permanent resident of the range unit of permit issue, and own livestock that graze on the range unit of permit issue. Permits allow for 20 animal units yearlong; permits may not be divided or transferred. Permits are active for 5 years and then automatically renewed, so long as the holder is not in violation of the grazing regulations. The next renewal date for all term permits is October 2025.

With respect to the other two types of permits, ONHIR's attorney told us that there are currently no issued temporary or association temporary permits. ONHIR issues these annual permits to reward good land management by term permit holders or business associations with approval to graze additional livestock. Reissuance of these temporary permits is based on the permit holders' compliance with grazing regulations, compliance with the RUMP, and water and forage availability. ONHIR has not issued temporary permits in recent years due to drought and the threat of drought, and ONHIR has not issued association temporary permits because there are no longer any eligible grazing associations on the New Lands.

ONHIR's attorney also told us that under ONHIR's general authority to administer the New Lands, it administers approximately 117 special land use permits. No fees are collected for these permits, which are issued for indefinite, long-term use. Grazing permittees within a range unit are eligible to apply for the permits, which are necessary for building a livestock corral, roping arena, ceremonial site, barn, livestock camp, or other structure. Special land use permits include specific conditions and requirements such as the size of the area or structure, that the structure or activity be maintained in good working order, and compliance with the RUMP and New Lands grazing regulations. Livestock owners have special land use permits in place for corrals and barns, and a few have farm plots. In addition, almost every range unit has a ceremonial site. The special land use permit is first approved by the range unit's permittees and then sent to ONHIR's New Lands Range Office for review and approval.

ONHIR's New Lands Branch is responsible for records specific to grazing activities. These records are held in the New Lands Range Office in Sanders, AZ, as well as at ONHIR headquarters in Flagstaff, AZ. According to ONHIR, these records include the following:

- Copies of permits (official permits are retained by the permittees)
- Livestock tallies
- Permit transfers
- Records of violations
- Brand certificates
- Communications from permittees

Although ONHIR provided us with some samples of grazing and special land use permits electronically, we were unable to conduct a full file review due to travel restrictions related to the COVID-19 pandemic.

Grazing Regulation Enforcement

ONHIR enforces grazing regulations on the New Lands, including inspection of livestock, collection of fees paid for citations issued, recording and maintaining violation records, and impounding trespassing livestock.

Permit enforcement activities are performed mostly by the range technician, with some supervision from the New Lands manager.[4] In FYs 2018 and 2019, 85 percent of the range technician's time (approximately $42,000 annually in payroll costs) was spent on permit administration and enforcement activities.

The range technician interacts with the permittees on livestock matters and ONHIR grazing regulations in both the Navajo and English languages. The range technician's major enforcement duties include the following:

- Monitoring compliance with grazing regulations and permit requirements by checking range units for livestock numbers, forage conditions, and grazing capacity
- Performing work as a certified livestock inspector, including inspections to determine compliance with regulations for the movement, sale, and sanitary and health conditions of livestock

[4] In addition, some grazing permit enforcement and Navajo livestock law enforcement is performed by Navajo rangers employed by the Navajo Nation's Resource Enforcement Branch.

- Attending meetings of the Nahata Dziil Chapter or New Lands grazing organizations and ensuring that permittees' comments and concerns are documented and addressed by the New Lands Range Office

- Traveling to all areas within the New Lands to monitor range use for compliance with permits and RUMPs and, as needed, delivering notices to residents about upcoming meetings, permit violations, and compliance requirements

ONHIR stated that there are few trespass issues on the New Lands due to permittee compliance with the regulations and monitoring of the rangeland by ONHIR staff. Livestock trespass fees totaled just over $60 for FYs 2018 and 2019 and were the only permit-associated revenue collected during that timeframe. Per 25 C.F.R. § 700.725, the owner of any livestock grazing in trespass on the New Lands is liable for a civil penalty of $1 per head per day for each cow, bull, horse, mule, or donkey and 25¢ per head per day for each sheep or goat in trespass, plus a reasonable value for damage to property.

Congressional Considerations in the Event of ONHIR's Closure or Transfer of Duties

In the event of ONHIR's closure or transfer of duties,[5] legislation may be needed to:

- Identify a successor agency to be responsible for the administration of grazing and special use permits on the New Lands.

- Identify which grazing regulations will apply and resolve any issues with transition to the successor agency (for example: both the Bureau of Indian Affairs and the Navajo Nation have regulations for grazing on trust land, but they differ from ONHIR's and do not incorporate incentives for sustainable rangeland management). In its response to our draft report, the Navajo Nation stated its preference that ONHIR's current regulations continue to apply to trust lands regardless of ONHIR's future.

- Continue the range management practices on the New Lands consistent with current ONHIR regulations.

Any legislation specific to grazing regulations on the New Lands should factor in the New Lands range maintenance activities and operations at the Padres Mesa Demonstration Ranch, which together promote sustainability of the rangeland. As noted earlier, these two topics are further discussed in separate reports.

[5] We acknowledge that on August 24, 2021, the Navajo Nation filed a complaint in the U.S. District Court for the District of Arizona naming as defendants ONHIR and the U.S. Department of the Interior. The complaint states that it seeks declaratory and injunctive relief "to secure prompt and proper conclusion of federal relocation . . . as well as prevention of premature closure of a federal agency before it fully discharges its statutory functions."

Conclusion

Due to the COVID-19 pandemic, we had to limit our fieldwork. In particular, we reviewed relevant laws, regulations, procedures, and documents but had to limit our site visits and interviews. We conducted our review in accordance with the *Quality Standards for Inspection and Evaluation* as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

We invited ONHIR and Navajo and Hopi officials to provide input on a draft version of this report. Both ONHIR and the Navajo Nation provided written responses, included in Attachment 2; we have made revisions and updated information in this report where applicable. Hopi officials did not provide a response.

We do not require a response to this report. We will notify Congress about our findings, and we will summarize this work in our next *Semiannual Report to Congress,* as required by law. We will also post a public version of this report on our website.

If you have any questions, please contact me at 202-208-5745, or your staff may contact Bryan Brazil, Western Regional Manager for Audits, Inspections, and Evaluations, at 916-978-6199.

cc: Christopher J. Bavasi, Executive Director, Office of Navajo and Hopi Indian Relocation
Bryan Newland, Assistant Secretary for Indian Affairs
Darryl LaCounte, Director, Bureau of Indian Affairs
Richard Myers, Chief of Staff, Bureau of Indian Affairs
Jerry Gidner, Director, Bureau of Trust Funds Administration
Robert Anderson, Principal Deputy Solicitor
Ben Burnett, Acting Chief of the Interior Branch, U.S. Office of Management and Budget
Milton Bluehouse, Jr., Deputy Chief of Staff to the President and Vice President, Navajo Nation
Clark Tenakhongva, Vice Chairman, Hopi Tribal Council

Attachments (2)

Attachment 1: Prior Reports in the ONHIR Review Series

Office of Navajo and Hopi Indian Relocation Background and Functions (Report No. 2019-WR-039), issued December 17, 2019.

Status of the Office of Navajo and Hopi Indian Relocation's Administration of Relocation Benefits (Report No. 2020-WR-016-A), issued September 29, 2020.

Status of the Office of Navajo and Hopi Indian Relocation's Appeals on Denied Eligibility Determination Cases (Report No. 2020-WR-016-B), issued September 29, 2020.

Status of the Office of Navajo and Hopi Indian Relocation's Land Selection in Arizona and New Mexico (Report No. 2020-WR-016-C), issued September 29, 2020.

Status of the Office of Navajo and Hopi Indian Relocation's Padres Mesa Demonstration Ranch (Report No. 2020-WR-016-D), issued September 22, 2021.

Status of the Office of Navajo and Hopi Indian Relocation's Range Maintenance Responsibilities and Activities on the New Lands (Report No. 2020-WR-016-F), September 22, 2021.

Attachment 2: Responses to Draft Report

The Office of Navajo and Hopi Indian Relocation's response to our draft report follows on page 12, and the Navajo Nation's response to our draft report follows on page 14.

UNITED STATES GOVERNMENT
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Christopher J. Bavasi
Executive Director

April 9, 2021

Mr. Mark Lee Greenblatt
Inspector General
U.S. Department of the Interior
Office of Inspector General (OIG)
1849 C Street NW - Mail Stop 4428
Washington, D.C. 20240

Office of Navajo and Hopi Indian Relocation (ONHIR)
Comments on Draft ONHIR Draft ONHIR Review – *Status of the Office of Navajo and Hopi Indian Relocation's Grazing Responsibilities and Activities on the New Lands*
Report No. 2020-WR-016-E

Dear Inspector General Greenblatt:

ONHIR appreciates the opportunity to comment on OIG's draft report on ONHIR's Grazing Responsibilities and Activities on the New Lands. (Grazing)

We also appreciate the good work of OIG's Sacramento staff in preparing this and other reviews of ONHIR's programs and activities. We have very few comments and we think this reflects the hard work of the Sacramento staff in getting to know ONHIR and our programs, people, and work. It also reflects the extensive dialogue over the time that OIG Sacramento staff have been working on this report and the frequent requests to ONHIR for documents, information, and language reviews.

Our comments follow:

Page 2

The 1980 Amendments to the Navajo—Hopi Settlement Act (P.L. 96-305) authorized a total of 400,000 acres to be taken into Trust status for the Navajo Nation. Of the 400,000 acres, 250,000 were to be provided to the Navajo Nation without cost to the Nation and 150,000 were to be provided by the United States taking into Trust land that had been acquired and paid for by the Navajo Nation.

Of the 400,000 acres, the Navajo Nation selected 352,000 acres for what became the "New Lands," part of which was two Navajo Tribal Ranches owned in fee by the Navajo Nation and the balance were from four private ranches which included fee and Arizona State lands.

P.O. Box KK • 201 E. Birch • Flagstaff, Arizona 86002 • (928) 779-2721 • Fax (928) 774-1977

The 352,000-acre New Lands are all lands in which the surface interest is held in Trust for the Navajo Nation by the United States with ONHIR as the federal land administrator. Most of the New Lands has a mineral reservation in favor of the BNSF Railway or the State of Arizona.

Page 7

Assistance with enforcement of livestock regulations is also provided by a Navajo Nation Resource Enforcement Officer (often referred to as a "Ranger") who is provided a residence on the New Lands by ONHIR.

Sincerely,

Christopher J. Bavasi
Executive Director

May 3, 2021

Mark L. Greenblatt, Inspector General
U.S. Department of the Interior
Office of Inspector General
1849 C Street NW - Mail Stop 4428
Washington, D.C. 20240

Re: Navajo Nation Comments on Office of Inspector General Draft Report *Current Status of the Office of Navajo and Hopi Indian Relocation's Grazing Responsibilities and Activities on the New Lands,* Report No. 2020-WR-016-E

Dear Mr. Greenblatt,

Thank you for the opportunity to comment on the OIG draft report titled *Current Status of the Office of Navajo and Hopi Indian Relocation's Grazing Responsibilities and Activities on the New Lands.* Although the report is largely descriptive in character, there are certain statements that the Navajo Nation ("Nation") does not agree with or that otherwise would benefit from additional context.

Comments on *Background* Section:

- **ONHIR is Not "Assisting" Relocation, But Rather Implementing a Federal Mandated Relocation Law.** In the *Background* section, the draft report states: "ONHIR is an independent Federal agency responsible for *assisting* with the relocation of Navajo people and Hopi people *living within each other's boundaries*." (Emphasis added.) This characterization of ONHIR's mission, and the omission of any reference to the fact that both Navajo and Hopi people were *required* to leave land that they had inhabited legally for generations, mischaracterizes what has occurred. A more accurate statement would be: "ONHIR is an independent Federal agency responsible for implementing a federally mandated relocation of Navajo people and Hopi people from lands they had legally inhabited for generations until passage of the Navajo-Hopi Land Settlement Act of 1974." *See, e.g.*, former 25 U.S.C. §§ 640d-13(a) (authorizing and directing relocation), 640d-14(a)-(b) (providing for payments to those "required to relocate" under the Act).

- **Navajo People did not Trespass on the Hopi Reservation.** Prior to 1974, the Navajo were not living within the boundary of the Hopi Reservation as could be implied from the language quoted in the preceding paragraph; rather, it was only when the United States government redrew the boundary lines—over the fierce objection of the Navajo Nation—that these Navajo people found themselves within the Hopi Reservation. The report

should make clear that the cause for this implied trespass is not the Navajo people, but the United States government.

- **The Need to Appoint a Commissioner.** The first paragraph in the *Background* section rightly highlights that ONHIR is supposed to be headed by a presidentially appointed Commissioner, but no such person has been in place since 1994 (despite repeated requests by the Navajo Nation for this important position to be filled). This inappropriately has long left ONHIR employees to oversee themselves with no one ultimately responsible or committed to carrying out ONHIR's complete mission. That includes not just the mandatory (and tragic) relocation of thousands of Navajo families, but also provision of services and infrastructure for relocatee communities. *OIG should recommend that a Commissioner be appointed for ONHIR.*

- **ONHIR's Responsibilities Extend Beyond the Completion of Relocation of Navajo and Hopi People.** In the *Background* section, the draft report states: "The United States holds the legal title [to the New Lands], and the tribe holds the beneficial interest. ONHIR will administer the land until the relocation of Navajo people and Hopi people off each other's designated land is complete." This language implies that ONHIR's responsibilities end once physical relocation of Navajo and Hopi people is complete; but ONHIR has related obligations which are not yet fulfilled. We repeat below the relevant explanation from the Navajo Nation's comments on the Office of Inspector General Draft Report *Current Status of the Office of Navajo and Hopi Indian Relocation's Administration of Relocation Benefits,* Report No. 2020-WR-016-A, regarding ONHIR's unmet obligation to provide certain relocation benefits:

Relocation Benefits Were Expressly Enumerated in the Relocation Act. *The draft report correctly notes that the relocation benefits are based on ONHIR's interpretation of the Relocation Act, but incorrectly states "that these benefits are not explicitly enumerated in the Settlement Act." As detailed below, the Relocation Act expressly provided that "housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such household shall be available at their relocation sites . . . ." ONHIR largely failed to provide these benefits, shrugging them off by pointing to existing Navajo or BIA infrastructure, as if the promise to the relocatees was only to move them to new homes in some of the worst infrastructure conditions in the United States.[1] This was not what the governing law provided nor what relocatees were promised.*

During deliberations on the Relocation Act, the Senate Committee on Interior and Insular Affairs set forth guiding principles for the relocation program. Of particular importance were principles 9 and 11:

9. That any such division of the lands of the joint use area ***must be undertaken in conjunction with a thorough and generous relocation program to minimize the adverse social, economic, and cultural impacts of relocation on affected tribal members*** *and to avoid any repetition of the unfortunate results of a number of early, official Indian relocation efforts;*
…

[1] As the draft report notes on page 7, the GAO reached a different conclusion.

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

11. That because of the Federal Government's repeated failure to resolve the land disputes, ***the major costs of resolution should be properly borne by the United States.***[2]

With these principles in mind, when Congress enacted Pub. L. 93-531, it required the original Navajo Hopi Indian Relocation Commission ("NHIRC") to prepare and submit to Congress a report and a Relocation Plan. Congress mandated that the Relocation Plan shall:

(2) take into account the adverse social, economic, cultural, and other impact of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;
…
(4) assure that housing ***and related community facilities and services****, such as water, sewers, roads, schools, and health facilities, for such household shall be available at their relocation sites; and*
(5) take effect thirty days after the date of submission to Congress….[3]

The NHIRC acknowledged its obligations in the 1981 Relocation Plan:

Congress was greatly concerned that relocation of Indian families be to areas where community facilities and services exist or will exist. The Commission's plan for relocation shall:

'assure that housing and related community facilities and services, such as water, sewer, roads, schools, and health facilities, for such households shall be available at their relocation sites….'[4]

The Relocation Plan recognized that the impact of relocation on existing host communities where relocates would be moved was within the Commission's "proper purview and responsibility" and that "[r]elocation to . . . new lands will necessitate the assurance of schools, roads, power, and other facilities."[5] *Thus, the Relocation Plan recognized the federal duty to provide schools, roads, power, and other facilities for relocation to new lands.*[6]

The Relocation Plan took effect 90 days after it was submitted to Congress, and it remains a binding, governing document, "in accordance with" which "[t]he relocation shall take place[.]"[7] *Consistent with the Relocation Plan, the ONHIR Management Manual recognizes that ONHIR participates in infrastructure projects on the Navajo reservation in proportion to the number of relocatees living in or moving to those areas and that ONHIR funds infrastructure on the new lands acquired pursuant to the Relocation Act.*[8] *The draft report therefore must be revised to acknowledge the original and ongoing federal duty to provide infrastructure and*

---

[2] *See* S. Comm. on Interior & Insular Affairs, Rep. on Res. of Navajo-Hopi Land Dispute, S. Rep. No. 93-1177, at 19–20 (1974) (emphasis added).
[3] Pub. L. 93-531 § 13(c)(2), (4)–(5) (emphasis added).
[4] *See* NHIRC, Report and Plan at 4, 185, 237 (1981) (emphasis in original).
[5] *Id.* at 278.
[6] *Id.* at 235-37, 270, 278.
[7] Pub. L. 93-531, § 12(c)(5), amended by Pub. L. 96-305, § 6 (changing 30-day effective date after congressional submission to 90 days); Pub. L. 93-531, § 14(a).
[8] ONHIR Management Manual §§1530 at 1, 1645.41.1 at 15.

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

community facilities for relocatees as a fundamental part of ONHIR's administration of relocation benefits.

The Statutory Provision Requiring the Relocation Plan Was Replaced in 1988, but the Federal Duty to Provide Infrastructure and Community Facilities for Relocatees Was Not. *In 1988, Congress replaced the statutory requirement for the creation and submission of the 1981 Report and the Relocation Plan with a requirement for a new, updated report to address then outstanding issues.[9] Some have asserted that this repeal eliminated the federal duty to provide community facilities for relocatees.[10] But Congress did not repeal the requirement that "[t]he relocation shall take place in accordance with the relocation plan and shall be completed by the end of five years from the date on which the relocation plan takes effect."[11]*

In addition, in the same legislation, Congress expressly prescribed ONHIR's "sole authority for final planning decisions regarding the development of lands acquired" pursuant to the Relocation Act.[12] Congress did that

out of concerns that the development of the new lands not be unnecessarily slowed down. . . . [and that] such development should be done in conformity with, and in accordance with, section 13(c)(4) which directs the Commissioner to assure that the acquisition of housing shall be provided to the relocatees simultaneously with related community facilities and services such as water, sewers, roads, schools and health facilities. Such directive is especially important in cases where the creation of a whole new community of relocatees is contemplated such as is the case with . . . the New Lands.

H.R. Rep. 100-1032, at 9 (1988).

Consistent with that, ONHIR shortly thereafter confirmed that "the program has long identified a variety of facilities which are necessarily incident to relocation housing such as; roads, water, power, utilities, schools, community and chapter facilities, recreational facilities, commercial facilities, range facilities and facilities for economic development."[13] And in fulfillment of Congress's 1988 report requirement, ONHIR recognized that "[t]he provision of adequate infrastructure support (water, wastewater disposal, and power) is essential to the successful relocation of families."[14] ONHIR also reported there that it "is committed to further development of various infrastructure projects which are badly needed by the relocatee population."[15] Thus, the United States indisputably still has a duty to provide community facilities for relocatees.

---

[9] Pub. L. 100-666, § 4(d), previously codified at 25 U.S.C. § 640d-12.
[10] *See, e.g.*, Government Accountability Office ("GAO"), *ONHIR: Executive Branch and Legislative Action Needed for Closure and Transfer of Activities*, GAO-18-266 (April 24, 2018) ("2018 GAO Report") at 33-34 & n.62.
[11] Pub. L. 93-531, § 14(a), previously codified at 25 U.S.C. § 640d-13(a).
[12] Pub. L. 100-666, §§ 4(b), 8, previously codified at 25 U.S.C. § 640d-10(h).
[13] Memo from Paul Tessler, NHIRC, to Mike McAlister, NHIRC (June 5, 1990) (concerning authority to issue rights-of-way and leases on the New Lands).
[14] ONHIR, Plan Update (Nov. 22, 1990) at 59 ("1990 Update").
[15] *Id.* at 10.

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

Yet despite all this, those needs remain woefully unaddressed. The draft report therefore must be revised to reflect that the current status of ONHIR's administration of relocation benefits is substantially deficient in implementation of the federal duty to provide necessary infrastructure and community facilities for relocatees.

Permit Administration Related to Grazing Activities, as of May 2020, Page 6. Note that the current text states that "the next renewal date for all term permits is October 2020", a date which is now in the past. This should be updated.

Congressional Considerations, Page 8. With regard to the proposed recommendation that Congress needs to resolve what grazing regulations should be applied to the trust land under ONHIR's current control, the Navajo Nation prefers that ONHIR's current regulations continue to apply to these trust lands (no matter the future of ONHIR). The Navajo Nation also requests that OIG recommend that a Commissioner be appointed to oversee ONHIR.

Definitional Issue of "New Lands." The report notes at footnote 1 that the Navajo Nation uses a different definition for "New Lands" than ONHIR, and that the report adopts ONHIR's terminology. The Navajo Nation would like to set forth in further detail here the need to correct and clarify the "New Lands" references in this report.

Page 2 includes the following text and footnote:

Amendments to the [Settlement] Act in 1980 authorized 352,000 acres of land in Arizona to be taken into trust by the U.S. Government for the Navajo Nation, referred to by ONHIR as the "New Lands."[1]

[1] In contrast, the Navajo Nation refers to all lands in Arizona and New Mexico selected and acquired in trust pursuant to the Act as "new lands." This report uses ONHIR's terminology.

The quoted statement in the body misstates the Settlement Act. This is confirmed by the OIG's September 2009 report on land selections and the amended Settlement Act ("Act") itself. The Act authorized transfer to the Navajo Nation ("Nation") of up to 250,000 acres of BLM land in Arizona and New Mexico and the acquisition of up to 150,000 acres of private land. DOI OIG, Status of ONHIR's Land Selection in Arizona and New Mexico, Report No. 2020-WR-016-C, at 2 (Sept. 2020) ("OIG Land Selection Report"); *see* Act § 11(a), previously codified at 25 U.S.C. § 640d-10(a). There is no state restriction on the private land acquisitions; instead, all the lands to be transferred or acquired must be within 18 miles of the then present boundary of the Navajo Reservation. *See* Act § 11(a)-(b), previously codified at 25 U.S.C. § 640d-10(a)-(b). Therefore, the Act authorizes a total of 400,000 acres in two states, not 352,000 acres just in Arizona as stated in the draft reports. Consequently, none of the reports should use ONHIR's inaccurate terminology as stated in the text and footnote quoted above because that improperly misstates and misapplies the Settlement Act.

In addition, pursuant to the Act, over 387,000 acres of land in Arizona and New Mexico already have been selected and acquired or transferred to date. OIG Land Selection Report at 2. All those lands—including any additional lands selected up to the 400,000-acre cap—are "New Lands"

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

under the Act. None of them have any legal difference under the Act from the subset of about 352,000 acres thereof that are located within the Navajo Nation's Nahata Dziil Chapter in Arizona. In particular, all of the acquired lands "shall be administered by [ONHIR] until relocation under the Commission's plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974[.]" Act § 11(h), previously codified at 25 U.S.C. § 640d-10(h). All this matters because the OIG should not perpetuate ONHIR's misperception or mischaracterization that the New Lands within the Nahata Dziil Chapter are somehow different under federal law than the remainder of the New Lands. Any assertion that they are different directly contradicts the Act.

To address these issues in the above-quoted body text, "352" should be replaced with "400", "and New Mexico" should be inserted after "Arizona", and "ONHIR" should be replaced with "Navajo Nation". In turn, the footnote should be changed to read as follows: "In contrast, ONHIR uses the term "new lands" to refer to only those about 352,000 acres of lands selected and acquired in trust pursuant to the Act which are located within the Navajo Nation's Nahata Dziil Chapter in Arizona. This report uses terminology as stated in the text that corresponds to the larger category of land defined in the Act." Related to that correction, a number of additional corrections and clarifications are required in each of the draft reports, as discussed separately below for each of the draft reports.

Correct and Clarify Additional References to the New Lands. On page 1 of the Grazing Report, the language "352,000 acres of Navajo Nation land in Arizona known as the New Lands" should be changed to "352,000 acres of Navajo Nation land in Arizona within the Nation's Nahata Dziil Chapter." Likewise, on page 2 of the Grazing Report, "within the Nahata Dziil Chapter" should be added after "The remaining acres (just over 13,000) of the New Lands". In addition, in the next-to-last full sentence on that page, change "as noted above" to "and elsewhere". Finally, in the second bullet point on page 8 of that report, add "managed for grazing" before "to monitor range use".

Clarify Whether or How the New Lands Outside the Nahata Dzill Chapter are Managed for Grazing. As explained above, the draft reports should not perpetuate ONHIR's misunderstanding or misrepresentation that all New Lands under the Act are only located within the Nahata Dziil Chapter. Also, there currently are approximately 35,000 acres of New Lands outside the Nahata Dziil Chapter. *See* OIG Land Selection Report at 2; Grazing Report at 2. However, the Grazing Report makes no mention of those lands, and instead seems to assume or suggest that they do not exist. Because they do in fact exist, and all the New Lands have the same federal status and are subject to the same federal restrictions, the Grazing Report must be revised to address whether, and if so how ONHIR manages any New Lands for grazing outside the Nahata Dziil Chapter. If there is no such management, but some of those lands are suitable for grazing, that should be noted as an additional issue that warrants further action by ONHIR.

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

Conclusion. The United States promised a generous and humane relocation—a promise that was not kept. Before ONHIR is closed, all of the issues identified in the report and this memorandum should be fully addressed in close consultation and coordination with the Navajo Nation. Thank you.

Sincerely,

Jonathan Nez, *President*
THE NAVAJO NATION

Myron Lizer, *Vice President*
THE NAVAJO NATION

POST OFFICE BOX 7440 | WINDOW ROCK, AZ 86515 | PHONE: (928) 871-7000 | FAX: (928) 871- 4025

Report Fraud, Waste, and Mismanagement

Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to departmental or Insular Area programs and operations. You can report allegations to us in several ways.

By Internet: www.doioig.gov

By Phone: 24-Hour Toll Free: 800-424-5081
Washington Metro Area: 202-208-5300

By Fax: 703-487-5402

By Mail: U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW.
Washington, DC 20240