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

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

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Report No.: 2020-WR-016-F September 2021

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

SEP 2 1 2021

Memorandum

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 Range Maintenance Responsibilities and Activities on the New Lands*
Report No. 2020-WR-016-F

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 range maintenance responsibilities and activities on 352,000 acres of Navajo Nation land in 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 livestock water systems on the New Lands?

2. What is the status of ONHIR's livestock fencing on the New Lands?

3. What are ONHIR's maintenance activities, costs, and records management for livestock water systems and fencing on the New Lands?

4. What considerations exist for the U.S. Congress or a successor agency 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.

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). Navajo families live and raise livestock on the New Lands. In its capacity as administrator of the New Lands, ONHIR is responsible for range maintenance activities—the limited assessment of, repair to, and construction of water systems and fencing that support livestock—on more than 339,300 acres of the New Lands. 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.

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 range maintenance is one of three overlapping components that together promote the overall sustainability of the New Lands rangeland. The other two components—ONHIR's grazing regulations and ONHIR's ranching practices on its Padres Mesa Demonstration Ranch—are further discussed in separate reports.[2]

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[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.

[2] See (1) OIG Report No. 2020-WR-016-E, *Status of the Office of Navajo and Hopi Indian Relocation's Grazing 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.

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 (designated tracts of land for grazing) to allow grazed plants to recover and regrow.

On the New Lands specifically, there are 14 range units that 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. The RUMPs were last revised in 2016, and they include elements such as a needs assessment for range and livestock improvements and a schedule for operation and maintenance activities.

Inventory of Livestock Water Systems

ONHIR is responsible for the management of livestock water systems on the New Lands, including 68 wells and their pumping mechanisms (such as windmills) and 87 earth dams.

Overview of 68 Wells and Their Pumping Mechanisms

Of the 68 wells, ONHIR officials told us that 57 were already in place (inherited) when the land was taken into trust to be administered by ONHIR. Construction of the remaining 11 of the 68 wells was funded by ONHIR.

Overview: 68 wells

- 57 inherited
  - 9 of these not in use or in limited use
- 11 funded by ONHIR
  - 2 of these not in use or in limited use

Further, of the 68 wells, 11 (2 of which were ONHIR funded) are not in use or are in limited use due to inadequate water supply, water quality issues, or presence of heavy metals. ONHIR provided us with a list of the New Lands wells and windmills, some of which we viewed during a site visit in January 2020. The COVID-19 pandemic prevented followup visits to verify the completeness of the list, but we confirmed the cited locations using Google Maps satellite images. See Attachment 2 for a detailed list of wells on the New Lands.

Following our visit, ONHIR conducted a summary review of its water systems and compiled an inventory of its wells and windmills for visual and historical reference. For each well, the inventory provides well identification number, GPS location, type of pump, windmill size, and tank size. The summary does not, however, assess the wells' placement in relation to livestock to help assess efficiencies of use or identify costs to maintain the wells and windmills. A responsible agency, whether ONHIR or a successor agency, may need to determine whether a more comprehensive assessment of the productivity, placement, and costs to maintain wells and windmills is needed to help manage the New Lands livestock water systems more efficiently.

Wells use pumps powered by the wind, sun, and/or electricity to send water from the ground to troughs and storage tanks. On the New Lands, most wells (46) use windmills to power the pump. In more remote areas where pumps are at risk of being vandalized or damaged due to

trash, theft, graffiti, bullet holes, drug activity, etc., the windmills are built with metal parts beyond reach from the ground to reduce vulnerability. Solar-powered systems are less likely to be used in those areas, as their glass components and exposed electronics are close to the ground and more vulnerable to theft and damage. (See Figure 1 for a view of a solar-powered windmill and its storage tank. See Figure 2 for a summary of power sources for New Lands wells.)

Figure 1: Example of a Solar-Powered Windmill: The Papalote Well in the Chambers Range Unit

Source: Office of Inspector General.

Figure 2: Power Sources for New Lands Wells

Power Source	Defined	Count
Windmill	Wind turns the blades, which power gearboxes to operate a mechanical pump that moves water from a well to the surface.	46
Solar submersible pump	Solar energy powers a submersible pump or a power pole. The submersible pump is installed below the cylinder pump inside the well casing.	4
Solar-powered mill	Solar energy powers motors that turn the blades, which produce electricity to draw water. A solar-powered mill can work even if there is no wind.	2
Solar jack	Solar energy powers a windmill with a pumpjack (an aboveground drive).	2
Horizontal pump	The pump moves water horizontally to other pump stations.	2
Solar wind	A hybrid system combines solar panels and wind turbines to produce energy.	2
Sub-electric pump	An electric pump with no mechanical gears draws power from a connected power pole.	1
Not developed	Well is capped and not in use due to inadequate water supply or a water quality issue.	9
Total		**68**

Known Environmental Issues and Attempted Mitigation for 6 Wells

ONHIR authorized and funded testing in July 2015 to mitigate concerns raised by the 14R Ranch Corporation[3] that uranium levels in the wells might harm livestock. The testing identified levels of heavy metals possibly sufficient to harm livestock in 6 of the 68 wells—five of the wells raised concerns regarding uranium, and one raised concerns regarding lead (see Figure 3).[4] The report recommended that five of the wells be used on a short-term basis only and specifically noted that one would be harmful to humans over time. Based on testing results and the location and use of these wells, ONHIR decided to cap three of the six wells in 2017 and leave the remaining three available for short-term livestock use only.

[3] The 14R Ranch Corporation is a nonprofit comprising the 14 range units in the New Lands focused on improving and sustaining the livelihood of Navajo cattle producers.

[4] *Water Quality Testing and Evaluation of Heavy Metal Contaminants in New Lands Livestock Watering Systems,* issued October 2015. Tolani Lake Enterprises organized water testing in cooperation with the Little Colorado River Association and the 14R Ranch Corporation. The report was prepared by Mohave Environmental Laboratory, and samples were taken and analyzed by TestAmerica. As there is no current standard for livestock exposure to uranium in drinking water, all testing assumptions were based on the standard for human exposure to drinking water set by the U.S. Centers for Disease Control and Prevention and regulated by the U.S. Environmental Protection Agency. According to the report, uranium collects in the kidneys and liver of cattle with long-term exposure to above-acceptable contamination level, but not in the muscle tissue, which is most commonly consumed.

Figure 3: New Lands Livestock Wells With Heavy Metals

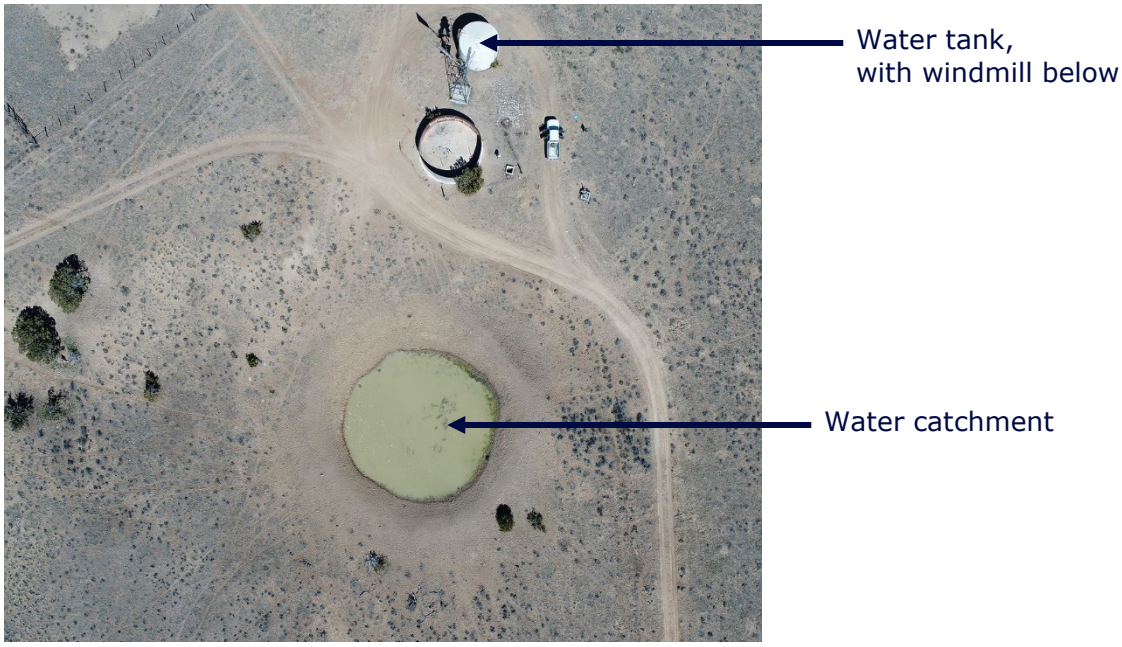
Well Name	Test Results*	Study Recommendation	Status
Solitary Well	High lead (0.056 mg/L)	Use for short duration only	In use
Chambers Well	Uranium (0.036 mg/L)	Use for short duration only	Capped
Range Office	Uranium (0.034 mg/L)	Harmful to humans over time	Capped
Midway Well	Uranium (0.032 mg/L)	Use for short duration only	Capped
Sandhill Well (also known as Pinta)	Uranium (0.035 mg/L)	Use for short duration only	In use
Interstate Well	Uranium (0.070 mg/L)	Use for short duration only	In use

* The U.S. Environmental Protection Agency established a maximum contaminant level of 0.03 milligrams per liter (mg/L) in drinking water for human consumption.

Overview of 87 Earth Dams

ONHIR officials told us the 87 earth dams are earthen embankments, earth spillways, or borrow areas used as water catchments when it rains or snows; they are not intended for flood control or flood prevention. They also provide a water source for wildlife. Some earth dams formed naturally, and others were made by settlers and Native Americans who lived on the New Lands before the land was acquired for relocation purposes. ONHIR did not create any of the earth dams but has rebuilt some using U.S. Fish and Wildlife Service funds. According to ONHIR's attorney, neither ONHIR nor any third party has conducted a safety review of the earth dams because, due to their relatively small size, they do not present a high enough risk to life and property. See Figure 4 for a view of an earth dam used as a water catchment near the Hardscrabble Well.

Figure 4: Overhead View of Earth Dam Used as a Water Catchment



Source: Photo provided by ONHIR.

Inventory of Livestock Fencing

As of March 2020, ONHIR is responsible for a total of 540 miles of fencing consisting of 210 miles of exterior perimeter fencing and 330 miles of interior boundary fencing. A reconnaissance report on boundary fences on the New Lands completed in April 2014 found that, at that time, both the exterior and interior fences were in good condition, with minor exceptions. It specifically noted that, at that time, most interior fences were relatively new. ONHIR plans to update the reconnaissance report as it prepares for possible office transition and closure.

We note that about 25 miles of exterior perimeter fencing may need to be moved to align with the New Lands surveyed boundary. Throughout the course of our fieldwork, ONHIR officials provided us with differing opinions and changing information about the mileage involved and whether the realignment would affect privately held land or only Navajo lands.[5] ONHIR's attorney initially told us there was no issue regarding boundary discrepancies but later stated that correct alignment of the exterior perimeter fencing would move the fence a few feet farther onto Navajo Nation land. In contrast, the New Lands Range Office told us that private lands were also involved. Due to the COVID-19 pandemic, we were unable to perform additional work to verify or reconcile ONHIR's differing statements. ONHIR's attorney stated that ONHIR has not prioritized moving the fence to the correct location because it believes the misalignment

[5] In addition to the 2014 reconnaissance report, both ONHIR headquarters and its New Lands Range Office reference three land surveys: two performed by the Bureau of Land Management in 1988 and 1993 using typical survey techniques by taking the mean of multiple measurements and one performed more recently in approximately 2016 or 2017 by the Navajo Nation using a GPS-based survey.

is of little significance, as there is Navajo land on both sides of the boundary. ONHIR's attorney also told us that, as part of the planning for transition and closure, ONHIR will discuss with the Navajo Nation whether economic and other considerations weigh in favor of moving the fence to the correct location.

Range Maintenance Activities, Costs, and Records Management

Range maintenance activities include the limited assessment of, repair to, and construction of water system components and fencing that support livestock on the New Lands. Maintenance is conducted on an as-needed basis, and there is no scheduled preventive maintenance.

Range Maintenance Activities

As of May 2020, ONHIR had a three-person range crew dedicated full-time to range maintenance activities. According to ONHIR, in preparation for eventual transition and closure, ONHIR uses contracts for certain well and fencing work, with the three-person crew serving primarily in an advisory capacity.

Grazing permittees notify the range crew of needed repairs and maintenance. The range crew usually responds to maintenance requests the day they are received. Factors determining how quickly an issue is addressed include the following:

- Any safety or hazard issues
- Effect of the maintenance issue on grazing
- Whether parts needed for repair and maintenance are available
- Whether repair is within the range crew skill set or a contractor needs to be engaged

Range Maintenance Costs

According to ONHIR's attorney, in fiscal years (FYs) 2018 and 2019, range maintenance costs for water systems and fencing on the New Lands totaled just over $2 million (see Figure 5). ONHIR's noncontract range maintenance costs each year were nearly $1 million, with payroll accounting for about 83 percent of the total. ONHIR stated that the remainder of the noncontract costs included travel and vehicles, services, supplies, and (in FY 2019) equipment. During that same time, ONHIR's contract range maintenance costs were nearly $115,000. Most of these contract costs were for professional assessments and improvements to rangeland wells as needed.

Figure 5: Total ONHIR Noncontract and Contract Costs for FYs 2018 and 2019

	FY 2018 ($)	FY 2019 ($)	Total ($)
Noncontract Costs			
Payroll	826,593	772,453	1,599,046
Other	172,700	152,436	325,136
Total noncontract costs			*1,924,183*
Contract Costs			
Wells	77,120	33,104	110,224
Fencing	4,580	–	4,580
Total contract costs			*114,804*
Total by Fiscal Year	**$1,080,993**	**$957,993**	**$2,038,987**

Note: We did not audit the financial information provided by ONHIR, including these amounts.

Range Maintenance Records Management

ONHIR's New Lands Branch is responsible for range maintenance records. These records are held in the New Lands Range Office in Sanders, AZ, as well as at ONHIR headquarters in Flagstaff, AZ. Each fence has its own file and an assigned number used in the filing system. Files include maps showing fence placement and archaeological clearances for any exterior perimeter fencing that needs to be realigned. Each well and windmill also has an assigned number and its own file that includes its location and specifics (such as GPS coordinates, depth, static water level, head size, windmill size, casing size, power source, troughs), maintenance history, and water quality testing.

During a site visit to the New Lands in January 2020, we conducted interviews with the range crew and visited wells, mills, and fencing sites. Due to the COVID-19 pandemic, however, we were unable to conduct a followup visit to the New Lands to verify and review range maintenance files.

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

In the event of ONHIR's closure or transfer of duties,[6] legislation may be needed to:

- Identify a successor agency to be responsible for range maintenance activities on the New Lands

- Identify which regulations specific to range maintenance activities will apply and resolve any issues with transition to the successor agency (for example, the Bureau of Indian Affairs has regulations specific to administration of trust land, but they differ from ONHIR's and do not incorporate incentives for sustainable rangeland management)

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

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

In addition, the responsible agency, whether ONHIR or a successor agency, may need to determine whether a comprehensive assessment of the productivity, placement, and costs to maintain wells and windmills is needed to help manage the New Lands livestock water systems more efficiently. The responsible agency may also need to determine whether exterior boundary lines for the New Lands have discrepancies that must be reconciled.

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 3; we have made revisions and updated information in this report where applicable. Hopi officials did not provide a response.

[6] 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."

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 (3)

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 21, 2021.

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), issued September 21, 2021.

Attachment 2: List of Wells on the New Lands, as of May 2020

Range Unit	Well Name	In Use (✓) or Not Developed or Not In Use (X)	Inherited vs. ONHIR Funded
Antelope Well	Antelope Well	✓	Inherited
	Ranch Well	✓	Inherited
	Sundance Well	✓	ONHIR funded
	Morgan Spring Well	✓	Inherited
Barth Lake	Barth Well	✓	Inherited
	Calico Well	✓	Inherited
	Deerwater Well	✓	Inherited
	Hellsapoppin Well	✓	Inherited
	Wildcow Well	✓	Inherited
	Zuni Well	✓	Inherited
Blue Bird	Blue Bird Well	✓	Inherited
	Chafin Well	✓	Inherited
	Roberts Well	✓	Inherited
	Staddling Well	✓	Inherited
	White Well	✓	Inherited
Cedar Point*	Cedar Point	X	Inherited
Chambers	Chambers Well†	X	Inherited
	Papalote Well	✓	Inherited
	River Well	✓	Inherited
	Rotenhouse Well	✓	Inherited
	Waterfalls Well	✓	Inherited
	Range Office Well†	X	Inherited
East Mill	Cactus Jack Well	✓	Inherited
	Cluster Well	✓	Inherited
	East Mill Well	✓	Inherited
	Rattlesnake Well	✓	Inherited
	Bar-N Well	X	Inherited
	Fairchild Well	✓	Inherited
Hard Scrabble	Hardscrabble Well	✓	Inherited

Range Unit	Well Name	In Use (✓) or Not Developed or Not In Use (X)	Inherited vs. ONHIR Funded
	Lowery Well	✓	Inherited
	South Bar-N Well	✓	ONHIR funded
Hogan	Border Well	✓	ONHIR funded
	Hogan Well	✓	Inherited
	Nine Mile Well	✓	Inherited
	Sleepy Holler Well	✓	Inherited
	Twelve Mile Well	✓	Inherited
Kelsey	Hither Well	✓	Inherited
	Kelsey Well	X	Inherited
	Nigh Well	✓	Inherited
	North Well	✓	Inherited
	Yonder Well	✓	Inherited
Little Silversmith	Goodluck Well	✓	Inherited
	Horse Ridge Well	✓	ONHIR funded
	Shipping Well	✓	Inherited
	Silversmith Well	✓	Inherited
Middle Well	Clay Mine Well	✓	Inherited
	Crows Nest Well	✓	Inherited
	Little Well	✓	Inherited
	Middle Well	✓	Inherited
Navajo West Pasture*	Lost 24 Well	✓	Inherited
Navajo Springs	Salt Well	✓	ONHIR funded
	Spurlock Well	✓	ONHIR funded
North Well	Highway Well	✓	Inherited
	Solitary Well†	✓	Inherited
Padres Mesa*	Buckaroo Well	X	ONHIR funded
	Entrance Well	X	Inherited
	Midway Well†	X	Inherited
	Padres Mesa Well	✓	Inherited
	Painted Desert Well	X	ONHIR funded
Parker Draw	Beacon Well	✓	Inherited

Range Unit	Well Name	In Use (✓) or Not Developed or Not In Use (X)	Inherited vs. ONHIR Funded
	Parker Well	✓	Inherited
	Wallace Well	✓	Inherited
Pinta*	Interstate Well†	✓	ONHIR funded
	Red Ridge Well	X	ONHIR funded
	Pinta Well†	✓	ONHIR funded
Rim	Bobcat Well	✓	Inherited
	Tecolote Well	✓	Inherited
Sanders*	Old New Lands Office Well	X	Inherited
Count	**68**	**✓ = 57**	

* New Lands area not part of the 14 range units.

† Wells where laboratory reports concluded that heavy metals are present that may cause harm to livestock.

Attachment 3: Responses to Draft Report

The Office of Navajo and Hopi Indian Relocation's response to our draft report follows on page 17, and the Navajo Nation's response to our draft report follows on page 19.

UNITED STATES GOVERNMENT
OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Christopher J. Bavasi
Executive Director

April 7, 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 Review – *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

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.

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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 was from four private ranches which included fee and Arizona State lands.

Page 3

Livestock water placements are approximately 2 miles apart.

Page 5

A conventional windmill associated with a stock well does not convert wind power to electricity. Rather it uses the wind and a gearing system to operate a mechanical pump to pump water from the well to the surface.

Data is being collected as windmills are reconditioned and maintained. Solar power is being incorporated to improve effectiveness during periods of little to no wind where practical.

Page 6

Chambers well was capped because of uranium concerns and the Range Office well had collapsed in addition to there being an issue with uranium.

Page 9

Data is still being collected regarding wells.

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 Range Maintenance Responsibilities and Activities on the New Lands,* Report No. 2020-WR-016-F

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 Range Maintenance 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 impacted 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.

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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*

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[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.

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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.

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[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.

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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.

Congressional Considerations, Page 10. With regard to the recommendations, the Nation supports requiring the establishment of leases or use of grazing permits, with the fees, as well as revenue from cattle sales, placed into trust for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974. The Nation also believes that OIG should recommend the appointment of a Commissioner for 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" 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

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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 Range 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 that are managed for grazing among those lands known as the New Lands." On page 2 of the Range Report, in the third paragraph, at the end of the both first sentence and the second sentence, add "within the Navajo Nation's Nahata Dziil Chapter." In addition, in the first full paragraph on page 3, at the beginning of the first sentence, "On the New Lands" should be replaced with "Within the Nahata Dziil Chapter". On page 7, add "within the Navajo Nation's Nahata Dziil Chapter" in the second sentence of the first paragraph before "completed" and at the end of the first sentence in the second paragraph.

Furthermore, throughout the Range Report, the text should be revised to reflect whether ONHIR manages rangeland on any New Lands outside the Nahata Dziil Chapter. If ONHIR does not but there is such land suitable for rangeland management, that issue should be addressed. Alternatively, ONHIR does manage such other New Lands rangeland that should be explained. For example, are there wells, windmills, dams, and fencing? If so, what are their quantities and issues? For example, such rangeland might in fact or properly be fenced even if not used for grazing, to avoid grazing by others' livestock.

Correct an Ambiguous Reference to the 14R Ranch Corporation. On page 5, in the first sentence of the last paragraph, the 14R Ranch Corporation is identified to be "a nonprofit comprising the 14 range units in the New Lands". Of course, the range units are just administrative units of ONHIR and the New Lands are Navajo trust lands. It would be more accurate to say that the Nahata Dziil 14R Ranch Corporation is "a 501(c)(3) nonprofit organization focused on improving and sustaining the livelihood of Navajo cattle producers through outreach programs and activities."

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

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memorandum should be fully addressed in close consultation and coordination with the Navajo Nation.

Sincerely,

Jonathan Nez, *President*
THE NAVAJO NATION

Myron Lizer, *Vice President*
THE NAVAJO NATION

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