



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

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION BACKGROUND AND FUNCTIONS



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Memorandum

To: David Bernhardt
Secretary, U.S. Department of the Interior

Christopher J. Bavasi
Executive Director, Office of Navajo and Hopi Indian Relocation

From: Mark L. Greenblatt
Inspector General

Subject: Overview Memo – Office of Navajo and Hopi Indian Relocation Background and Functions
Report No. 2019-WR-039

This report is the first in a series of reports we intend to issue to help decisionmakers plan for the future of the Office of Navajo and Hopi Indian Relocation (ONHIR).

Our overall objective is to identify and report on ONHIR's responsibilities, functions, and current operations that could impact the closure and transfer of ONHIR to the U.S. Department of the Interior (DOI) or other successor agency (or agencies). We have engaged an independent accounting firm to perform a financial audit of ONHIR that is expected to be completed in June 2020. In subsequent reports, we may evaluate other activities such as applicant appeals, use of land and property, building leases and permits, and operation of the Padres Mesa Demonstration Ranch (a cattle ranch for Navajo ranchers).

This initial report describes ONHIR's functions and provides information on funding and expenditures, current operations, and factors to be considered if ONHIR is closed. The data presented are from ONHIR, and we will verify accuracy as we conduct future work.

What Is ONHIR?

ONHIR is an independent Federal agency responsible for assisting with the relocation of Navajo people and Hopi people living within each other's boundaries as a result in part of a longstanding land dispute between the tribes. ONHIR reports directly to the President of the United States and is overseen by both the Office of Management and Budget (OMB) and the U.S. Congress. A presidentially appointed Commissioner serves as the head of ONHIR. This position has been vacant since 1994, and a Senior Executive Service Executive Director who has been acting under delegated legal authorities manages the agency.

In 1882, an Executive Order established a reservation for the Hopi Tribe "and such other Indians as the Secretary of the Interior may see fit to settle thereon." At that time, a small number

of Navajo resided on this tract of land. Over time, with population growth and their semi-nomadic herding practices, the Navajo further spread across the area, increasing land disputes.

The Navajo-Hopi Settlement Act of 1974 designated specific lands to the Navajo and to the Hopi (see Figure 1 for reservation locations). Along with the land partitioning, the Settlement Act established the Navajo and Hopi Relocation Commission (officially replaced by ONHIR in 1988) to help Navajo and Hopi people relocate off of each other’s newly partitioned lands. The Settlement Act was amended in 1980, authorizing an additional 352,000 acres to be taken into trust for the Navajo, which became known as the “New Lands.” See Attachment 1 for a timeline of ONHIR history.

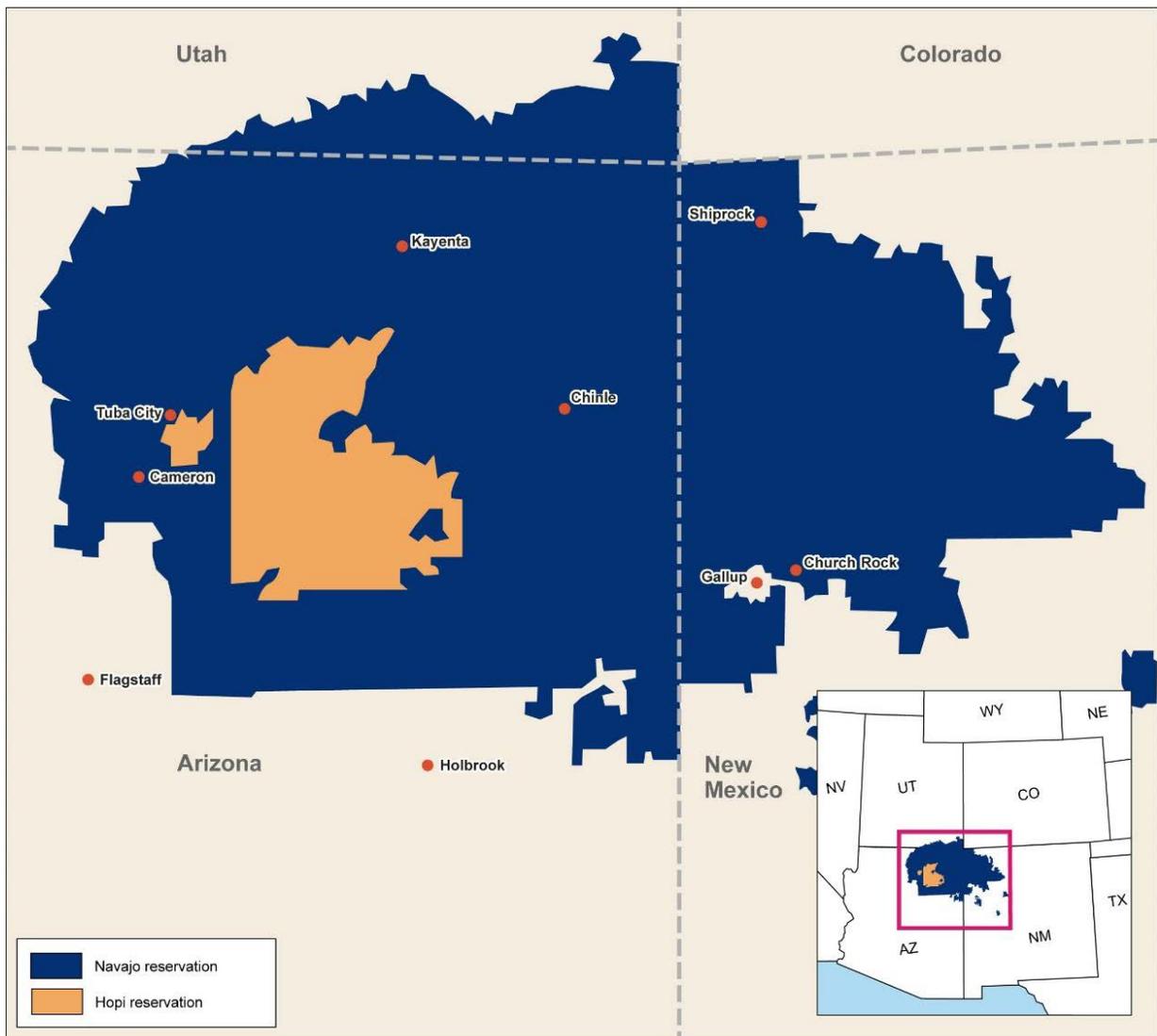


Figure 1. Map of Navajo and Hopi reservations. (Source: GAO Report No. GAO-18-266.)

ONHIR functions include:

- Certifying families as eligible for relocation benefits
- Providing pre- and post-move counseling and other services to assist eligible households with their transitions
- Managing the administrative appeals process
- Acquiring and managing land and property and contracting for the construction of new housing and infrastructure where necessary

Funding and Expenditures

An initial plan for ONHIR was implemented in 1981 and projected that operations would be completed within 5 years (by 1986) at an estimated cost of \$41 million to relocate an estimated 1,100 households. Unforeseen obstacles prolonged the need to keep ONHIR open, including difficulty persuading individuals to relocate, communication issues, difficulty determining eligibility for individuals who worked seasonally outside of the partitioned lands, failure to provide notice to potential applicants, and challenges by denied applicants that resulted in legal proceedings and multiple extended application periods.

Far exceeding the 5-year timeframe and \$41 million cost, ONHIR has been actively providing relocation benefits for 38 years (fiscal years (FYs) 1982 to 2019) at a cumulative cost of more than \$598 million. The majority of the \$598 million has been expended for housing and operations (see Figure 2).

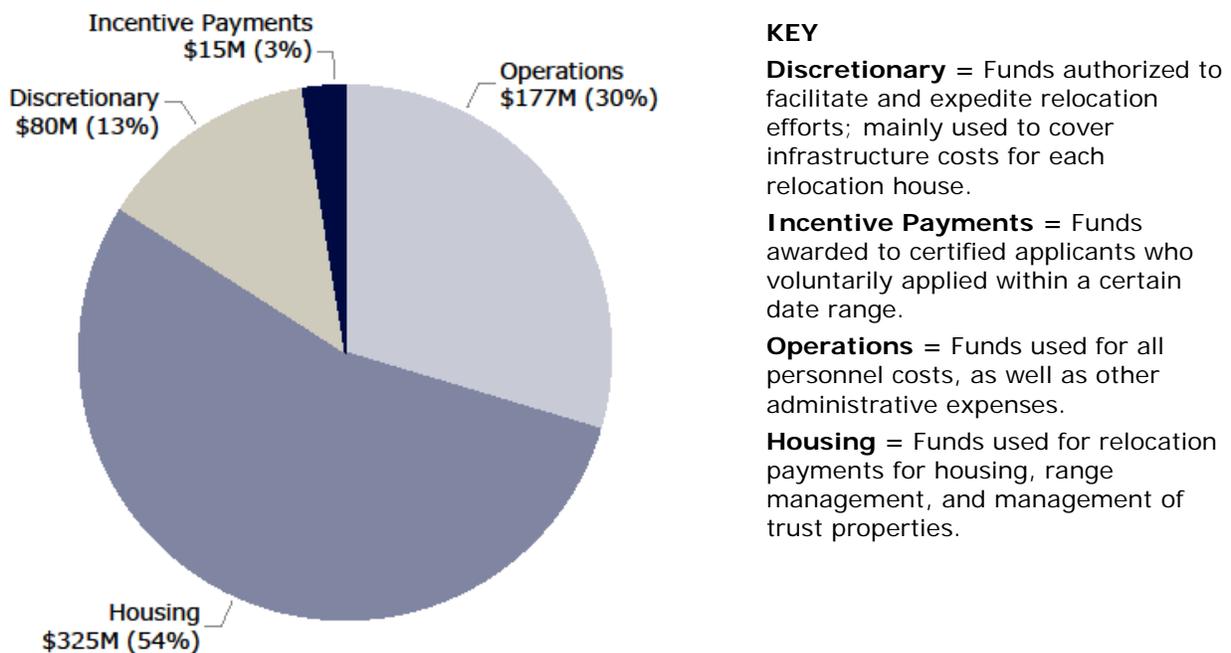


Figure 2. Breakdown of ONHIR Funding, FYs 1982 – 2019. (Source: All data are from ONHIR.)

After initial spikes in funding, annual appropriations for ONHIR have generally declined as the number of relocation homes remaining to be constructed has decreased. Funding increases after application periods were reopened may have occurred to accommodate activity related to new applications, and a notable funding increase occurred after our December 2014 evaluation report¹ concluded that ONHIR could complete its work at a faster pace if its annual appropriation was increased. As a result, there was a noticeable increase in contracted relocation homes in FY 2016.

Across the 38 years for which ONHIR provided data (FYs 1982 to 2019), the total appropriations of \$598 million supported the contracting and construction of 3,220 relocation homes (see Figure 3), and also included relocation benefit payments (currently set at \$134,000 for a household of three or fewer and \$140,000 for a household of four or more) and range and trust property management.

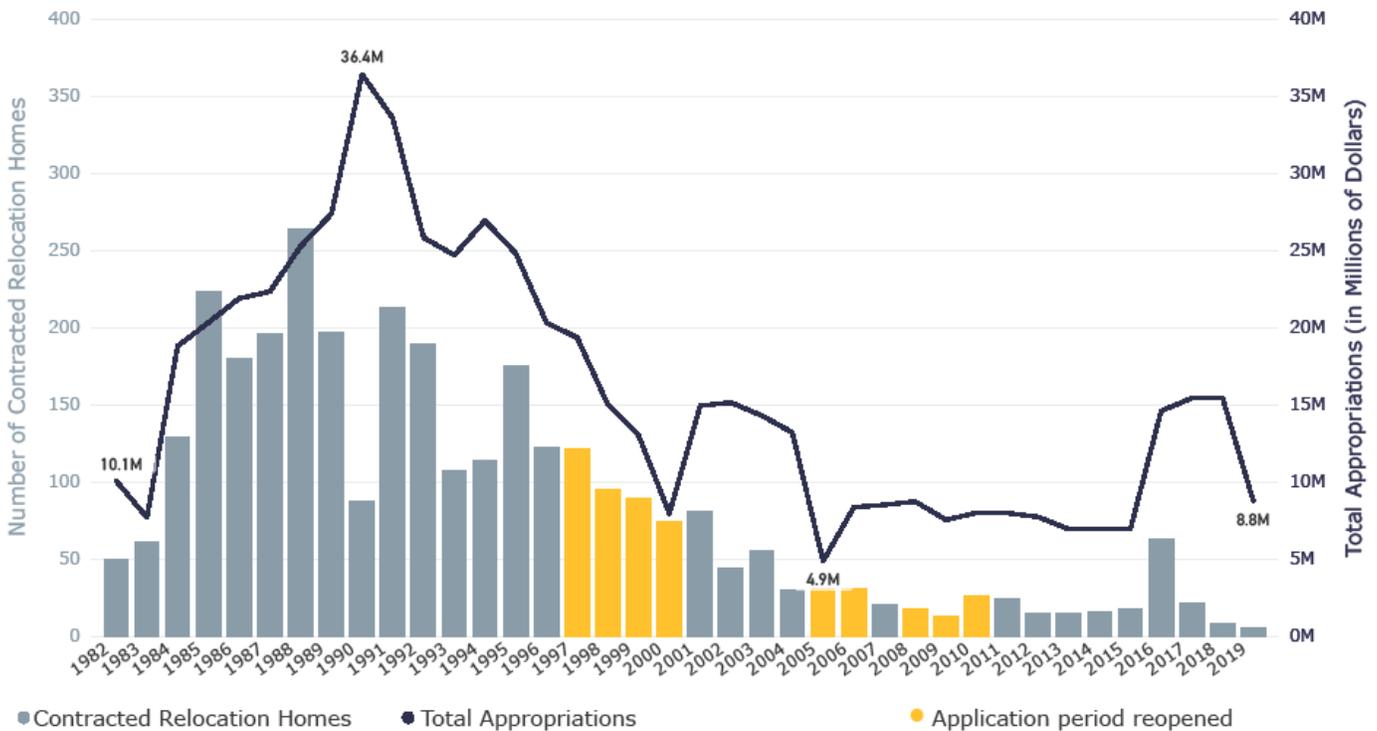


Figure 3. Number of contracted relocation homes per year, FYs 1982 – 2019, with an overlaid line showing total ONHIR appropriations. (Note: Data start date is 1982 because ONHIR could not provide official records before this date. All data are from ONHIR.)

Current Operations

ONHIR’s FY 2020 budget request is \$7.5 million to expedite relocation activities in preparation for agency closure. While original eligibility for relocation benefits has been determined for all applicants and construction of relocation homes is nearly complete, there are still functions under ONHIR that will require closing action or transference of duties (see

¹ OIG Report No. WR-EV-MOA-0003-2014, *Operations of the Office of Navajo and Hopi Indian Relocation*, issued December 2014.

Figure 4). According to ONHIR data, in FY 2019 the agency had 27 employees, down from a high of 103 employees in FY 1989.

Snapshot of Key ONHIR Responsibilities

<p>Certified Applicants Awaiting Relocation</p> <p>6 relocations pending:</p> <ul style="list-style-type: none"> • 4 contracts signed • 1 seeking home • 1 remaining 	<p>Appeals</p> <ul style="list-style-type: none"> • 7 pending court decisions • 3 remanded to ONHIR • 230 cases eligible to appeal 	<p>Home Warranties</p> <ul style="list-style-type: none"> • 15 active • 4 expired, completing work • 4 pending start • Additional possible, pending appeal decisions
<p>Agreements and Leases</p> <ul style="list-style-type: none"> • 6 surface use agreements • 15 leases on record • 2,565 homesite leases • 32 rights-of-way • 84 grazing permits 	<p>Government-Owned Buildings</p> <ul style="list-style-type: none"> • 14 total • Includes existing/ inherited buildings, those built by ONHIR, and those built by tenants 	<p>Post-Move Counseling</p> <ul style="list-style-type: none"> • 24 active • Additional possible, pending appeal decisions

Figure 4. Current status of ONHIR responsibilities that will require closing actions or transference. (Source: All data are from ONHIR.)

See Attachment 2 for a detailed table of ONHIR functions.

Factors To Consider in the Event of ONHIR’s Closure

Summarized below are two issues for decisionmakers to factor into next steps for closing ONHIR: (1) disagreement over whether ONHIR is responsible for infrastructure for relocatees and (2) legislative requirements for transfer of ONHIR responsibilities.

First, there is disagreement between the Navajo Nation and the Federal Government as to what services fall under ONHIR’s responsibilities. The Naabik’íyáti Committee, a Navajo Nation Council standing committee, estimates that about \$227 million in infrastructure remains to be addressed (for roads, power, water, telephone lines, livestock/economic development, etc.), as well as potential environmental concerns, for relocated Navajo. The 1974 Settlement Act specified that the relocation plan must ensure that “housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities” for relocatees, be available at the relocation sites. The Act further stated that the relocation plan must “take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts” and

granted ONHIR the authority to call on other Federal agencies for assistance in carrying out the relocation plan. The Navajo position relies on this language in the Act.

The 1988 amendments to the Settlement Act removed the language describing requirements for a relocation plan but retained ONHIR's ability to call on other agencies for assistance. In 1990 a new Commissioner was appointed, and the relocation plan was updated according to the 1988 amendments. The Naabik'íyáti Committee believes that ONHIR should address the infrastructure needs before it closes or use its authority to call on other Federal agencies to help. ONHIR believes that it has fulfilled the duties it was legislatively tasked with by providing relocation benefits to all individuals who were found eligible, and that other services such as infrastructure needs should be provided by another permanent agency. The U.S. Government Accountability Office (GAO) reported in 2018² that it is not within ONHIR's statutory responsibility to provide infrastructure.

Second, the Settlement Act does not include provisions for transferring any remaining relocation activities to a successor agency or agencies. As such, legislative changes are needed to require a Federal agency or agencies to assume ONHIR's Federal responsibilities and complete any remaining tasks after the Office is closed. In addition, the Settlement Act states that ONHIR will cease to exist when the President of the United States determines that its functions have been fully discharged. The GAO's 2018 report recommended that ONHIR's Executive Director request a presidential determination as to whether ONHIR has fully discharged its responsibilities and should close. ONHIR's response to the recommendation stated that it has worked many years with the OMB—part of the Executive Office of the President—on closure scenarios and strategies, but did not state an intention to request closure.

We do not require a response to this report. If you have any questions, please contact me at 202-208-5745.

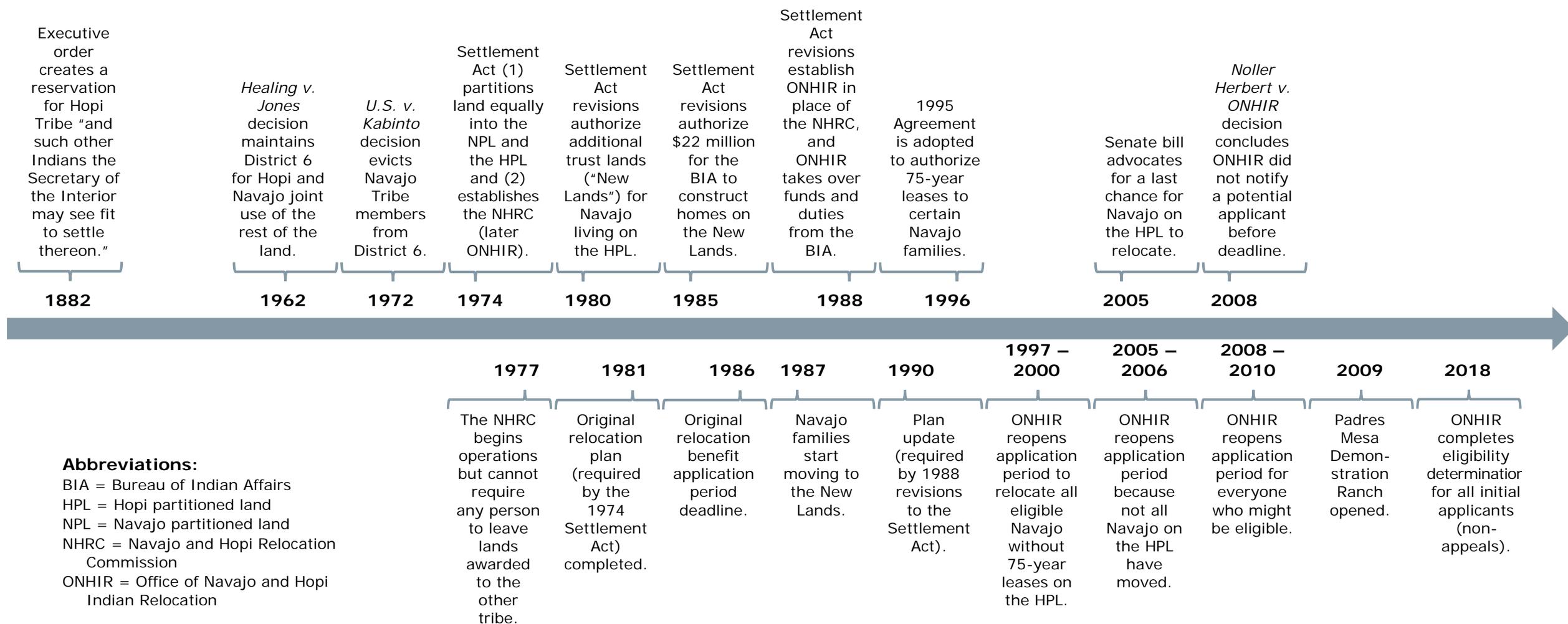
The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented.

cc: Tara Sweeney, Assistant Secretary, Indian Affairs
Richard Myers, Chief of Staff, Bureau of Indian Affairs
Jerold Gidner, Acting Special Trustee, Office of the Special Trustee for American Indians
Dan Jorjani, Solicitor, Office of the Solicitor
Craig Crutchfield, Chief of the Interior Branch, U.S. Office of Management and Budget

Attachments (2)

² GAO Report No. GAO-18-266, *Office of Navajo and Hopi Indian Relocation: Executive Branch and Legislative Action Needed for Closure and Transfer of Activities*, issued April 2018.

Timeline of Significant Events in the History of ONHIR, From 1882 to 2018



ONHIR Functions, Responsibilities, and Current Status

Note: Status is per ONHIR as of September 30, 2019, unless otherwise indicated. We will verify accuracy and entirety of data during future reviews.

Function	Responsibility	Defined	Status (Source: ONHIR)
Certify applicants as eligible for relocation benefits	Determine eligibility	Review applications for relocation benefits and certify applicants who meet established criteria.	<ul style="list-style-type: none"> • Applied: 7,184 • Certified: 3,841 • Denied: 3,343
Provide pre- and post-move counseling and other services to assist eligible households with transition	Oversee relocation process	Assist in obtaining homesite lease and home planning, ensure water and power access to new homes, and conduct construction inspections, etc.	<ul style="list-style-type: none"> • 6 pending <ul style="list-style-type: none"> - 4 in contract - 1 seeking home - 1 remaining
	Provide counseling	Pre- and post-move counseling during the 2-year transition period following relocation.	<ul style="list-style-type: none"> • 24 cases • Additional counseling/warranties necessary pending appeal decisions
	Administer relocation home warranties	Administer and enforce home warranty program for 2 years after homes are built on the reservation.	<ul style="list-style-type: none"> • 15 homes within 2-year warranty • 4 homes with expired warranty, but contractor is completing warranty items • 4 homes to be completed in 2019 – 2020 that have 2-year warranties • Any additional relocatees on the reservation will have 2-year warranties
	Provide replacement relocation homes	If complaint is found to have merit and not a result of homeowner acts, home will be replaced or repaired.	<ul style="list-style-type: none"> • 20 houses with identified risk for needing replacement • 1 active investigation
Manage the administrative appeals process	Administer appeals process	For applicants who are denied relocation benefits. Includes contracting the services of an independent hearing officer and outside counsel. If the applicant is denied, the applicant has 6 years to seek review in the U.S. District Court (Arizona).	<ul style="list-style-type: none"> • 7 cases pending court decision • 3 remanded cases in the ONHIR administrative appeal process • About 230 cases eligible for appeal

Function	Responsibility	Defined		Status (Source: ONHIR)
Acquire and manage land/property and construct new housing and infrastructure where necessary	Manage use of the New Lands	Agreements and leases	Surface Use: When the surface estate is held in trust by the Federal Government for the Navajo Nation, but the mineral estate is owned by private entities.	6 agreements
			Land/Building Use: When ONHIR entered into leases (in trust) for use of land or buildings on New Lands.	<ul style="list-style-type: none"> • 15 leases • \$1.3 million in total revenues through 2019 • 47% used for chapter appropriation
			Homesite: When an individual acquires a lease to secure space in his or her new community to build a home.	Leases issued: <ul style="list-style-type: none"> • New Lands: 495 • Coalmine: 52 • Tuba City: 108 • LeChee: 15 • Hopi Tribe: 24 • Navajo Nation: 1,871
		Rights-of-way: Legal right of passage over another person's land.	32 rights-of-way	
		Grazing permits: Permits issued to livestock producers and issued for up to 10 years.	84 permits	
	Oversee Government-owned buildings	ONHIR assumes ownership of buildings on the New Lands, both inherited and built by ONHIR.	<ul style="list-style-type: none"> • 14 Federal Government-administered buildings on the New Lands • 1 building in New Mexico, used as Navajo Department of Transportation headquarters 	
	Operate the Padres Mesa Demonstration Ranch	Created and operated by ONHIR to educate relocatees on livestock ranching. The ranch raises cattle, sustains grazing land, organizes cattle sales, and does outreach with New Lands ranchers. Note: In a 2018 report (Report No. GAO-18-266) the GAO indicated it will be preparing a legal opinion that will address ONHIR's authority to operate the ranch using a mix of appropriated funds and revenue collected by ONHIR from cattle sales. As of October 2019, the opinion had not been issued and no deadline had been established.	<ul style="list-style-type: none"> • 1 ranch manager (ONHIR employee), 3 contract cowboys, and 2 contract helpers for cattle sales • FY 2019 cattle sales: \$193,236 • FY 2019 expenditures: \$206,304 • Other income: \$3,300 	
	Assist with remaining land selection	In 2019, the Navajo Nation was authorized for new land selections in accordance with the Navajo-Hopi Settlement Act of 1974. ONHIR selects land after Navajo consultation for BIA approval.	Deadline for Navajo Nation to make land selection is 2026	

Function	Responsibility	Defined	Status (Source: ONHIR)
	Manage environmental issues	The Navajo Nation's Naabik'iyáti Committee has voiced concerns about contamination from mining and home construction defects that may be due to construction on unsuitable sites.	<ul style="list-style-type: none"> • ONHIR told us it was unaware of potential soil contamination at Black Mesa. • An ONHIR and U.S. Geological Survey study found that contamination in Churchrock was not caused by mining.

