



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

Status of the Office of Navajo and Hopi Indian Relocation's Assets and Official Records

This is a revised version of the report prepared for public release.



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

MAR 25 2022

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 Assets and Official Records*
Report No. 2020-WR-016-I

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 assets and official records. Specifically, we sought to answer the following:

1. What is the status and value of ONHIR's assets, specifically its fund balance with the U.S. Treasury, land improvements, fixed assets, and other assets?
2. What official records does ONHIR have, and where are electronic and physical records stored?
3. 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 (OMB) 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.

ONHIR's primary mission is the relocation process, which includes applicant eligibility determination, assistance with planning for and acquiring relocation homes, and an administrative appeals process for denied applicants. In addition, ONHIR acquires and manages land held in trust for the Navajo Nation and promotes sustainable rangeland management on the New Lands, a relocation community in Arizona.¹ Also on the New Lands, ONHIR operates the Padres Mesa Demonstration Ranch, which provides New Lands ranchers with training and guidance on cattle production and land stewardship and facilitates cattle sales to support and improve the ranchers' livelihood.

This report inventories the following assets: ONHIR's fund balance with the U.S. Treasury, land improvements, fixed assets, office supplies, IT hardware and software, and leased vehicles. The report also describes ONHIR's official records, both electronic and physical, that are stored at ONHIR offices and the National Archives and Records Administration (NARA).² The report concludes with a summary of congressional considerations in the event of ONHIR's closure or transfer of duties.

Condition of ONHIR's Financial Records

ONHIR provided the asset information presented in this report, including financial information. We did not audit the financial information and therefore do not express an opinion on its accuracy and completeness. We note, however, that some costs appear to be recorded in ONHIR's financial statements contrary to Federal accounting standards. For example, the standards provide guidance that land improvements should be recorded as assets and capitalized rather than being expensed and that repairs and maintenance should be expensed and not capitalized unless the costs result in the betterment of the asset or extend the useful life of the

¹ Amendments to the Navajo-Hopi Land Settlement Act in 1980 authorized the U.S. Government to take a total of 400,000 acres into trust for the Navajo Nation. Land selected in Arizona includes 352,000 acres that ONHIR refers to as the "New Lands." 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. The Navajo Nation has stated that there is no legal difference between any lands taken into trust pursuant to the Act. ONHIR acknowledges its own administrative authority over the 387,000 acres but states that use and revenues from lands in Arizona and New Mexico follow different requirements. This report uses the term "New Lands" per ONHIR's definition.

² Assets and official records related to ONHIR's relocation operations and rangeland management are addressed in other reports in this series (see Attachment 1).

asset.³ Because we did not audit ONHIR’s financial data, we do not know to what extent costs included as assets should have been recorded as expenses and vice versa.

Our office received appropriated funds in fiscal year (FY) 2019 to review ONHIR’s finances. As part of that effort, in September 2019, we contracted with an accounting firm to perform an audit of ONHIR’s financial statements for FYs 2018 and 2019. The accounting firm reported in April 2020 that it found the financial statements were not auditable because ONHIR could not provide the basic accounting records needed to perform the audit. In response to the accounting firm’s finding, ONHIR stated that it was “unaware of this deficiency in [its] record-keeping system” and explained that it has had annual audits performed by a certified public accounting (CPA) firm that ONHIR believed was fully qualified to audit a Federal agency. ONHIR stated that none of the audits by the CPA firm, which were conducted from 1995 through 2017, raised this record-keeping problem.⁴

In an effort to resolve the issues concerning the financial records, ONHIR entered into two interagency agreements with the U.S. Department of the Interior’s Interior Business Center (IBC) in 2020 and 2021.

The first agreement (dated August 12, 2020) allowed the IBC to take over certain ONHIR financial activities to ensure compliance with guidance from the U.S. Department of the Treasury and the OMB regarding the form and content of agency financial statements. This step was taken to prepare ONHIR’s financial records for FYs 2018 and 2019 for a financial audit. ONHIR told us that because its existing system cannot be configured or updated to comply with Treasury and OMB guidance, it is in the process of procuring a new financial management system, which it expects to be operational in late summer 2022.

The second agreement (dated March 16, 2021) allowed the IBC to provide ONHIR with ongoing support regarding general ledger accounting, financial statements, and commercial and intragovernmental payment processing. These steps are intended to bring ONHIR into compliance with the Treasury and OMB guidance. According to ONHIR, a “meaningful audit” of its financial records can take place once the IBC fully supports its accounting operations and ONHIR has migrated to the new financial management system. According to ONHIR, the “IBC estimated that ONHIR will be using a new financial system by fall 2022.”

Status and Value of ONHIR Assets

ONHIR assets include its fund balance with the Treasury, land improvements, fixed assets, office supplies, IT hardware and software, and leased vehicles.

³ “Expensing” and “capitalizing” refer to the treatment of a particular cost on an entity’s financial statements. Expensing a cost subtracts it (along with other costs) from revenue to determine profit or loss for the reporting period. Capitalizing a cost records it as an asset: Only a portion of the cost is recognized as an expense in that financial year (first year depreciation), and the remainder is spread over a period of time (the useful life of the asset) as a depreciation expense each year until fully depreciated.

⁴ We have not independently contacted the CPA firm to verify these statements.

Fund Balance With the Treasury

ONHIR has an asset account with the Treasury—called a fund balance—that reflects its available budget authority. ONHIR’s main source of funding for this account comes from “no year appropriations,” which are available for an indefinite period without fiscal year limitation. This designation allows ONHIR to carry forward any funds not spent during the fiscal year to the following fiscal year. The fund balance also includes revenues from cattle sales, grazing fees, and bull leases from ONHIR’s Padres Mesa Demonstration Ranch, as well as revenues from ONHIR’s building leases and surface use agreements. Total revenues are an immaterial amount compared with appropriations received. According to ONHIR, the fund balance is used for ONHIR’s operational costs, including all personnel and other administrative expenses.

ONHIR's **annual operations budget** is approximately
\$4 million

ONHIR's reported **fund balance** with the Treasury is
\$21,323,049

According to ONHIR’s chief financial officer (CFO), its annual operations budget is approximately \$4 million, and, based on current operational costs and communication with the OMB, the agency expects to continue receiving that amount in appropriations annually until it is closed. ONHIR’s reported fund balance with the Treasury was \$21,323,049 as of September 30, 2021.

The CFO explained that ONHIR discusses the fund balance with the OMB each budget season and the OMB expects ONHIR to use its carryforward funds on activities related to ONHIR’s closeout. Any unspent funds will return to the Treasury’s General Fund at agency closure.

We note that some of the funds maintained in ONHIR’s fund balance are subject to ongoing disagreements that, when resolved, may result in adjustments or transfers.

First, according to a September 17, 2020 legal opinion from the U.S. Government Accountability Office (GAO), ONHIR lacks the statutory authority to retain revenues from bull leasing and cattle sales at the Ranch.⁵ From June 2009 to March 2020, ONHIR retained approximately \$2.3 million from these activities. According to the GAO’s opinion, these revenues should be transferred to the Treasury’s General Fund. On September 24, 2020, ONHIR requested that the GAO reconsider its determination. On July 29, 2021, the GAO issued a second opinion reconfirming its previously stated position.⁶

In addition, the Navajo Nation has a pending claim (as of May 2020) requesting payment for lease revenues collected and retained by ONHIR that, according to the Navajo Nation, total

⁵ The full legal opinion is available online at <https://www.gao.gov/assets/b-329446.pdf>.

⁶ The full legal opinion is available online at <https://www.gao.gov/assets/b-332596.pdf>.

more than \$1 million.⁷ An ONHIR official told us that ONHIR has not yet formally responded to the claim because it is waiting on guidance from the U.S. Department of Justice.

Land Improvements

A land improvement is the cost of modifications or additions to property to make it more usable. Such improvements include roads, fences, landscaping, and water and lighting systems. Land improvements are generally considered a separate asset from the land itself. The money spent on improving land is not added to the original cost of the land; instead, it is treated as a separate asset purchase and should be depreciated over its useful life like other fixed assets.

Contrary to Federal accounting standards for these types of costs, ONHIR's annual financial statements do not list land improvements as assets on the balance sheet⁸ or record land improvement costs in a land improvement asset account. Instead, ONHIR records land improvements as expenses.

ONHIR provided a cumulative summary of its land improvement costs from October 1985 to January 2021 showing it has spent approximately \$55 million on land improvements. These improvements include infrastructure, roads, buildings, fencing, and archaeological reviews related to the land improvements (see Attachment 2 for a breakdown by cost). As a result of expensing these land improvement costs, ONHIR's financial statements understate the cost of these assets by approximately \$55 million on the balance sheet. ONHIR disagrees with this analysis, stating that the improvements would be fully depreciated by now. Although we agree that the land improvements would be fully depreciated, Federal accounting standards require that the total improvement cost of \$55 million be reported as an asset alongside its corresponding depreciation.

Fixed Assets

Fixed assets—long-term, tangible assets or properties—are subject to depreciation to account for the loss in value as they age. ONHIR's fixed assets include office furniture, office equipment, and heavy equipment or machinery such as compressors, drills, squeeze chutes for livestock, welders, trailers, backhoes, tractors, other vehicles, and veterinary equipment.

An ONHIR official provided the schedule for fixed assets, which totals just over \$900,000 in costs with a current value of about \$550 (see Figure 1 on the next page). The threshold value at which depreciation is required for fixed assets is \$1,000. ONHIR depreciates fixed assets costing more than \$1,000 over their estimated useful lives, which usually range between 5 and 8 years.

⁷ The claim was initially made against the U.S. Department of the Interior but was referred to ONHIR for resolution by Indian Affairs, Bureau of Trust Funds Administration. This topic will be further discussed in a forthcoming report on the status of ONHIR's properties and land use agreements.

⁸ A balance sheet is part of the annual financial statement. It reports an entity's overall financial condition: its assets (what it owns), its liabilities (what it owes), and its net worth (the difference between the two).

**Figure 1: Fixed Assets, as of September 2021
(Financial Information Provided by ONHIR)**

Asset Type	Acquired Cost (\$)	Current Value (\$)
Heavy equipment (includes Ranch equipment)	674,630	558
Office furniture and fixtures (includes IT equipment)	247,789	0
Total Fixed Assets	\$922,419	\$558

Office Supplies

ONHIR’s office supplies account has an estimated balance for the value of office supply items maintained in its supply room. ONHIR’s financial statement for FYs 2016 and 2017 shows the balance for this account at \$2,000 each year. ONHIR’s CFO told us the year-end balance for this account was the same in FYs 2018, 2019, and 2020 because the account remains consistent without adjustment over the years. ONHIR does not keep track of what items are included in the account. This practice is not in accordance with Federal accounting standards.

IT Hardware and Software

ONHIR provided an inventory of IT system hardware and software as of October 2021 that includes two servers, workstations, routers and switches, printers, and other devices. Figure 2 summarizes the IT assets that have associated annual costs.

Figure 2: IT Assets With Annual Costs

Asset	Purpose and Key Information	Estimated Annual Costs
Server #1	One of two ONHIR servers. ONHIR plans to move this server to the cloud in 2022.*	Costs for encryption, antivirus, maintenance, and security: \$35,000
Server #2	One of two ONHIR servers.	Security services: \$75,000
IMI Global (online application)	Ranch cattle data are stored in this application used by Ranch staff.	Subscription cost: \$250

* The estimated cost for migration is \$15,000.

Leased Vehicles Owned by the U.S. General Services Administration

ONHIR has leased vehicles that are owned by the U.S. General Services Administration (GSA). Because such operating leases are contracts that allow use of an asset but do not convey ownership of the asset, these assets are not recorded on the balance sheet included as part of the annual financial statement. Instead, lease payments are operating expenses that are expensed as they are incurred.

ONHIR has 10 vehicles with operating leases from the GSA, as detailed in Figure 3. The month-to-month leases for all vehicles cost \$89,000 in FY 2019. The monthly leases cost between \$205 and \$340 for each vehicle, plus an additional charge for mileage. The vehicles can be returned or exchanged as needed by ONHIR. Although these assets do not belong to ONHIR, vehicle lease information is included in this report because the leases will need to be terminated or transferred to a successor agency in the event of ONHIR’s closure or transfer of duties.

Figure 3: GSA-Leased Vehicle Inventory

Vehicle No.	Assigned To	Vehicle Purpose
G62-4101S	Flagstaff Office	Home inspections for relocations and warranty claims
G62-5405U	Flagstaff Office	Travel for Navajo Nation and Hopi meetings
G62-5406U	Flagstaff Office	Travel for New Lands meetings
G62-1808S	New Lands Supervisor	Oversight of the New Lands and Navajo Nation meetings
G63-0597V	Ranch Manager	Ranch operations and Navajo Nation meetings
G63-0831V	Ranch Manager	Ranch operations and Navajo Nation meetings
G63-1262X	Range Land Technician	Maintenance on the New Lands
G63-1263X	Range Land Technician	Maintenance on the New Lands
G63-1292S	Range Land Technician	Maintenance on the New Lands
G63-2689U	Range Land Technician	Maintenance on the New Lands

Official Records

ONHIR’s official records include both electronic and physical records. Due to the COVID-19 pandemic, we were not able to confirm the status or completeness of records at ONHIR and NARA offices. We also had to limit our site visits due to travel restrictions, and NARA files were not accessible because the facility was closed.

Electronic Records

According to ONHIR officials, ONHIR has electronic records related to all stages of the relocation process: certification, counseling, home construction, and post-move services. ONHIR also stores financial information and records related to contracting, warranties, and appeals. Data are captured in a real-time environment and available for all staff.

In addition, ONHIR’s IT specialist stated the electronic files can be formatted to be opened in any spreadsheet program and are ready for transfer to any successor agency. ONHIR told us that any specific reports desired by a successor agency can be transferred electronically. ONHIR noted, however, that its current report functionality may not continue after a planned

migration of server data to the cloud in 2022. Reports are currently produced by combining different databases with specific program coding. If the program coding is not available after the migration to the cloud, current reports may no longer be available.

Physical Records

NARA defines active records as current records that continue to be used with sufficient frequency to justify keeping them in the office of creation, and NARA defines inactive records as those that are no longer used in the daily course of business but are preserved and occasionally used for legal, historical, or operational purposes.

ONHIR’s active physical records are stored at several office locations, and inactive physical records are stored at a NARA facility. Figure 4 provides information on the specific locations and the types of records being stored. ONHIR’s Flagstaff office has a list of active records retained at ONHIR.

Figure 4: Physical Records Locations

Office	Location	Record Type
New Lands Range Office	Chambers, AZ	Grazing permits, records related to range wells/water tanks and fencing
ONHIR Headquarters Office	Flagstaff, AZ	Financial, HR, IT, and procurement records, and relocation and appeals records
NARA Facility	Perris, CA	Permanent and temporary records
New Lands Office	Sanders, AZ	Administrative and cultural records

According to an ONHIR official, permanent records have historical value, and they are retained indefinitely. Examples of ONHIR’s permanent records include client case files, New Lands files, and cultural resource files. Temporary records have a set retention period, after which they are destroyed by either NARA or ONHIR, depending on the storage location. Examples of temporary files include financial records, which are usually retained 3 to 6 years.

As of April 2021, NARA stores 894 boxes of ONHIR records (some of which are shown in Figure 5 on the next page), and an ONHIR official told us that ONHIR has another 134 boxes of records that it will transfer to NARA when ONHIR closes. Identifying a point of contact at the successor agency for ONHIR’s NARA contract will facilitate retrieving ONHIR’s stored files if they are needed after ONHIR’s closure.

All of ONHIR’s records stored at NARA are categorized as Record Group 220, which includes records of temporary committees, commissions, and boards. ONHIR is not charged for record storage at NARA because NARA pays the storage fees for these types of files. Services provided by NARA include records management consulting, records storage and services, and digitization. If ownership of ONHIR’s files is transferred to a successor agency, the NARA account manager estimated the monthly storage cost will be \$1,000 each month.

Figure 5: Records at ONHIR Being Prepared To Send to NARA



Source: ONHIR.

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

In the event of ONHIR's closure or transfer of duties,⁹ legislation may be needed to:

- Require an audit or financial review of ONHIR's financial statements for the fiscal years not audited (from FY 2018 to present)
- Transfer ONHIR's fund balance with the Treasury to a successor agency or return the funds to the Treasury's General Fund
- Transfer ONHIR's land improvements to a successor agency
- Dispose of or transfer ONHIR's other noncash assets (including fixed assets and other assets) to a successor agency
- Transfer ONHIR's electronic records to a successor agency as needed

⁹ We acknowledge the Navajo Nation's two pending claims. First, on August 23, 2021, the Navajo Nation filed a complaint in the U.S. Court of Federal Claims against the United States on behalf of the relocation beneficiaries for alleged maladministration of the New Lands. It is seeking \$40 million in damages and remanding to ONHIR and the U.S. Department of the Interior (DOI) with direction to improve administration of and recordkeeping for the New Lands and revenues. Second, 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 DOI. 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

We invited ONHIR and Navajo and Hopi officials to provide input on a draft version of this report. ONHIR initially did not provide formal comments but instead made suggested changes to the draft report itself; it then provided a summary chart of comments. Notwithstanding the form of ONHIR's submissions, we considered these suggestions. ONHIR's table of comments and the Navajo Nation's written response are included in Attachment 3; we have made revisions and updated information in this report where applicable and as appropriate. Hopi officials did not provide a response.

In ONHIR's comments on the draft report, it contended that "OIG's determination that its financial records were 'not auditable,' prior to completion of this report biased OIG's investigation so as to make OIG's conclusions unreliable." ONHIR further stated its position that the OIG "prejudged this matter prior to conducting its investigation of ONHIR concerning this issue." As for the initial matter, the OIG did not conduct any investigation of ONHIR; instead, as noted below, this was a review subject to different standards and analyses. In addition, as explained in the "Condition of ONHIR's Financial Records" section of this report, we contracted with an independent accounting firm to audit ONHIR's financial statements. The accounting firm—not the OIG—concluded that the financial statements were not auditable, and we reported that conclusion.

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.¹⁰ We believe that the work performed provides a reasonable basis for our conclusions. Although we did not audit the financial information, we did review selected costs and, as described in this report, we found that some did not appear to be recorded in ONHIR's financial statements in accordance with Federal accounting standards. Furthermore, ONHIR itself acknowledged that a "meaningful audit" of its financial records cannot take place until it has migrated to a new financial management system.

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
Clint Bowers, Acting Chief of Staff, Bureau of Indian Affairs
Jerry Gidner, Director, Bureau of Trust Funds Administration
Robert Anderson, Solicitor
Ben Burnett, Acting Chief of the Interior Branch, U.S. Office of Management and Budget

¹⁰ 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.

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.

[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), issued September 21, 2021.

[Status of Identified Environmental Concerns Related to the Office of Navajo and Hopi Indian Relocation's Administration of Land](#) (Report No. 2020-WR-016-G), issued February 9, 2022.

Attachment 2: Land Improvement Costs, From October 1985 to January 2021

Improvement	Cost (\$)
Roads	28,880,254
Buildings	5,725,834
Archaeological reviews (required by Federal or Navajo law for all land development activities)	4,624,459
Water systems	4,611,175
Cadastral survey (real property boundaries)	3,077,719
Engineering	2,534,427
Gasoline spill remediation at a fuel station site on the New Lands	2,333,570
Fencing	1,158,256
Bridge repair	930,231
Electricity infrastructure	856,532
Phone infrastructure	13,773
Total	\$54,746,230

Note: ONHIR provided us with the financial information included in this report, which we did not audit.

Attachment 3: Responses to Draft Report

The Office of Navajo and Hopi Indian Relocation's response to our draft report follows on page 15, and the Navajo Nation's response follows on page 18.

<u>OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION (ONHIR): COMMENTS ON DOI OIG REPORT ON ONHIR ASSETS</u>			
PAGE	SUBJECT	COMMENTS	NOTES
Transmittal Memorandum	OIG limiting fieldwork	Are Future Visits of OIG to ONHIR planned?	OIG later informed ONHIR “no.”
2	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 the partitioning of Tribal land by the federal courts under authority granted by the Navajo—Hopi Land Settlement Act of 1974 (Pub. L. No. 93-531).	Re-write of sentence for accuracy.
2	Background Footnote 1.	The Act actually authorized up to 400,000 acres of land—no more than 35,000 acres of which could be in New Mexico with the balance in Arizona to be taken into Trust. The 352,000-acre figure represents the Arizona lands taken into Trust in Arizona which now comprise the Nahata Dziil Commission Governance Navajo “Chapter.”	Addition for completeness.
3	Background—ONHIR’s Financial Records	ONHIR stated that it was “unaware of this deficiency in [its] recordkeeping system” and explained that it has had annual audits performed by a certified public accounting (CPA) firm that ONHIR believed was fully qualified to audit a federal agency. ONHIR stated that none of the audits by the CPA firm, which were conducted from 1995 through 2017, raised this record-keeping problem. ¹ ONHIR claims that OIG’s determination that its financial records were “not auditable,” prior to completion of this report biased OIG’s investigation so as to make OIG’s conclusions unreliable.	Sets forth ONHIR’s position on OIG—DC prejudging this matter prior to conducting its investigation of ONHIR concerning this issue.
3	IBC Matters	IBC estimates ONHIR will be using a new financial system from Oracle by Fall2022.	Provides information on timing of corrective actions.

4	GAO position on ONHIR receipts from cattle sales.	ONHIR maintains that the GAO decision puts the Agency in an untenable position in which if it does not remit the proceeds of cattle sales to the Treasury, GAO claims ONHIR is violating the Miscellaneous Receipts Act, but if ONHIR does remit these funds derives from "lands acquired pursuant to the Act" to the Treasury, ONHIR is violating the Settlement Act.	Provides information on actual choice facing ONHIR.
4	Navajo Claim/litigation against ONHIR/U.S.	The claim was actually made against DOI and has since resulted in a civil action in the Court of Federal Claims against the United States.	Provides updated information.
5	Treating ONHIR funded improvements on the New Lands as expenses or depreciable assets.	Had ONHIR carried these improvements on its balance sheet from when the improvements were made, they would all have been fully depreciated by now. Thus, ONHIR maintains that OIG's "understatement" claim is incorrect.	Shows issue is moot.
6	ONHIR's [REDACTED] Server	CIO is currently in talks with our IBM partner, we are creating an SOW for Maintenance Service to be done on the current [REDACTED] server, so the IBM partner gets a feel for how our system works. This is a temporary service as we will soon be creating an SOW to move our [REDACTED] to the cloud.	Provides updated information.
7	ONHIR's Electronic Records	ONHIR can only produce specific reports as long as ONHIR has the [REDACTED] available with the programing to produce the report. Reports are produced by combining a number of databases and with specific program coding.	Provides clarifying information.
8	ONHIR's Physical Records	ONHIR's active physical records are stored at several office locations, and inactive physical records are stored at the NARA.	Provides clarifying information.
8	Additional location of ONHIR Physical Records	Padres Mesa Ranch: Foraging data, cattle sale data	Provides additional information.

8	NARA permanent records designation	Examples of ONHIR's permanent records include client case files, New Lands files, and cultural resource files	Provides clarifying information.
8	NARA maintenance of ONHIR permanent records following closure	According to NARA officials there remains approximately 134 boxes of records that have been prepared for transfer to NARA when ONHIR closes. NARA will assume and maintain physical and legal custody of all permanent records transferred to them.	Provides additional information.
8	Additional information on NARA records storage	All of ONHIR's records stored at NARA are categorized as Record Group 220, which includes records of temporary committees, commissions, and boards. ONHIR is not charged for record storage at NARA because NARA pays the storage fees for these types of files due to pending agency closure. Services provided by NARA include records management consulting, records storage and services, and digitization. If ownership of ONHIR's files is transferred to a successor agency, the NARA account manager estimated the monthly storage cost will be \$1,000 each month. ONHIR Permanent Files cannot be transferred to a successor agency as they are scheduled into record series for transfer to NARA and will become the legal property of NARA once transferred. A successor agency can obtain copies of the records through the digitization process.	Provides additional information.
9	Congressional considerations	Transfer ONHIR's fund balance with the Treasury to a successor agency or return the funds to the Treasury's General Fund, subject to the Act's provision for use of funds derived from "lands acquired pursuant to the Act."	Points out legal issue that must be resolved.

THE NAVAJO NATION

JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT



September 17, 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 “*Status of the Office of Navajo and Hopi Indian Relocation’s Assets and Official Records,*” Report No. 2020-WR-016-I.

Dear Inspector General Greenblatt:

Thank you for the opportunity to comment on the Office of Inspector General (OIG) draft report titled “*Status of the Office of Navajo and Hopi Indian Relocation’s Assets and Official Records.*”

Background. The Navajo Nation (Nation) appreciates that OIG has rewritten the Background section in a manner that addresses the Nation’s principal concerns raised with regard to the Background sections in prior draft reports. For footnote 1, please note that ONHIR’s definition of “New Lands” at 25 C.F.R. § 700.701(b) encompasses all lands acquired under former 25 U.S.C. § 640d-10, which corresponds to the Nation’s definition of that term.

ONHIR’s Recordkeeping. The Nation also appreciates that OIG has documented the Office of Navajo and Hopi Indian Relocation’s (ONHIR’s) failure to maintain proper records, such that an accounting firm retained by OIG “found [that] the financial statements were not auditable because ONHIR could not provide the basic accounting records needed to perform the audit.” ONHIR’s failure to properly account for the funds under its control is symptomatic of ONHIR’s larger failure to provide adequate and safe housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for relocatees at their relocation sites.

The OIG draft report also notes that ONHIR’s financial records are temporary files, which are usually retained for 3 to 6 years, after which they are destroyed. In addition, the draft report includes figure 5, which is a photo of numerous boxes that are identified as records at ONHIR being prepared to send to NARA, the National Archives and Records Administration. As noted below, the Navajo Nation has filed two lawsuits related to ONHIR. Because of that, ONHIR’s records—especially financial records—must be preserved and may not be destroyed pending resolution of that litigation. Furthermore, ONHIR’s records should not be transferred to NARA if doing so would impede the review and, if necessary, production of relevant records for litigation. This is especially important due to pandemic-related closures of NARA offices.

NAVAJO NATION OFFICE OF THE PRESIDENT AND VICE PRESIDENT

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

Government Accountability Office (GAO) Findings Regarding ONHIR. The draft report notes that the GAO has found that ONHIR lacks the statutory authority to retain revenues from bull leasing and cattle sales at the Padres Mesa Demonstration Ranch and that these revenues should be transferred to the Treasury Department’s General Fund. As noted in a letter from Navajo Nation Attorney General Doreen McPaul to the GAO General Counsel dated November 13, 2020 (attached as an exhibit to the Navajo Nation Comments on the Office of Inspector General Draft Report titled *Current Status of the Office of Navajo and Hopi Indian Relocation’s Padres Mesa Demonstration Ranch*, Report No. 2020-WR-016-D), it is the Nation’s position that ranch revenue, like other New Lands revenue, is received by ONHIR in trust for the Indian beneficiaries of that land and the use thereof under former 25 U.S.C. § 640d-10, namely, the Navajo Nation and the identified group of “Navajo families residing on Hopi-partitioned lands as of December 22, 1974” (the “Identifiable Group”). Accordingly, the funds should not be returned to Treasury’s General Fund but must be deposited in a federal trust account for these Indian beneficiaries.

Recent Litigation Brought by the Navajo Nation. The text accompanying footnote 7 in the draft report notes that the Nation has a pending claim against ONHIR regarding payment of lease revenues collected and retained by ONHIR. That should be updated to reflect two cases filed in August:

- *Navajo Nation v. United States*, No. 21-CV-01746 (Fed. Cl. filed Aug. 23, 2021). In this case, the Navajo Nation and the Identifiable Group of Relocation Beneficiaries (collectively, “Plaintiffs”) have brought claims for maladministration of 376,000 acres of New Lands under Section 11(h) of the Relocation Act with regard to (1) grazing, (2) leasing, (3) rights of way and New Lands revenues (4) deposits, (5) investments, and (6) expenditures. The Plaintiffs seek \$40 million in damages and remand to ONHIR and Interior for improved administration of and recordkeeping for the New Lands and revenues therefrom.
- *Navajo Nation v. Office of Navajo and Hopi Indian Relocation*, No. 21-CV-08190 (D. Ariz. filed Aug. 24, 2021). In this case, the Navajo Nation has brought claims on behalf of itself and on behalf of over 50,000 affected Navajos, seeking declaratory and injunctive relief to compel ONHIR to promptly complete relocation 35 years past the statutory deadline, including providing required community facilities for relocatees and obtaining reasonable interagency assistance, and to fully discharge ONHIR’s functions before closing and transferring those functions to Interior or elsewhere.

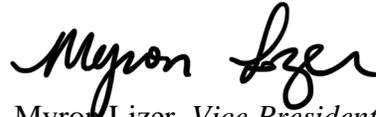
Congressional Considerations. The draft report raised five “Congressional Considerations”, all of which are premised on the event of ONHIR’s closure or transfer of duties. The Nation believes that no such closure or transfer of duties can take place without federal legislation. However, the Nation opposes any such closure or transfer of duties until ONHIR has fulfilled its obligations under the Navajo-Hopi Land Settlement Act of 1974 (Pub. L. 93-531), as identified by the Nation in separate submissions to the OIG for OIG’s related reports on ONHIR.

Conclusion. The United States promised a generous and humane relocation and that the United States would bear the costs of that relocation—promises that have not been kept. Before ONHIR is closed, all of the issues identified by OIG and by the Navajo Nation need to be fully and adequately addressed, in close consultation and coordination with the Navajo Nation.

Sincerely,



Jonathan Nez, *President*
THE NAVAJO NATION



Myron Lizer, *Vice President*
THE NAVAJO NATION

