



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

# **Status of the Office of Navajo and Hopi Indian Relocation's Padres Mesa Demonstration Ranch**

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



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

SEP 21 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 Padres Mesa Demonstration Ranch*  
Report No. 2020-WR-016-D

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 operation of the Padres Mesa Demonstration Ranch. Specifically, we sought to answer the following:

1. What is the financial status of the Ranch?
2. What are the Ranch's assets and condition of records?
3. What is the Ranch's involvement with the community?
4. What congressional considerations exist in the event of ONHIR's closure or transfer of duties?

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

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### **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.

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## 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."<sup>1</sup> This acreage now makes up the Navajo Nation's Nahata Dziil Chapter (a unit of local tribal government). Navajo relocatees have homes on the New Lands. Relocatees with grazing permits raise livestock across 14 range units (tracts of land used by New Lands ranchers).

## Overview of Ranch Authority and Operations

In 2009, ONHIR established and began operating the Padres Mesa Demonstration Ranch for the benefit of the relocatees. The Ranch occupies 64,000 acres on the New Lands. See Figure 1 on the following page for views of the Ranch.

An ONHIR employee—the ranch manager—oversees the Ranch's operations and contracted employees. ONHIR's functions at the Ranch include:

- Facilitating livestock sales for the ranchers in the 14R Ranch Corporation (a nonprofit known as "14R" for the 14 range units in the New Lands) and independent ranchers, who purchase their own livestock and receive the revenue when sold
- Developing rangeland conservation plans that the New Lands ranchers implement
- Providing training and other assistance to the community
- Caring for and selling the livestock raised at the Ranch (the livestock are purchased from ONHIR's appropriations)

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<sup>1</sup> 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.

- Using the Ranch as the headquarters for Ranch operations and a location to host livestock producers and industry leaders, media, and government officials

**Figure 1: Views of the Padres Mesa Demonstration Ranch**



Clockwise from top left: Ranch entrance, cattle grazing on the Ranch, Ranch shop buildings (Quonset huts), and the ranch manager’s personal residence.

Sources: Photos of Ranch entrance and ranch manager’s residence provided by ONHIR; photos of cattle and shop buildings taken by the Office of Inspector General.

To fund Ranch operations, ONHIR uses a mix of appropriations, revenues from livestock sales, and fees collected for grazing and bull leasing. ONHIR does not have specific authorization to use fees from grazing and bull leasing or the proceeds from the cattle sales. On September 17, 2020, the U.S. Government Accountability Office (GAO) issued a legal opinion stating that ONHIR may use its appropriations to operate the Ranch but does not have the authority to retain the revenues from cattle sales.<sup>2</sup> Grazing and bull leasing fees were not addressed in the legal opinion. The GAO concluded that, pursuant to the miscellaneous receipts statute (31 U.S.C. § 3302(b)), revenues from cattle sales should be deposited into the U.S. Treasury. On September 24, 2020, ONHIR requested that the GAO reconsider its decision (see Attachment 2 for the full request). Specifically, ONHIR disagreed with the GAO’s determination that ONHIR lacked the statutory authority necessary to retain or obligate money from the sale of cattle and that it had violated the miscellaneous receipts statute by using those proceeds to offset the Ranch’s operating costs rather than depositing those funds into the

<sup>2</sup> The full decision is available online at <https://www.gao.gov/assets/b-329446.pdf>.

Treasury. In particular, ONHIR contended that the Navajo-Hopi Land Settlement Act provides ONHIR the discretionary authority to determine the application of cattle sale proceeds, and Congress has been aware of ONHIR's use of such proceeds for years and has not acted to end that practice; ONHIR also contended that the GAO's conclusion that the Ranch falls within ONHIR's authorized purpose and function to administer the New Lands by implication includes using the proceeds to maintain Ranch operations. In addition, ONHIR argued that because the Act requires that the New Lands be used exclusively for the benefit of relocatees, proceeds from the sale of Ranch cattle cannot properly be sent to the Treasury without limitations on how such funds should be spent, but should instead be held in trust for the Navajo Nation.

On November 13, 2020, the Navajo Nation sent a letter to the GAO expressing its agreement that ONHIR had not violated the miscellaneous receipts statute when it used money from the sale of cattle but also contending that revenues from cattle sales should be held in trust for the Navajo Nation rather than used to operate the Ranch. See Attachment 3 for the full Navajo Nation request.

On July 29, 2021, the GAO responded to ONHIR's request for reconsideration and reconfirmed its previously stated position.<sup>3</sup> The GAO stated it found no material error or basis to change its prior decision.

## **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 ranching practices are 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 maintenance of livestock water systems and fencing—are further discussed in separate reports.<sup>4</sup>

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

On the New Lands specifically, the 14 range units each function under a sustainable range unit management plan (RUMP). The RUMPs—written for each range unit but using a standard format—are agreements between the permittees and ONHIR that promote the preservation and sustainable use of the range. The RUMPs were last revised in 2016, and they

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<sup>3</sup> The full decision is available online at <https://www.gao.gov/assets/b-332596.pdf>.

<sup>4</sup> 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-F, *Status of the Office of Navajo and Hopi Indian Relocation's Range Maintenance Responsibilities and Activities on the New Lands*, issued September 2021.

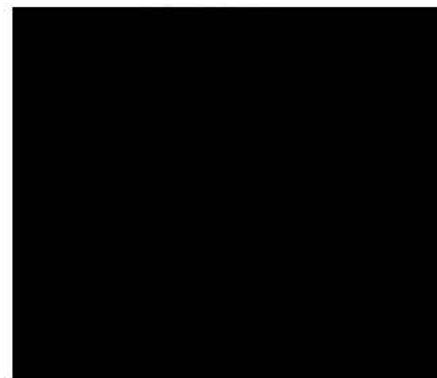
include elements such as a needs assessment for range and livestock improvements and a schedule for operation and maintenance activities.

### **Skill-Building and Economic Benefits**

The Ranch provides a hands-on training and skills facility to educate ranchers on how to sustainably raise cattle and find and apply for grants and other resources. It provides expertise in areas such as livestock health and breeding, marketing (including staging and shipping), and land stewardship. All of these efforts are intended to create a sustainable, economic advantage for New Lands ranchers. The Ranch does not provide funds or material goods directly to ranchers.

Using economies of scale, the Ranch also facilitates livestock sales for community ranchers in coordination with 14R, which enables the ranchers to obtain a higher price per animal than they would by selling independently. Specifically, the Ranch coordinates cattle sales to livestock exchanges for auction and to for-profit brokerage firms, which sell to food industry companies such as [REDACTED]. The livestock sales combine ONHIR’s Ranch cattle and cattle from the New Lands ranchers with cattle from other community ranchers not from the New Lands. Payments for livestock sales are made directly to ONHIR, the New Lands ranchers, and community ranchers. ONHIR told us that as a result of this approach to livestock sales, [REDACTED] has created a unified brand name for the ranchers’ beef products. ONHIR also stated that [REDACTED] markets the products under the “Navajo Beef” brand (sometimes sold as “Native American Beef”) and distributes them to the Bashas’ supermarket in the New Lands as well as at other Bashas’ markets and some restaurants (including at casinos operated by the Navajo Nation Gaming Enterprise) in areas outside the New Lands (see Figure 2 for logo). According to ONHIR, Navajo Beef is sold as a premium product because it is source verified and high quality due to the sustainable practices used to raise the cattle. ONHIR told us that the success of the branding drives higher product prices—and therefore higher profits—for Native American ranchers, improving the livelihood of tribe members.

**Figure 2: Navajo Beef Logo**



Source: [REDACTED]

### **The Ranch’s Financial Status**

Based on financial information provided by ONHIR, the Ranch’s operating expenses exceed its revenues.<sup>5</sup> Under current practice, the revenues from Ranch livestock sales and other income are first used to pay the Ranch’s operating expenses. ONHIR then uses its appropriated funds to cover the difference.<sup>6</sup>

ONHIR was unable to provide complete expense reports but estimated that Ranch revenues cover 62 percent of its costs. ONHIR reported to us that from the inception of the

<sup>5</sup> We did not audit the financial information provided by ONHIR.

<sup>6</sup> We address the GAO’s September 2020 legal opinion and its potential relevance to these matters subsequently.

Ranch in June 2009 until March 2020, the Ranch had \$2,256,060 in revenues and its expenditures totaled \$3,619,945, resulting in an overall deficit of \$1,363,885 that was covered by ONHIR appropriations (see Figure 3).

**Figure 3: Ranch Revenues and Expenses, June 2009 to March 2020**

<b>Financial Snapshot—Cumulative Amounts</b>	
Ranch revenues (mainly livestock sales)	\$2,256,060
Ranch expenses*	\$3,619,945
Deficit	(\$1,363,885)
ONHIR appropriations used	\$1,363,885

\* Expenses are approximations, as the total includes estimates for the ranch manager’s salary and benefits, depreciation of fixed assets, and maintenance or repairs related to water systems and fencing on the Ranch.

Ranch operating expenses include the ranch manager’s salary and benefits, depreciation of fixed assets, ranch hand wages, maintenance and fuel for vehicles, cattle feed and medicine, veterinary care, costs for water systems and fencing, cattle supplies, and other supplies. However, ONHIR does not include the ranch manager’s salary and benefits, depreciation of fixed assets, and costs (materials and labor) for water systems and fencing in its reported accounting—i.e., its internal financial information—of Ranch expenses.

Ranch staffing includes a ranch manager and ranch hands as needed. The ranch manager is a full-time ONHIR employee, and ONHIR told us that as of March 2020, [REDACTED] spends approximately 16 hours per week on Ranch supervision and other Ranch activities and the remaining hours on range and grazing management activities for the New Lands. Before March 2020, the ranch manager worked full-time on Ranch activities. The ranch hands are contractors: two work full-time, and two work part-time as needed.

ONHIR provided financial data showing that Ranch expenses have exceeded its revenues each year since inception in 2009. See Figure 4 on the following page for information on the past 3 fiscal years.

**Figure 4: Ranch Revenues and Expenses for Fiscal Years 2018, 2019, and 2020, as of March 10, 2020**

<b>Fiscal Year</b>	<b>Revenues* (\$)</b>	<b>Expenses† (\$)</b>	<b>Deficit (\$)</b>
2018	292,150	386,253	(94,103)
2019	196,536	305,937	(109,401)
2020 (partial)	98,198	215,684	(117,486)
<b>Total</b>	<b>\$586,884</b>	<b>\$907,874</b>	<b>(\$320,990)</b>

\* Revenues are from cattle sales and other income, including grazing fees in fiscal year 2018 (\$150) and bull leasing fees in fiscal years 2019 (\$3,300) and 2020 (\$7,000).

† Expenses are approximations, as the total includes estimates for the ranch manager’s salary and benefits, depreciation of fixed assets, and maintenance or repairs related to water systems and fencing on the Ranch.

As noted previously, however, the GAO’s recent opinion concluded that ONHIR lacks statutory authority to retain revenues from the sale of cattle to cover the Ranch’s operating costs and instead should deposit the revenues into the Treasury as miscellaneous receipts. The GAO’s opinion stated that, going forward, ONHIR’s appropriations should be used to cover the costs of Ranch operations. The GAO further stated that ONHIR should examine its accounts and adjust them as needed to ensure that all revenues received to date from cattle sales are deposited into the Treasury as miscellaneous receipts pursuant to 31 U.S.C. § 3302(b). According to ONHIR records, cumulative revenues totaled \$2,256,060 as of March 2020. If ONHIR lacks sufficient budget authority to cover the adjustment, the GAO opinion stated that it should report a violation of the Antideficiency Act (Pub. L. No. 97-258).<sup>7</sup>

## **Ranch Inventory and Records**

### **Assets**

ONHIR has livestock, equipment, and General Services Administration (GSA)-leased vehicles in use for Ranch operations. According to ONHIR officials, there are no other assets at the Ranch.

ONHIR reported to us that, as of March 2020, Ranch assets include the following:

- Livestock, estimated value: \$450,000 (237 cows, 78 calves, 8 bulls). ONHIR does not track livestock as an asset and instead considers a livestock purchase an expense. As a result, the original costs are not available. See Figure 5 on the following page for the estimated value for each livestock type provided by an ONHIR official. Currently, the Ranch is operating under ONHIR’s recommended level of 480 head of cattle.

<sup>7</sup> As also noted previously, ONHIR stated in response to the GAO’s opinion that it believes it has statutory authority to retain revenues, and the Navajo Nation expressed the opinion that these revenues should be held in trust for the Navajo Nation rather than used for Ranch operations. As also described previously, the GAO declined to reconsider its position.

- Equipment and furniture, estimated value: \$15,000. The original cost of Ranch equipment and furniture is approximately \$160,000, and the current estimated value (taking into account depreciation) is \$15,000, as of February 2020. The Ranch inventory lists 19 items (see Attachment 4 for a full list of Ranch equipment and furniture).

**Figure 5: Estimated Value of Livestock Inventory, as of March 2020**

<b>Livestock Type</b>	<b>Unit Value* (\$)</b>	<b>Number</b>	<b>Total Value (\$)</b>
Cows	1,500	237	355,500
Calves	850	78	66,300
Bulls <sup>†</sup>	4,000	8	32,000
<b>Total</b>	<b>-</b>	<b>323</b>	<b>\$453,800</b>

\* Estimated value provided by ONHIR’s ranch manager.

† In addition to these bulls, the Ranch leases five bulls from the Navajo Nation.

The ranch manager has two GSA-leased vehicles assigned to [REDACTED] which [REDACTED] uses for Ranch operations and management functions; travel between ONHIR offices; travel to attend meetings of the Navajo Nation; and travel to meetings or other activities conducted at locations outside the New Lands. The vehicles are on month-to-month leases, with ONHIR documented as the lessee. The vehicles can be returned or exchanged as needed.

### **Land and Buildings**

In an April 2018 report, the GAO cited multiple concerns with leases and permits.<sup>8</sup> First, the GAO found that ONHIR has not leased land or buildings for the Ranch. ONHIR officials stated in their response to the report that there is no requirement to do so, even though ONHIR’s own manual requires written leases and land use approvals for the New Lands. Second, the GAO found that ONHIR’s grazing of Ranch cattle on the New Lands without a permit is inconsistent with ONHIR regulations, which require a grazing permit for all livestock grazing on the New Lands. ONHIR responded that it does not have a grazing permit for the cattle on the Ranch because ONHIR officials determined it was not necessary for ONHIR to issue a permit to itself. Finally, the GAO found that ONHIR is not eligible for a grazing permit under its regulations because it is a Federal entity and only enrolled members of the Navajo Nation are eligible for these permits. ONHIR has still not addressed these issues more than 2 years later.

There are no leases on the property or the buildings used for Ranch operations. Because the Ranch land is held in trust by the United States for the Navajo Nation, the lack of leases could be a potential future obligation for ONHIR or a successor agency if the Navajo Nation requests payments for past, present, or future use of Navajo trust land and buildings on trust

<sup>8</sup> 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.

land.<sup>9</sup> Without a written lease, the terms of occupancy and use, including payment, are not clearly established.

One Ranch building is a house where the ranch manager stays at no charge for 5 or more nights per week, in accordance with [REDACTED] hiring agreement; the residence is also used for meetings and trainings. The Ranch also has two shop buildings and an arena that are used for operations, meetings, and training workshops. On ONHIR's list of Government-owned/ONHIR-occupied buildings, all buildings on the Ranch are listed on one line, as one property.

## Records

ONHIR uses proprietary software from IMI Global to record livestock inventory.<sup>10</sup> ONHIR requires the use of IMI Global to market and sell the Navajo Beef cattle brand. All existing Ranch cattle data are in the IMI Global application, and ONHIR plans to download and retain data before its access is discontinued in the event of ONHIR's closure. According to ONHIR, the IMI Global inventory record is complete, up-to-date, and accessible online. ONHIR does not maintain hardcopy files of the data stored in the IMI Global software, and we were unable to travel to physically confirm the completeness of the inventory record due to the COVID-19 pandemic.

ONHIR does not maintain records for labor activities related to the Ranch's property maintenance or repairs other than records related to purchase transactions, including those specific to vehicle maintenance and repair. Every 6 months, the ranch manager and ranch hands prepare a range report for the New Lands ranchers that provides grazing capacity determinations and other rangeland sustainability information.<sup>11</sup> Ranch staff prepare these reports because they are the only ones with the expertise to do so. Range reports from 2012 to the present are available to a successor agency to provide historical information if needed.

Ranch staff record current operational data on two whiteboards in the shop building (see Figure 6 on the following page). The "Personnel Board" tracks staff hours, performance, and notes on daily accomplishments, including work related to specific animals and their health information. Every 6 months, a contract ranch hand photographs the board and then wipes it clean to start over. Ranch staff save the digital photographs for their records. The ranch hand enters health status changes (vaccinations, illness, etc.) and other information into the IMI Global electronic database to provide ranch-to-market tracking of each animal. The ranch hand also provides IMI Global with some data over the phone as part of a quality assurance review verifying the source and age of the cattle. The second whiteboard tracks the livestock inventory count and is continually updated. Digital photographs of this board are also saved when taken, but there is no schedule for taking these photographs.

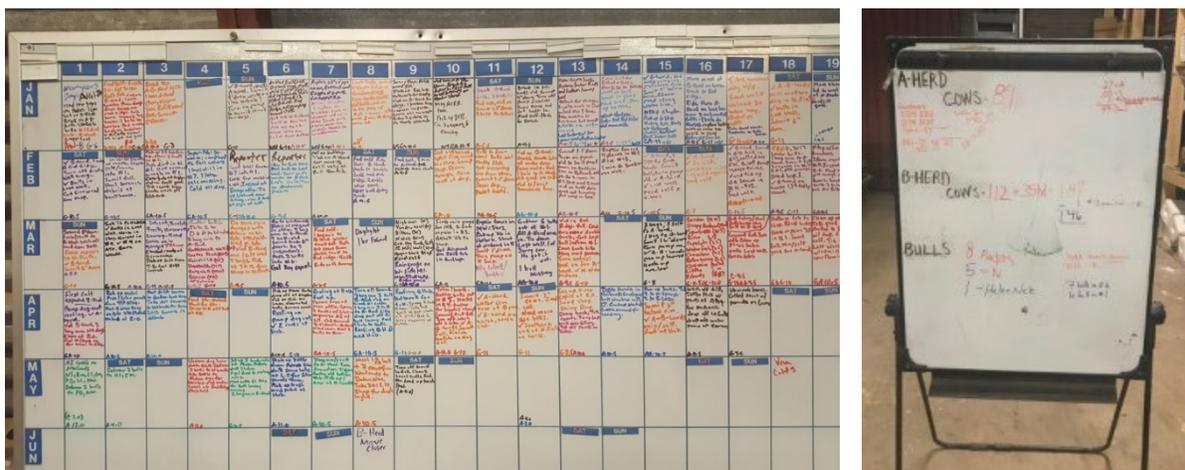
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<sup>9</sup> We plan to issue a report examining leases on the New Lands as part of this ONHIR review series.

<sup>10</sup> IMI Global provides third-party verification of food production in North America. Through ear tags, cattle are tracked through the feed yard, processing plant, and distribution, providing verification of where each was born and raised and the ranching practices (ensuring they are non-hormone treated, natural, organic, grass-fed, etc.). According to ONHIR, participation in the IMI Global program increases the marketability of Navajo Beef because the program standards verify the quality of the meat and the genetics and conditions of the animals raised.

<sup>11</sup> The latest range report (issued June 2021) is available online at [https://www.onhir.gov/assets/documents/transition/range/Range\\_Monitoring.pdf](https://www.onhir.gov/assets/documents/transition/range/Range_Monitoring.pdf).

**Figure 6: Personnel Board, May 2020 (Partial View, at Left), and Livestock Inventory Count Board in Ranch Shop, March 2020 (at Right)**



Source: Photos provided by ONHIR.

## The Ranch’s Community Involvement

ONHIR provides training opportunities every other month on how to sustainably raise cattle. The trainings average 4 to 8 hours long and are mainly for the benefit of New Lands ranchers, but anyone interested can attend. Trainings are run by the ranch manager and contract ranch hands in coordination with 14R, the Navajo Nation Department of Agriculture, the U.S. Department of Agriculture, and the University of Arizona.

Training topics include Ranch activities such as branding, vaccinations, breeding, herd recordkeeping, herd quality assurance, livestock marketing, and forage production. Overall, the trainings teach sustainable operations to produce a beef product with increased retail value that will contribute to ranchers’ success and livelihood over the long term, while preserving and protecting the land. About 100 people attend each training, and 30 to 40 percent of attendees are 14R or New Lands ranchers.

In addition to the trainings, Ranch staff often visit the range units to help ranchers give vaccinations or assist them with tending to their cattle. ONHIR also provides tours at the Ranch as requested for school 4-H and Future Farmers of America programs in Arizona’s Sanders Unified School District. According to ONHIR, approximately six Ranch visits and tours occur each year.

ONHIR further supports the livelihood of New Lands ranchers and other Native Americans via the ranch manager’s coordination of cattle sales with outside parties. ██████ reported that, from 2014 to 2017, it paid \$█████ for 2,065 head of cattle to 70 Native American ranchers on and off the Navajo Nation (33 ranchers from 14R). ██████ paid an average of \$█████ per year, or \$█████ to each Native American rancher. ██████ estimated that if the Native American ranchers had sold the cattle at auction or to individual cattle buyers instead, each rancher would have earned \$1,000 to \$2,600 less (14 to 36 percent less) on average per

year. In addition, the sustainable ranching practices that ONHIR has implemented help ensure continued quality livestock production over time, providing the New Lands ranchers with sustainable income.

In March 2019, the Navajo-Hopi Land Commission<sup>12</sup> reported to Congress that the Ranch has been a success and has taught many relocatees the benefits of cattle management, range management, and marketing of a brand that is recognized for its quality and generates nearly twice the economic return than the ranchers previously realized. The Commission emphasized how the Ranch has the potential to improve the agricultural economy across the Navajo Nation and concluded by requesting that Congress “continue to support and fully fund the Padres Mesa Demonstration Ranch.”

## **Congressional Considerations in the Event of ONHIR’s Closure or Transfer of Duties**

In the event of ONHIR’s closure or transfer of duties,<sup>13</sup> legislation may be needed to:

- Identify a successor agency to be responsible for the continued operation of the Ranch, including transfer of the Ranch’s assets and records (e.g., access to the IMI Global recordkeeping system that stores whiteboard information) or sale or disposition of the Ranch’s assets
- Determine whether leases or grazing permits need to be established for continuing Ranch operations
- Authorize the successor agency to operate a for-profit cattle ranch (if the agency does not already have authority to do so)
- Determine whether to authorize the successor agency to retain grazing and leasing fees, and, in light of the GAO opinion, revenues from cattle sales to fund continuing Ranch operations or, alternatively, provide appropriations sufficient to cover these costs

In its response to our draft report, the Navajo Nation stated that it supports establishing leases or grazing permits, with the fees and revenues from cattle sales placed into trust for the benefit of the Navajo Nation. It also stated that it does not believe that the Ranch should be considered a for-profit enterprise because the Ranch performs a “valuable educational function.” The response cited, for example, the provision of information about cattle and range management and stated that the Ranch demonstrated the benefits of “effective marketing of a quality brand.” The Navajo Nation also stated that the Ranch “has improved the financial well-

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<sup>12</sup> This commission of the Navajo Nation Council (the legislative branch of the Navajo Nation government) consists of Navajo Nation Council delegates. Its purpose is to examine and advocate on Navajo and Hopi land-related matters.

<sup>13</sup> 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.”

being of a number of Navajo families” and expressed the opinion that the Ranch “has the potential to improve the agricultural economy across the entire Navajo Nation.”

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

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

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

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

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

Attachments (5)

## **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 Grazing Responsibilities and Activities on the New Lands* (Report No. 2020-WR-016-E), issued September 22, 2021.

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

## **Attachment 2: Office of Navajo and Hopi Indian Relocation Request to the U.S. Government Accountability Office, September 2020**

Following on page 15 is the Office of Navajo and Hopi Indian Relocation's (ONHIR's) request that the U.S. Government Accountability Office reconsider its decision that ONHIR lacks the statutory authority to retain or obligate money from the sale of cattle.



UNITED STATES GOVERNMENT  
**OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION**

**Christopher J. Bavasi**  
Executive Director

September 24, 2020

Thomas H. Armstrong  
General Counsel  
United States Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

VIA E-Mail to Omari Norman  
Assistant General Counsel for Appropriations Law  
U.S. Government Accountability Office  
[normano@gao.gov](mailto:normano@gao.gov)

**Re: GAO File Number B-329446- *Office of Navajo and Hopi Indian Relocation-Compliance with the Purpose Statute and the Miscellaneous Receipts Statute***

Dear Mr. Armstrong,

The Office of Navajo and Hopi Indian Relocation (“ONHIR”) respectfully submits this letter in response to the above-referenced decision (the “Decision”). The ONHIR lodges this request for reconsideration of GAO’s Decision.<sup>1</sup> Specifically, ONHIR objects to GAO’s determination that ONHIR lacks the statutory authority necessary to retain or obligate money from the sale of cattle from ONHIR’s Padres Mesa Demonstration Ranch (“ranch” or “PMDR”), thus violating the miscellaneous receipts statute, 31 U.S.C. § 3302(b), when it failed to deposit money received from the sale of cattle into the Treasury and instead used that money to offset the ranch’s operating costs. ONHIR requests GAO reevaluate its determination that ONHIR violated the miscellaneous receipts statute in its utilization of proceeds from the sale of cattle.

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<sup>1</sup> GAO-06-1064SP.

## I. INTRODUCTION

ONHIR takes exception to GAO's determination that it lacks the statutory authority to administer revenue from cattle sales in support of the operations of the PMDR. As discussed in greater detail below, the Navajo-Hopi Settlement Act ("the Act") specifically provides ONHIR with the discretionary authority, within the scope of its statutory duties, to determine the application of cattle sale proceeds.<sup>2</sup>

The Decision further fails to consider the implication of GAO's own findings. The Decision concludes that ONHIR has discretionary authority to determine how to carry out its authorized activities, including the authority to make expenditures in support of the PMDR.<sup>3</sup> As such, this determination reinforces the proposition that ONHIR has the necessary and appropriate authority to utilize the proceeds of the sale of PMDR cattle to maintain PMDR operations, because, as GAO determined, PMDR admittedly falls within the agency's authorized purpose and function to administer the land.<sup>4</sup>

Furthermore, GAO over-simplifies the relationship between the United States Government and Tribal nations. ONHIR acts as a *trustee* over lands acquired under the Act, but these lands are part of the Navajo Reservation and the resources from the land are for the benefit of the Navajo Tribe, and, in particular Navajos who on December 22, 1974 resided on lands later partitioned to the Hopi Tribe.<sup>5</sup> As such, a traditional "agency" analysis about the utilization of monies obtained with trust assets is simply inappropriate. Instead, ONHIR's powers as trustee include "powers appropriate to achieve the proper investment, management and distribution of trust property."<sup>6</sup> ONHIR's actions with regard to the cattle sale proceeds, are well within ONHIR's duties and powers as Trustee. The funds received from cattle sales are not "government owned" they are held in trust for the Navajo Nation. Thus, although the Decision takes issue with ONHIR's reinvestment of the cattle

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<sup>2</sup> P.L. 93-531 (1974); 25 U.S.C. § 640d-10(h).

<sup>3</sup> Decision at pp. 5-6.

<sup>4</sup> See 25 U.S.C. § 640d-10(h); *U.S. v. Sinnott*, 26 F. 84, 86 (D. Ore. 1886) (finding that administering a program for the benefit of Indians includes using money derived from Indian resources for program development, and stating: "even if the deposition of the money received . . . was a technical violation of [the relevant statute], there is no pretense but that the defendant acted in good faith, and the Indians to whom the money really belonged had the benefit of it.").

<sup>5</sup> 25 U.S.C. § 640d-10(a)(2), (h).

<sup>6</sup> Ariz. Rev. Stat. § 14-10815(A)(2)(b).

proceeds into the PMDR, the power to oversee funds arising directly from these operations is specifically granted to ONHIR as trustee.<sup>7</sup>

Irrespective of ONHIR's statutory authority, and the clear fact the proceeds from cattle sales are not government monies since they are trust assets, ONHIR's reinvestment of these proceeds is not subject to and does not trigger the miscellaneous receipts statute because the cattle sales comply with appropriations laws. On this basis, discussed in greater detail in the following, ONHIR respectfully requests GAO reverse its Decision.

## **II. MATERIAL ERRORS OF FACT AND LAW IN THE DECISION.**

Pursuant to GAO-06-1064SP, ONHIR hereby provides its explanation of the asserted errors of fact and law in the Decision.

### *A. ONHIR's Use of Cattle Sales Revenues is Properly Within ONHIR's Congressional Grant of Authority.*

The Decision mischaracterizes ONHIR's use of the proceeds of cattle sales as solely to cover the costs of ranch operations and does not take into account the resulting effect of its use of such proceeds aiding in ONHIR's duty as trustee to administer the land.<sup>8</sup> Furthermore, the Decision fails to take into account ONHIR's powers to assist "in the management of livestock and range resources"<sup>9</sup> and to encourage economically successful and environmentally responsible grazing on the part of relocatees.<sup>10</sup> Thus, ONHIR may retain moneys it receives from cattle sales because it has the authority under statute and as trustee to do so.<sup>11</sup>

In evaluating the scope of an agency's statutory powers, "Congress is presumed to have left to reasonable agency discretion questions that it has not directly resolved."<sup>12</sup> ONHIR exercised its discretion by directing some of its single-line appropriations to starting and operating PMDR. The Decision acknowledges ONHIR was within its discretion and grant of authority to provide "employment opportunities to relocatees, stimulating the local

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<sup>7</sup> See Ariz. Rev. Stat. § 14-10816(4).

<sup>8</sup> 25 U.S.C. § 640d-10(h).

<sup>9</sup> 25 C.F.R. § 700.722

<sup>10</sup> See Formal Response at p. 28.

<sup>11</sup> 72 Comp. Gen 164, 165-66 (1993)

<sup>12</sup> *Id.* at 697. See generally *Adirondack Med. Ctr. v. Sebelius*, 740 F.3d 692, 696 (D.C. Cir. 2014) (the canon of *expressio unius est exclusio alterius* is a traditional tool of statutory construction meaning that "the expression of one is the exclusion of others.").

economy in settlement lands, and encouraging and training in economically successful grazing practices are rationally related to reducing the economic burdens imposed by the Settlement Act.”<sup>13</sup> “ONHIR has, therefore, provided sufficient justification for how ... the ranch are authorized expenditures under the Settlement Act and do not violate the purpose statute.”<sup>14</sup>

ONHIR’s retention and use of the ranch proceeds is consistent with Congress’ consolidated appropriations to ONHIR to enable it to act as trustee.<sup>15</sup> Congress has not placed any prohibition on the ONHIR’s use of proceeds from the PMDR.<sup>16</sup> Nor do the legislative histories of the Act<sup>17</sup> indicate any congressional intent to restrict the ONHIR’s trustee powers regarding disposition of receipts to a greater degree than outlined in Congress’ appropriations.<sup>18</sup> The logical conclusion, therefore, and consistent with traditional canons of construction, is that Congress has approved ONHIR’s use of the cattle proceeds to support the PMDR.<sup>19</sup>

Furthermore, the Decision’s conclusion that “ONHIR had no authority to retain this money”<sup>20</sup> overlooks the fact that ONHIR is specifically required to engage in precisely these trust activities.<sup>21</sup> As an independent administrative agency, ONHIR has broad authority to determine the most appropriate method of carrying out its statutory duties.<sup>22</sup>

The Act directs ONHIR to exercise extensive control over New Lands grazing – a resource that belongs to the Navajo Nation and relocatees.<sup>23</sup> Consistent with these principles, ONHIR has used cattle sales revenues for the ongoing operation and benefit of PMDR. As discussed in ONHIR’s Formal

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<sup>13</sup> Decision p. 6.

<sup>14</sup> *Id.*

<sup>15</sup> See Consolidated Appropriations Act (Mar. 21, 2018).

<sup>16</sup> See *Id.*

<sup>17</sup> P.L. 93-531 (1974) Section 14 of the Act directed relocation of persons living on lands partitioned.

<sup>18</sup> See Consolidated Appropriations Act (Mar. 21, 2018).

<sup>19</sup> See generally *Adirondack Med. Ctr. v. Sebelius*, 740 F.3d 692, 696 (D.C. Cir. 2014) (the canon of *expressio unius est exclusio alterius* is a traditional tool of statutory construction meaning that “the expression of one is the exclusion of others.”).

<sup>20</sup> Decision at p. 7.

<sup>21</sup> See, e.g., 25 U.S.C. § 640d-10(h) (giving ONHIR sole planning and decision making authority with regard to land development); 25 U.S.C. 640-25(b) (“Funds appropriated under the authority of this subsection (a) may be used by the Commissioner for grants, contracts, or expenditures which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by this subchapter.”).

<sup>22</sup> See *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944).

<sup>23</sup> See, e.g., 25 U.S.C. § 640d-13(a).

Response, and subsequently in its Use of Appropriations for Demonstration Ranch correspondence, the continued fiscally responsible operation of PMDR has a direct and profound benefit to relocatees and is well within ONHIR's authority.<sup>24</sup>

*B. The Decision Mischaracterizes the Resulting Proceeds for Cattle Sales as "Government Owned."*

The Decision's continued characterization of the proceeds from cattle sales as "money or the government" is flawed.<sup>25</sup> The cattle sale proceeds are not monies of the federal government subject to the miscellaneous receipts statute.<sup>26</sup> "The mere fact that moneys are received by a federal agency in the exercise of its lawful functions does not necessarily mean that those moneys are actually "received" for the use of the United States and, therefore, must be deposited in the U.S. Treasury and withdrawn only by an appropriation."<sup>27</sup>

Specifically, the Decision misstates the law as it relates to the Government's ownership of Navajo lands. ONHIR is not required to transfer ownership of the cattle to the Navajo relocatees to make the cattle Navajo property.<sup>28</sup> ONHIR maintains and oversees the lands held in trust for the Navajo Nation as part of the Navajo Reservation. In evaluating the Apache Tribe's ownership interest in property held in trust by the United States, the court in *White Mountain Apache Tribe v. United States* noted:

There is nothing contingent about the Tribe's future interest in the trust property. In other words, nothing can divest the Tribe of full title to that property once the government terminates its trust relationship. The Tribe's interest in the trust property is accordingly better described as an indefeasibly vested future

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<sup>24</sup> See Formal Response at p. 28; see also ONHIR's Use of Appropriations for Demonstration Ranch correspondence.

<sup>25</sup> Decision p. 6.

<sup>26</sup> "[A]n official or agent of the Government receiving money *for the Government* from any source shall deposit the money in the Treasury . . ." 31 U.S.C. § 3302(b) (emphasis added).

<sup>27</sup> *Decision Matter of: Office of Nat. Res. Revenue-Disbursement of Mineral Royalties*, B-321729 (Nov. 2, 2011) (internal citations omitted). See also *Matter of: Mine Health & Safety Admin.-Disposition of Nat'l Coal Mine Rescue Contest Registration Fees*, B-325396 (Feb. 23, 2015) ("A government agency may receive funds that do not constitute 'money for the Government,' such as when the funds received are for the benefit of another.").

<sup>28</sup> Decision p. 6.

interest, and the government's interest better described as one akin to a present life estate in the trust property.<sup>29</sup>

Here, title to the lands acquired under the Act was “taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.”<sup>30</sup> Thus, the Navajo Nation retains all ownership in any revenue from those resources held in trust, including money from cattle sales.<sup>31</sup>

The Supreme Court has determined that “Congress decided to have the United States ‘hold the land ... in trust’ not because it wished the Government to control use of the land ..., but simply because it wished to prevent alienation of the land and to ensure that allottees would be immune from state taxation.”<sup>32</sup> Tribal autonomy, including use and development of tribal trust property is one of the primary vehicles for “the economic self-development necessary to equal Indian participation in American life.”<sup>33</sup> As a trustee of the lands, the government has a fiduciary responsibility to administer the land *for* the benefit of the Navajo Nation, not the United States.<sup>34</sup> Further, “[u]nder the common law of trusts, ‘[t]he first duty of a trustee must be to preserve the trust property intact. To do this, he must not suffer the estate to waste or diminish, or fall out of repair....’”<sup>35</sup>

As referenced, in addition to following its Congressional mandates, ONHIR has a fiduciary responsibility as trustee (not a governmental agency) to manage this property and related resources for the benefit of these beneficiaries.<sup>36</sup> This includes using any revenue from those resources for the sole benefit of the Navajo Nation members generally and relocatees specifically.<sup>37</sup> Accordingly, revenues received from cattle sales do not constitute

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<sup>29</sup> *White Mountain Apache Tribe v. United States*, 249 F.3d 1364, 1381–82 (Fed. Cir. 2001), *aff'd and remanded*, 537 U.S. 465, 123 S. Ct. 1126, 155 L. Ed. 2d 40 (2003).

<sup>30</sup> 25 U.S.C. § 640d-10(a)(2).

<sup>31</sup> See e.g. *Chippewa Cree Tribe of Rocky Boy's Reservation v. United States*, 73 Fed. Cl. 154 (2006)(finding that tribal property remains tribal property after it is converted to money).

<sup>32</sup> *United States v. Navajo Nation*, 537 U.S. 488, 504 (2003); citing *United States v. Mitchell*, 445 U.S. 535 (1980).

<sup>33</sup> *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 664 (9th Cir. 1975).

<sup>34</sup> *United States v. Mitchell*, 463 U.S. 206, 224 (1983); see also *White Mountain Apache Tribe v. United States*, 249 F.3d 1364, 1381–82 (Fed. Cir. 2001)(“As the Restatement makes clear, ‘[i]f a trust is created for beneficiaries in succession, the trustee is under a duty to the successive beneficiaries to act with due regard to their respective interests.’”)

<sup>35</sup> *White Mountain Apache Tribe*, 249 F.3d at 1381–82; citing Bogert, *The Law of Trusts and Trustees*, § 600.

<sup>36</sup> See 25 U.S.C. § 640d-10; *Mitchell*, 463 U.S. at 225

<sup>37</sup> 25 U.S.C. § 640d-10(h).

“money for the Government.” Rather, they are received for the benefit of the trust corpus and the objectives of the PMDR. The Decision fails to take this distinction into consideration.

*C. Irrespective of its Statutory Authority, ONHIR’s Use of the Cattle Sales Complies with Appropriations Law and Does Not Trigger the Miscellaneous Receipts Statute.*

The Decision states that “the authorized uses of an appropriation must be anchored in the text of the statute and may not be inferred from its budget justification.”<sup>38</sup> Under 31 U.S.C. § 1301(a), appropriated funds may be used for authorized purposes.<sup>39</sup> 25 USC 640d-10(h) requires the proceeds of cattle sales to be used exclusively for the benefit of Navajo relocatees from the Hopi-partitioned lands.<sup>40</sup> Specifically, ONHIR was tasked with the administration of lands transferred or acquired “until relocation under the Commission's plan is complete **and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: Provided,** That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter.”<sup>41</sup> Sending the proceeds of cattle sales to the U.S. Treasury is inconsistent with this statutory provision.

ONHIR’s use of the proceeds from cattle sales is authorized by Congress, complies with appropriations law, and thus, does not trigger the miscellaneous receipts statute. The determination of “whether an appropriation is available for certain expenses recognizes that when Congress makes an appropriation for a particular purpose, by implication it authorizes the agency involved to incur expenses that are necessary or incident to the accomplishment of that purpose.”<sup>42</sup> ONHIR’s use cattle sales to improve lands and provide for the continued operation of the PMDR is “necessary” and “incident to” the purpose of ONHIR’s appropriations in allowing the agency to ensure the success of

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<sup>38</sup> Decision p. 7.

<sup>39</sup> *Matter of: Commodity Futures Trading Com’n – Availability of Appropriations for Inspector Gen. Overhead Expenses*, B-327003 (Sept. 29, 2015).

<sup>40</sup> 25 U.S.C. § 640d-10(h).

<sup>41</sup> *Id.* (emphasis added).

<sup>42</sup> GAO has developed a three-part test to evaluate “whether a specific expenditure is a necessary expense of an appropriation: (1) the expenditure must bear a logical relationship to the appropriation sought to be charged; (2) the expenditure must not be prohibited by law; and (3) the expenditure must not be provided for by another appropriation.” *Id.*

relocatees.

Both the operation of PMDR, and the identified uses of revenue from cattle sales bear more than a “logical relationship”<sup>43</sup> to ONHIR’s clear obligations to administer acquired lands<sup>44</sup> and to assist with improving the economic, educational, and social conditions of relocatees and their families.<sup>45</sup> As acknowledged, the PMDR provides a valuable purpose in ensuring relocatees’ grazing practices are economically successful while preserving grazing resources. Thus, like every rancher, PMDR uses revenues from cattle sales to offset PMDR operating expenses. This approach is a practical necessity and one of the keys to permittees’ acceptance of the PMDR.<sup>46</sup> This analysis makes clear that the continued use of cattle sales to offset the need for appropriations and to continue to operate the PMDR is an appropriate use as incidental to ONHIR’s duties under the Act.

### III. CONCLUSION

For these reasons, ONHIR respectfully disagrees with the conclusions reached in the Decision and requests GAO reconsider its position to specifically address the special relationship ONHIR serves as trustee. ONHIR appreciates the opportunity to present its argument. Please do not hesitate to let us know if your office has any questions or would like to discuss these matters further.

Very truly yours,



Christopher J. Bavasi  
Executive Director, ONHIR

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<sup>44</sup> 25 U.S.C. § 640d-10(h).

<sup>45</sup> See 25 U.S.C. § 640d-30(d).

<sup>46</sup> This has also been one of the principal reasons that the PMDR has proved so attractive to other relocatees living outside the New Lands.

### **Attachment 3: Navajo Nation Request to the U.S. Government Accountability Office, November 2020**

Following on page 24 is the Navajo Nation's request that the U.S. Government Accountability Office reconsider its decision that the Office of Navajo and Hopi Indian Relocation lacks the statutory authority to retain or obligate money from the sale of cattle.

Note: The Navajo Nation included this document as an attachment to its response to our draft report.



**NAVAJO NATION DEPARTMENT OF JUSTICE**  
*OFFICE OF THE ATTORNEY GENERAL*

DOREEN N. MCPAUL  
Attorney General

KIMBERLY A. DUTCHER  
Deputy Attorney General

November 13, 2020

Thomas H. Armstrong, General Counsel  
U.S. General Accountability Office  
441 G Street NW  
Washington, DC 20548

via email only to Karen Nicole Willems, [WillemsK@gao.gov](mailto:WillemsK@gao.gov) and  
Charlotte E. McKiver, Asst. General Counsel, [mckiverc@gao.gov](mailto:mckiverc@gao.gov)

**Re: GAO Decision B-329446 and ONHIR violation  
of the Permanent Appropriation Repeal Act**

Dear Mr. Armstrong and Mses. McKiver and Willems:

On behalf of the Navajo Nation (“Nation”), this letter responds to the September 24, 2020 letter to Mr. Armstrong by the U.S. Office of Navajo and Hopi Indian Relocation (“ONHIR”), which requested reconsideration of the U.S. Government Accountability Office (“GAO”) Decision B-329446 of September 17, 2020 (“Decision”). The Decision had concluded in part that ONHIR violated the Miscellaneous Receipts Act (“MRA”), 31 U.S.C. § 3302(b), by not depositing into the U.S. Treasury revenue from the sale of cattle at the Padres Mesa Ranch. Decision at 1, 2, 4.

As explained below, the Nation agrees with ONHIR that ONHIR did not violate the MRA in this because the ranch revenue is not received “for the Government” under that law. However, that revenue is not so received precisely because it is instead received by ONHIR in trust for the Indian beneficiaries of that land and the use thereof, namely, the Navajo Nation and a specific group of Navajo families. Accordingly, the Nation requests that the GAO reconsider the Decision to recognize that ONHIR violated the Permanent Appropriation Repeal Act (“PAR Act”), 31 U.S.C. § 1321, by failing to deposit that revenue in the U.S. Treasury in trust for the Navajo Nation and “Navajo families residing on Hopi-partitioned lands as of December 22, 1974[.]”

**The Ranch revenue is not received “for the Government” under 31 U.S.C. § 3302(b)**

The Nation agrees with ONHIR that revenues from the Padres Mesa Ranch should not be deposited in a general Treasury account per the MRA because that money is not received “for the Government” under the MRA, 31 U.S.C. § 3302(b). *See* ONHIR Letter at 5-7. As ONHIR aptly explains, this is because ONHIR administers the Ranch as trustee for the benefit of the Nation and “Navajo families residing on Hopi-partitioned lands as of December 22, 1974[.]” *Id.* at 2, 5-7 (citation omitted). In particular, as ONHIR had explained previously in an entire section of its prior

letter to the GAO on this issue, “ONHIR’s Cattle Sales Revenues [from the Ranch] are Received on Behalf of the Navajo . . . as Trust Property and Are Therefore Not Subject to the Miscellaneous Receipts Statute.” Letter from Christopher J. Bavasi, Executive Director, ONHIR, to Omari Norman, Asst. General Counsel for Appropriations Law, GAO (April 11, 2018) at 5.

This situation is similar to the one addressed in GAO Decision B-321729 of November 2, 2011, on disbursement of mineral royalties by the U.S. Department of the Interior (“DOI”) Office of Natural Resources Revenue. There, the GAO applied the principle that “when funds received by a federal agency do not represent ‘money for the government,’ the miscellaneous receipts statute, 31 U.S.C. § 3302(b), does not apply . . . .” GAO Decision B-321729 at 1. In that situation, the funds were mineral royalties collected for and due to an Alaska Native regional corporation established under the Alaska Native Claims Settlement Act. *Id.* 1-3, 5. Given that, “the mere fact that moneys were received by a federal agency in the exercise of its lawful functions . . . does not change the character of the funds as . . . belonging to” others. *Id.* at 5.

So too here, the MRA does not apply because “the government has received the money for the benefit of another.” *Id.* at 4. As recognized in Decision B-329446, the Padres Mesa Ranch is land acquired and held in trust for the Navajo Nation as part of the Navajo Reservation. Decision at 3. That acquisition was made and that trust land status is specified per Section 11(a) of the Navajo-Hopi Settlement Act of 1974 (“Settlement Act”), Public Law 93-531, as amended and previously codified at 25 U.S.C. § 640d-10(a).<sup>1</sup> Namely, title to such lands “shall be [and has been] taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.” *Id.* In addition, Settlement Act Section 11(h) relevantly provides that “[t]he lands transferred or acquired pursuant to this section shall be administered by the Commissioner [now, ONHIR] . . . and . . . shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974[.]” Settlement Act § 11(h), Pub. L. 93-531, added by Pub. L. No. 96-305, § 4, 94 Stat. 929, 930-932 (1980), amended by Pub. L. No. 100-666, § 8, 102 Stat. 3929, 3933 (1988) and previously codified at 25 U.S.C. § 640d-10(h). Therefore, under the Settlement Act, the land from which this revenue was generated is expressly held in trust for the Navajo Nation and expressly used solely for the benefit of a specific group of Navajo families.

When Congress uses such express fiduciary language, one “‘must infer that Congress intended to impose . . . traditional fiduciary duties unless Congress has unequivocally expressed an intent to the contrary.’” *Cobell v. Norton*, 240 F.3d 1081, 1100 (D.C. Cir. 2001) (quoting *N.L.R.B. v. Amax Coal Co.*, 453 U.S. 322, 330 (1981)). Therefore, given the Settlement Act’s express trust status for acquired land and the specified sole beneficial use thereof, the requirement there that ONHIR “administer” the acquired trust lands must be given its fiduciary meaning. For this, the duty of “administration” is the first “specific” and fundamental duty of trusteeship. Restatement (Third) of Trusts § 76 (2007). This includes “collecting and protecting trust property” and “managing the trust estate to provide returns . . . .” *Id.* § 76(2)(b)-(c).

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<sup>1</sup>While that codification was omitted from a 2016 reclassification of 25 U.S.C. “as being of special and not general application[.]” 25 U.S.C. § 640d note (2016), that “[e]ditorial omission from the Code has no effect on the validity of” the Act. Office of Law Revision Counsel, U.S. House of Representatives, Editorial Reclassification: Title 25, U.S.C., available at <http://uscode.house.gov/editorialreclassification/t25/index.html>.

These trust duties apply even if the trustee serves without compensation. *Id.* cmt. a; *id.* § 70, cmt. d(1). This also is “an affirmative duty. Thus, a trustee may commit a breach of trust by failing to act, as well by improperly exercising the powers of the trusteeship[.]” *Id.* § 76, cmt. b. In addition, a trustee must comply with both the terms of the trust and default general trust law mandates except as permissibly modified by the trust terms. *Id.* at cmt. b(1). Therefore, because Section 11 of the Settlement Act explicitly establishes a trust relationship and basic trust duties and does not detract from general trust principles, the Act establishes ONHIR’s fiduciary duty to administer the Ranch and revenue therefrom in trust for the Navajo Nation and the specified group of Navajo families. For all these reasons, the Nation agrees with ONHIR that revenue from the Padres Mesa Ranch is not “for the Government” and therefore is not subject to the MRA.

### **The Ranch revenue must be deposited as trust funds in the Treasury per 31 U.S.C. § 1321**

While the MRA does not apply to the Padres Mesa Ranch revenue, the very reason why it does not apply requires that that money be classified and deposited as trust funds rather than be retained and used by ONHIR. For this, the GAO has previously concluded that “the Settlement Act as amended does not state that ONHIR may collect, retain, and use revenue from . . . Navajo trust land, and ONHIR officials have not identified another statute authorizing the agency to do so.” GAO, ONHIR: Executive Branch and Legislative Action Needed for Closure and Transfer of Activities, GAO-18-266, at 47 (April 2018). The Nation agrees with that conclusion, and it is confirmed by the Permanent Appropriation Repeal Act of 1934 (“PAR Act”) and other authority.

The PAR Act classifies as “trust funds” all “Indian moneys, proceeds of labor, . . . and so forth[.]” “Miscellaneous trust funds of Indian tribes[.]” and amounts analogous to those funds that are received by the U.S. Government as trustee, and provides that they “shall be deposited in the appropriate trust fund account in the Treasury.” PAR Act, ch. 756, § 20, 48 Stat. 1224, 1233 (codified as amended at 31 U.S.C. § 1321(a)(20), (a)(67), (b)(1)); *cf. Chippewa Cree Tribe of Rocky Boy’s Reservation v. United States* (“*Chippewa*”), 69 Fed. Cl. 639, 649 n.8 (2006), *reconsid. denied*, 73 Fed. Cl. 154, 159 (2006) (discussing the PAR Act). Consistent with that, all money held by the federal government for Indian tribes has long been presumed to be held in trust absent explicit language to the contrary. *Cobell*, 240 F.3d at 1098; *Loudner v. United States*, 108 F.3d 896, 900 (8th Cir.1997); *Rogers v. United States*, 697 F.2d 886, 890 (9th Cir. 1983); *Chippewa*, 69 Fed. Cl. at 659. Moreover, “where the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund . . . .” *United States v. Mitchell*, 463 U.S. 206, 225 (1983) (quoting *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 987 (1980)).

Here, no explicit statutory language precludes the Ranch revenues received by ONHIR from being Indian trust funds. Thus, under the PAR Act, those revenues “are “true” trust funds in the customary sense, in which there is a legal fiduciary relationship between the Federal Government as trustee and the Indians as trustor.” *Chippewa*, 69 Fed. Cl. at 656 (quoting OMB finding on federally held Indian funds published at 62 Fed. Reg. 11505, 11506 ¶ 7 (March 12, 1997)). Accordingly, under 31 U.S.C. § 1321, the United States has a legal, fiduciary duty to

deposit the Ranch revenue as Indian trust funds. *See Quapaw Tribe of Okla. v. United States*, 111 Fed. Cl. 725, 730 (2013).

In addition, ONHIR has no legal authority to retain and use the Ranch revenue. The Anti-Deficiency Act precludes federal agencies from undertaking obligations or spending money without legal authorization. *See* 31 U.S.C. § 1341; *Sutton v. United States*, 256 U.S. 575, 580-81 (1921); *Samish Indian Nation v. United States*, 657 F.3d 1330, 1339 (Fed. Cir. 2011), *vacated in part on other grounds*, 568 U.S. 936 (2012). While the GAO has found that ONHIR may use congressionally appropriated funds to operate the Padres Mesa Ranch, *see* Decision at 6, that authorization does not extend to ranch revenue. That is because that revenue is not ONHIR's, as explained above. Also, ONHIR's expenditure of that revenue is not authorized by statute "because Congress did not give ONHIR statutory authority to retain the proceeds of cattle sales." *Id.* at 7.

This duty to deposit and not use Navajo trust land revenue is confirmed by additional authorities. First, under Section 11(h) of the Settlement Act and the Restatement of Trusts, ONHIR's explicit, basic duty to "administer" acquired Navajo trust land includes a duty to "deposit trust money" in an account "in the trustee's name as trustee[,] consistent with the fiduciary duty to segregate and identify trust property "separate from the trustee's own property." *See* Restatement (Third) of Trusts §§ 76 cmt. d(1), 84. Second, the ONHIR Management Manual ("OMM")—which governs ONHIR's operations per 25 C.F.R. § 700.219(a)—mandates that all "revenues from the 'New Lands' . . . received . . . by the ONHIR" be deposited with the Federal Reserve System and held there until payments are issued from the U.S. Treasury. *See* OMM §§ 2230 (payment vouchers), 2300 (deposits), 2310 (deposit handling). Finally, as DOI noted in commenting on ONHIR's use of money for the Padres Mesa Ranch, "because the revenue from the sale or use of trust property belongs to the beneficiary, not the trustee, the [Bureau of Indian Affairs ("BIA")] could not keep such revenue for the BIA's use without specific authority to do so." Letter from Eric Shepard, Assoc. Solicitor, Division of Indian Affairs, Office of the Solicitor, DOI, to Omari Norman, Asst. General Counsel for Appropriations Law, Office of General Counsel, GAO (Nov. 15, 2019) at 4. What applies for the BIA applies equally to ONHIR here. All this supports the GAO's prior conclusion that there is no legal authority for ONHIR to retain and use this Navajo trust land revenue.

For all these reasons, ONHIR may not retain and spend collected Navajo trust land revenue to offset operating costs rather than deposit that in the U.S. Treasury. *Contra* ONHIR Letter at 1. Instead, as ONHIR's acknowledges, ONHIR has a "fiduciary responsibility as trustee (not a government agency) to manage this property and related resources for the benefit of these beneficiaries." *Id.* at 6. Because of that, the Settlement Act, the PAR Act, the Anti-Deficiency Act, and the OMM all require that ONHIR deposit in trust for the Navajo Nation and the specified group of Navajo families all revenue from the Padres Mesa Ranch.

Thank you for your attention to these matters.

Ahéhee',  
  
Doreen N. McPaul

cc: Jonathan Nez, President, Navajo Nation, [jonathannez@navajo-nsn.gov](mailto:jonathannez@navajo-nsn.gov)  
Myron Lizer, Vice President, Navajo Nation, [myronlizer@navajo-nsn.gov](mailto:myronlizer@navajo-nsn.gov)  
Levon Henry, OPVP Legal Counsel, [levonhenry@navajo-nsn.gov](mailto:levonhenry@navajo-nsn.gov)  
Robert Black, Director, Navajo-Hopi Land Comm'n Office, [robertblackjr@navajo-nsn.gov](mailto:robertblackjr@navajo-nsn.gov)  
Otto Tso, Delegate, Navajo Nation Council & Chairman, Navajo-Hopi Land Commission,  
[otso@navajo-nsn.gov](mailto:otso@navajo-nsn.gov)  
Dana Bobroff, Chief Legislative Counsel, [danabobroff@navajo-nsn.gov](mailto:danabobroff@navajo-nsn.gov)  
Santee Lewis, Director, Navajo Nation Washington Office, [slewis@nwo.org](mailto:slewis@nwo.org)

## Attachment 4: Padres Mesa Demonstration Ranch Equipment and Furniture Inventory, as of February 2020

Item	Date Acquired	Cost (\$)	Current Value (\$)
Bookcase	1990	114	0
Couch	1983	398	0
Computer	1998	284	0
Table	1983	250	0
Squeeze chute	1994	1,248	0
Trailer, flatbed, double axle	1995	2,725	0
Trailer, gooseneck, beavertail	1998	7,336	0
Trailer, gooseneck, horse 20 feet × 6 feet	1998	4,367	0
16-foot trailer, flatbed	2003	1,748	0
Backhoe/front-end loader	2003	50,932	0
Gas generator	2008	1,400	0
Horse trailer	2009	10,777	0
Mobile animal scale	2010	20,350	0
2006 Ford F-350	2014	10,700	0
2012 Ford F-350 XLT	2016	24,106	0
Water truck	2016	2,592	0
Ultrasound vet equipment	2016	2,539	0
11,000-watt welder	2018	3,987	1,994
32-foot trailer, flatbed, gooseneck	2019	13,400	13,400
<b>Total</b>		<b>\$159,253</b>	<b>\$15,394</b>

## **Attachment 5: Responses to Draft Report**

The Office of Navajo and Hopi Indian Relocation's (ONHIR's) response to our draft report follows on page 31, and the Navajo Nation's response to our draft report follows on page 33.

The Navajo Nation included as an attachment to its response a November 2020 letter from the Navajo Nation Attorney General to the U.S. Government Accountability Office, which is Attachment 3 in this report.



UNITED STATES GOVERNMENT  
**OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION**

April 7, 2021

**Christopher J. Bavasi**  
Executive Director

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 Padres Mesa Demonstration Ranch***  
**Report No. 2020-WR-016-D**

Dear Inspector General Greenblatt:

ONHIR appreciates the opportunity to comment on OIG's draft report on ONHIR's Padres Mesa Demonstration Ranch (PMDR or Ranch).

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

Our comments follow:

Page 2

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

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

Page Two  
Letter to Inspector General Greenblatt  
April 7, 2021

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

ONHIR's functions at PMDR also include assistance with vaccination protocols and improved genetics through breeding programs to improve value of livestock sold.

In addition, the Ranch Headquarters are used as headquarters for ONHIR's beef program, Ranch Office, and a location to host producers, industry leaders, media, and governmental office holders.

Page 4

In addition to the reasons listed by OIG as to why ONHIR does not deposit the proceeds of cattle sales with the Treasury as GAO contended is required, ONHIR also contends that Section 640d-10 of the Settlement Act requires that the New Lands be used exclusively for the benefit of Relocatees and thus proceeds from sales of PMDR cattle could not properly be sent to the Treasury with no limitations on how such funds should be spent.

Page 5

Navajo Beef is currently sold in the New Lands only at the Bashas' Supermarket in the NDCG Shopping Center. In areas outside the New Lands Navajo Beef and Native American Beef are sold in other Bashas' markets and in some restaurants. (Restaurants include those in the casinos operated by the Navajo Nation Gaming Enterprise.)

Sincerely,



Christopher J. Bavasi  
Executive Director

# THE NAVAJO NATION

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JONATHAN NEZ | PRESIDENT MYRON LIZER | VICE PRESIDENT

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 Padres Mesa Demonstration Ranch*, Report No. 2020-WR-016-D

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 Padres Mesa Demonstration Ranch*. 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.<sup>1</sup> 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;***

...

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<sup>1</sup> As the draft report notes on page 7, the GAO reached a different conclusion.

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.**<sup>2</sup>

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....<sup>3</sup>

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....'<sup>4</sup>

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."<sup>5</sup> Thus, the Relocation Plan recognized the federal duty to provide schools, roads, power, and other facilities for relocation to new lands.<sup>6</sup>

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[.]"<sup>7</sup> 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.<sup>8</sup> The draft report therefore must be revised to acknowledge the original and ongoing federal duty to provide infrastructure and

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<sup>2</sup> 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).

<sup>3</sup> Pub. L. 93-531 § 13(c)(2), (4)-(5) (emphasis added).

<sup>4</sup> See NHIRC, Report and Plan at 4, 185, 237 (1981) (emphasis in original).

<sup>5</sup> *Id.* at 278.

<sup>6</sup> *Id.* at 235-37, 270, 278.

<sup>7</sup> 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).

<sup>8</sup> ONHIR Management Manual §§1530 at 1, 1645.41.1 at 15.

*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.<sup>9</sup> Some have asserted that this repeal eliminated the federal duty to provide community facilities for relocatees.<sup>10</sup> 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.”<sup>11</sup>

*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.<sup>12</sup> 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.”<sup>13</sup> 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.”<sup>14</sup> ONHIR also reported there that it “is committed to further development of various infrastructure projects which are badly needed by the relocatee population.”<sup>15</sup> Thus, the United States indisputably still has a duty to provide community facilities for relocatees.*

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<sup>9</sup> Pub. L. 100-666, § 4(d), previously codified at 25 U.S.C. § 640d-12.

<sup>10</sup> 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.

<sup>11</sup> Pub. L. 93-531, § 14(a), previously codified at 25 U.S.C. § 640d-13(a).

<sup>12</sup> Pub. L. 100-666, §§ 4(b), 8, previously codified at 25 U.S.C. § 640d-10(h).

<sup>13</sup> 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).

<sup>14</sup> ONHIR, Plan Update (Nov. 22, 1990) at 59 (“1990 Update”).

<sup>15</sup> *Id.* at 10.

*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.*

**Overview of Ranch Authority and Operations—Use of Cattle Sale Proceeds.** The draft report notes that the U.S. Government Accountability Office has “issued a legal opinion stating that ONHIR may use its appropriations to operate the Ranch but that it does not have the authority to retain the revenues from cattle sales . . . . The GAO concluded that, pursuant to the miscellaneous receipts statute, 31 U.S.C. § 3302(b), revenues from cattle sales should be deposited into the U.S. Treasury.” The draft report goes on to note that ONHIR has requested reconsideration of this decision. It should also note that the Navajo Nation has similarly requested reconsideration.

On November 13, 2020, the Navajo Nation responded to ONHIR’s reconsideration request. Specifically, the Nation has stated:

- ONHIR has correctly asserted that the ranch revenue is not received “for the Government” under the Miscellaneous Receipts Act (“MRA”), 31 U.S.C. § 3302(b). However, that revenue is not so received because it is received by ONHIR in trust for the Navajo Nation and Navajo families residing on Hopi-partitioned lands as of December 22, 1974, per Section 11(a) and (h) of the Act, previously codified at 25 U.S.C. §§ 640d-10(a), (h).
- For example, page six of ONHIR’s reconsideration request letter to the GAO acknowledged that ONHIR has a “fiduciary responsibility as trustee (not a government agency) to manage this property and related resources for the benefit of these beneficiaries.” Therefore, ONHIR violated the Anti-Deficiency Act, 31 U.S.C. § 1341, by spending the Padres Mesa Ranch revenue without authorization and violated the Permanent Appropriation Repeal Act, 31 U.S.C. § 1321, by failing to deposit that revenue in the U.S. Treasury in trust for the Navajo beneficiaries.

*Letter of Navajo Nation Attorney General Doreen McPaul to Thomas H. Armstrong, General Counsel, U.S. Government Accountability Office, November 13, 2020 (Attachment A). In addition, just before footnote 6 on page 7 of the draft report, at the end of the sentence, the following should be added: “, and the Navajo Nation has disagreed with that request.”*

The draft report on page 5 states that ONHIR via the Padres Mesa Ranch facilitates and coordinates livestock sales for Navajo ranchers on the New Lands. However, that discussion does not make clear that those concern sales of ranchers’ own cattle from other New Lands, separate from ONHIR’s sale of its own cattle that are raised and grazed on the Padres Mesa Ranch. This should be clarified, consistent with a statement on pages 10-11 of the same report, including that the proceeds of the former sales are paid directly to those ranchers separate from ONHIR.

**The Ranch’s Financial Status.** The draft report notes that ONHIR’s expenses have exceeded revenues at the Padres Mesa Ranch. It is important, however, to emphasize that the Ranch is a demonstration ranch—in other words it principally exists for educational purposes—and that much of the economic benefit of the Ranch is associated with the improved quality of livestock for Navajo ranchers who participate in its programs. As such, the Ranch has improved the financial well-being of a number of Navajo families and is a source of pride to the Nahta Dziil Chapter, where it is located. The Navajo Nation considers the Ranch to be a rare bright spot in the relocation process, teaching many relocatees the benefits of cattle and range management. It has also demonstrated that effective marketing of a quality brand can generate nearly twice the economic return than the ranchers had previously realized. The Ranch has the potential to improve the agricultural economy across the entire Navajo Nation.

**ONHIR’s Obligations with Regard to Leases and Permits.** The Navajo Nation largely agrees with GAO’s concerns about ONHIR’s failure to formally lease the land and buildings at the Ranch, as well as its failure to issue a grazing permit for the cattle on the Ranch. As the draft report notes, ONHIR “has still not addressed these issues more than 2 years later.” ONHIR should have to enter into leases and formally secure grazing permits via qualified Navajo relocatees, both as a matter of good recordkeeping (an area where ONHIR falls conspicuously short) and because it should pay associated fees which, in turn, should be placed into trust for the benefit of the Navajo relocatees.

**Footnote 11—Navajo-Hopi Land Commission.** For the purposes of clarity, please note that the Navajo-Hopi Land Commission is a commission of the Navajo Nation Council and consists of Navajo Nation Council delegates.

**Congressional Considerations, Page 11.** With regard to the recommendations, the Nation supports requiring the establishment of leases or grazing permits, with the fees, as well as revenue from cattle sales, placed into trust for the benefit of the Navajo families that resided on Hopi-partitioned lands as of December 22, 1974. The Nation does not believe that the Ranch needs to be considered a for-profit enterprise; it performs a valuable educational function whether it is operated as a for-profit or as a non-profit. The Nation also believes that OIG should recommend the appointment of a Commissioner for ONHIR.

**Definitional Issue of “New Lands.”** The draft report notes at footnote 1 that the Navajo Nation uses a different definition for “New Lands” than ONHIR, and that the draft 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 draft 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.”<sup>1</sup>

<sup>1</sup> 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 Dził Chapter in Arizona. In particular, all of the acquired lands “shall be administered by [ONHIR] until relocation under the Commission’s plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974[.]” Act § 11(h), previously codified at 25 U.S.C. § 640d-10(h). All this matters because the OIG should not perpetuate ONHIR’s misperception or mischaracterization that the New Lands within the Nahata Dził 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 Dził 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.

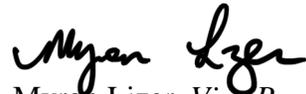
**Correct and Clarify Additional References to the New Lands.** In the draft report, in the third paragraph on page 2, the sentence which states that that “Navajo relocatees have homes on the New Lands” should have the following additional language appended at the end thereof: “in Arizona and elsewhere on and outside the Navajo Reservation.” This is warranted because Navajos have been relocated not only to the Nahata Dził Chapter, but elsewhere as well. In addition, in the next-to-last paragraph on page 6 in the Ranch Report, at the end of the second

sentence, the reference to “activities for the New Lands” should be changed to “activities for other New Lands within the Nahata Dził Chapter” since the Padres Mesa Ranch is part of and not separate from other New Lands.

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

Sincerely,

  
Jonathan Nez, *President*  
**THE NAVAJO NATION**

  
Myron Lizer, *Vice President*  
**THE NAVAJO NATION**

