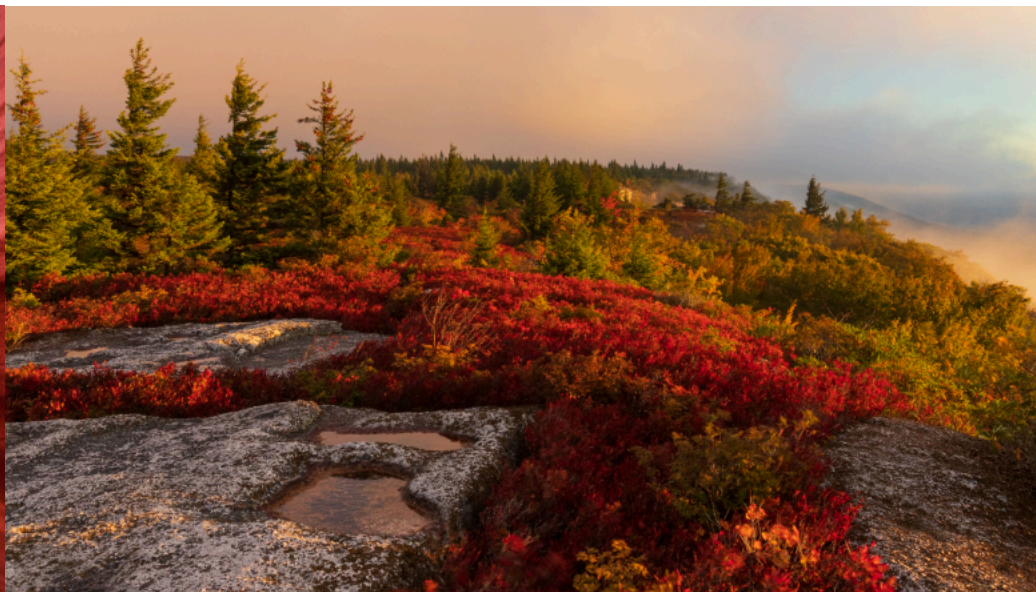




## Environment and Natural Resources Division FY 2023 Accomplishments Report



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## Foreword

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I am pleased to present the Accomplishments Report for fiscal year 2023 for the Environment and Natural Resources Division of the U.S. Department of Justice. The mission of the Division could not be more important given the pressing environmental challenges facing the nation now and in the future. The American people are fortunate that the Division is staffed by such a talented, accomplished, and professional group of employees and that the group works so effectively together and with our many partners.

The Division continues to be a central player in two of the Administration's highest priorities, securing environmental justice and responding to the climate crisis, while carrying out a mission of remarkable breadth. We enforce a myriad of federal laws and regulations, including to protect public health, wildlife and other natural resources, worker safety, and animal welfare. Representing the Environmental Protection Agency, the Department of the Interior, and other federal agencies in court, the Division also defends pollution control measures, approvals for renewable energy projects, and federal stewardship of public lands, wildlife, and natural resources. Our work promotes the sovereignty of federally recognized Indian Tribes, while protecting their rights, homelands, and resources. Our condemnation actions, meanwhile, acquire land needed for important federal programs, including for infrastructure and national security.

Key metrics illustrate the Division's achievements in 2023. The Division's



Todd Kim

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Environment and Natural Resources Division

over 400 attorneys worked on roughly 4,500 matters. We obtained over \$440 million in civil and criminal fines, penalties, and costs recovered. We secured federal injunctive relief valued at \$2.3 billion. And, through our defensive and condemnation litigation, we saved the United States more than \$2.5 billion. We achieved a favorable outcome in 99 percent of our civil enforcement cases, 91 percent of our civil defensive cases, 96 percent of our criminal cases, and 100 percent of our condemnation cases.

While securing these results, the Division continued to fight for environmental justice. We seek to ensure that every American, no matter where they live, has access to clean drinking water and a safe and healthy environment. In 2023, the Division's Office of Environmental Justice provided environmental justice training, outreach resources, and other support to the entire Department, while also organizing and seeking out opportunities to engage with environmental justice stakeholders. And, as demonstrated by the many accomplishments discussed in the chapters that follow, the Division successfully applied the principles of the Department of Justice's Comprehensive Environmental Justice Enforcement Strategy in a broad range of matters.

Our accomplishments also served to support the Administration's efforts to combat the climate crisis. For example, working with various states and the Southern Ute Indian Tribe, the Division secured Clean Air Act settlements with several natural gas processors. The companies will take steps that will reduce greenhouse gas emissions (and reduce pollution affecting air quality) in 12 states and Indian Country. This is just one example in a broader enforcement initiative to address climate pollution from numerous oil and gas production and processing facilities.

We also continued our defense of high-profile rules and actions of the Environmental Protection Agency (EPA) that will have crucial climate benefits. This included our defense in the D.C. Circuit of the agency's greenhouse gas emission standards for certain light-duty vehicles (model year 2023 and later) and

the agency's decision to restore the State of California's authority to develop greenhouse gas emissions standards that are more stringent than the agency's standards.

The Division's work in 2023 also facilitated the nation's transition to cleaner sources of energy. We defended federal agency approvals for wind energy projects and additionally handled a growing docket of litigation concerning federal agency approval of mining on federal lands for critical minerals, such as lithium, that are pivotal to the United States' continuing transition to a green energy economy.

The Division's environmental justice and climate work benefitted from the restoration in May 2022 of the Department's ability to enter into certain settlements that include supplemental environmental projects (SEPs). These are environmentally beneficial projects that help remedy the harm caused by violations of environmental law in the community where the harm occurred. In 2023, the Division included SEPs in several settlements, including a Clean Air Act settlement against BP Whiting, the largest refinery in the Midwest. In addition to paying the largest-ever Clean Air Act civil penalty against a single facility (\$40 million), BP committed to spending millions of dollars to retrofit and replace old, polluting diesel engines in four frontline communities, with input from citizen advisory committees.

Turning back to our broader mission, let me start by highlighting our success in 2023 in civil enforcement of the federal pollution control laws. These civil actions

served to protect the air we breathe and America's waters and wetlands, while also addressing the improper handling of solid and hazardous waste and the need to clean up contaminated lands.

One example (of many) is the settlement that the Division reached with the Tadano Group to resolve alleged violations of the Clean Air Act. The Tadano Group allegedly imported non-road cranes with diesel engines not certified to applicable emissions standards. Under the settlement, the Tadano Group will pay a \$40 million civil penalty and additionally purchase a new commercial tugboat to replace one with outdated diesel engines. The new vessel's engines will emit less pollution as the vessel services ships in Port Arthur, Texas, near low-income communities.

The Division also continued its important work with partners in U.S. Attorneys' Offices in bringing enforcement actions to address criminal violations of environmental and animal welfare laws. Many of these prosecutions in 2023 addressed knowing violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act. Our prosecutors also achieved excellent results in enforcing federal animal welfare laws, both in prosecuting criminal violations of the laws and securing the civil forfeiture of animals seized from criminal animal fighting ventures.

Meanwhile, the Division also obtained outstanding results in civil enforcement of the Animal Welfare Act. This included a settlement with the Commonwealth of Puerto Rico that will ensure the health

and safety of several hundred animals, including birds, reptiles, rhinos, hippopotamus, and an elephant, housed at a hurricane-ravaged facility in Puerto Rico.

The Division likewise had a banner year in promoting and protecting tribal rights and resources. The Supreme Court upheld the constitutionality of the Indian Child Welfare Act in *Haaland v. Brackeen* (S. Ct.), a decision of immense importance to Tribes and Native Americans. We continued to vigorously assert and protect tribal water rights, including in adjudications throughout the arid Western United States. The Division also worked to promote tribal sovereignty in other ways, including by filing actions to address trespass on Indian reservations.

Of particular note, the Division negotiated a remarkable resolution of long-running challenges to the operation of the Columbia River System of hydropower dams. In late 2023, the Administration announced an historic agreement under which the federal government will work in partnership with Tribes and States in the Pacific Northwest to restore wild salmon populations, expand clean energy production, and provide stability for communities that depend on the Columbia River for various purposes.

The Division concurrently handled a broad range of other litigation. We defended high-profile pollution control measures such as EPA rules and decisions implementing the Clean Water Act and Clean Air Act. We defended federal agency approvals of infrastructure pro-

jects and handled litigation to support national security, including (for example) relating to an acquisition for the Department of the Air Force of land within the boundaries of the Nevada Test and Training Range that provided an unobstructed view of highly sensitive military operations.

In addition, the Division litigated many actions related to stewardship of the federal public lands, wildlife, and natural resources. For example, we defended decisions made by the Department of the Interior’s Bureau of Land Management and the Department of Agriculture’s Forest Service concerning the management of federal public lands, including National Forests. We defended the rules, decisions, and analyses of the federal agencies that administer the Endangered Species Act. We also litigated vigorously to protect federal water rights and handled critical high-profile litigation related to the potential for Bureau of Reclamation-operated water delivery systems to impact Endangered Species Act-protected species.

All the while, the Division worked to defend the public fisc. The Division handled complex cases in which landowners sought compensation for alleged “takings” of property by the federal government. The major categories of takings cases included: cases related to flooding and flood control efforts during historic rainfall events; cases arising from damage caused by wildfires in Oregon, California, New Mexico, and Montana; and “rails-to-trails” takings cases, which arise from the conversion of unused rail lines into trails until the rail lines are needed.

The work of the attorneys and professional staff of the Environment and Natural Resources Division never stops, and our efforts in fiscal year 2023 laid the groundwork for successes in fiscal year 2024 and beyond. For example, the United States recently announced a landmark Clean Air Act settlement with diesel engine maker Cummins Inc. that will require the company to pay a civil penalty of over \$1.6 billion for installing software in hundreds of thousands of engines to circumvent emission regulations—the largest civil Clean Air Act penalty in history. We also prosecuted the first hydrofluorocarbon (HFC) smuggling case following the 2020 passage of new climate authority for EPA. We look forward to highlighting these and other accomplishments in next year’s report.

**Todd Kim**  
**Assistant Attorney General**  
**Environment and Natural**  
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**U.S. Department of Justice**  
**April 19, 2024**



# Overview of the Environment and Natural Resources Division

The Environment and Natural Resources Division is responsible for bringing cases against those who violate the nation's environmental laws as well as defending the federal government in litigation arising under a broad range of environmental statutes. With offices across the United States, the Division is the nation's environmental lawyer, and the largest environmental law firm in the country.

*Photo Credit: ENRD*

Founded more than one hundred years ago, the Environment and Natural Resources Division has a distinguished record of legal excellence concerning the implementation, enforcement, and defense of landmark environmental statutes. ENRD has offices located in Washington, D.C., Denver, San Francisco, Sacramento, and other locations throughout the country. ENRD has the following eleven practice areas:

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### **Appellate Section**

- Handles appeals and petitions for review in the Division's cases in courts of appeals nationwide.
- Provides assistance to the Office of the Solicitor General in U.S. Supreme Court matters.

### **Environmental Crimes Section**

- Prosecutes individuals and corporations who violate federal environmental protection laws such as the Clean Water Act and the Clean Air Act.
- Brings criminal enforcement actions to protect wildlife and marine species under the Endangered Species Act and the Lacey Act, including to address illegal wildlife trafficking and logging.
- Prosecutes worker safety and animal cruelty cases.

### **Environmental Defense Section**

- Defends federal agency compliance with federal pollution control laws, and litigates federal facility and cleanup contribution claims.
- Handles the defense of Environmental Protection Agency rules and other actions in cases filed directly in the courts of appeals.
- Brings Clean Water Act and Rivers and Harbors Act enforcement cases to protect wetlands and other waters of the United States.

### **Environmental Enforcement Section**

- Brings civil actions to enforce the federal pollution control laws such as the Clean Air Act and Clean Water Act.
- Secures cleanup, cost recovery, and damages for injury to natural resources resulting from hazardous waste sites and oil spills under the Comprehensive Environmental Response, Compensation, and Liability Act (the Superfund law) and the Oil Pollution Act.



## **Executive Office**

- Provides operational management and administrative support, including in the areas of financial management, human resources, information technology, procurement, facilities, security, and litigation support.

## **Indian Resources Section**

- Represents the United States in litigation to protect tribal lands, resources, jurisdiction, and treaty rights.
- Handles suits safeguarding water rights and hunting and fishing rights, and confirming reservation boundaries and rights to land.
- Defends federal statutes, regulations, programs, and actions that benefit Indian Tribes and their members.

## **Land Acquisition Section**

- Acquires real estate for congressionally authorized public uses by filing condemnation actions in federal district courts.
- Enables development of flood protection projects, military training sites, park sites, federal buildings, and other important facilities and projects.

## **Law and Policy Section**

- Addresses cross-cutting issues, including by reviewing policies, regulations, legislation, and international matters potentially affecting the Division's work.
- Assists with filings of amicus briefs and certain other litigation.

## **Natural Resources Section**

- Defends lawsuits relating to the federal public lands and federal agency land management, as well as associated natural and cultural resources, under dozens of statutes such as the National Environmental Policy Act, the Outer Continental Shelf Lands Act, and the National Historic Preservation Act.
- Handles, in tandem with the Office of the Solicitor General, original actions filed in the U.S. Supreme Court that involve boundary and water allocation disputes.
- Defends suits brought under the Fifth Amendment seeking just compensation for alleged takings of real property.
- Represents a broad range of federal agencies ranging from the Forest Service and National Park Service to the Department of Transportation and Department of Defense.

## **Office of Environmental Justice**

- Coordinates the implementation of the Department's Comprehensive Environmental Justice Enforcement Strategy.
- Engages the Department in the collective pursuit of environmental justice.
- Builds partnerships with community advocates.
- Promotes the just treatment and meaningful involvement of all people in environmental decision-making processes.

## **Wildlife and Marine Resources Section**

- Defends cases alleging that federal agencies violated federal wildlife and marine species conservation laws, including the Endangered Species Act, Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, and Marine Mammal Protection Act.
- Brings affirmative civil cases to enforce these laws and laws relating to animal welfare.



# Advancing Environmental Justice

The Division and the Department of Justice as a whole worked to advance environmental justice across the country, consistent with the *Comprehensive Environmental Justice Enforcement Strategy* and under the coordination of the Division's Office of Environmental Justice. The Division's prioritization of efforts to assist overburdened and underserved communities is illustrated by ENRD's continued efforts in *United States v. City of Jackson* (S.D. Miss.) to enforce the Clean Water Act and protect the health and safety of residents in Jackson, Mississippi.

The Comprehensive Environmental Justice Enforcement Strategy, adopted in May 2022, directs the Department to prioritize enforcement in overburdened and underserved communities. These groups often include low-income communities, communities of color, and tribal and Indigenous communities. As part of implementing the strategy, ENRD continues to collaborate with other Divisions and Offices to provide training and community outreach resources to the entire Department, to foster awareness of environmental justice issues, marshal diverse legal authorities to address multiple facets of public health and welfare, and engage communities to inform our litigation and the relief that litigation secures.

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## **Implementation of the Environmental Justice Strategy**

The Department's environmental justice strategy sets forth principles and actions to ensure that the entire Department is working to secure environmental justice with the full set of legal tools at its disposal. In 2023 ENRD worked with the Environmental Protection Agency and other agencies to identify cases that address public health and environmental harms faced by overburdened and underserved communities. We then prioritized resolution of those cases where the likely relief would most effectively alleviate those harm. We used settlement tools such as supplemental environmental projects (SEPs). ENRD also held a listening session jointly with the Department's Civil Rights Division to solicit input from environmental justice stakeholders.

The Office of Environmental Justice (OEJ), housed within ENRD, coordinates implementation of the Environmental Justice Enforcement Strategy and engages the Department in the collective pursuit of environmental justice. OEJ does so by increasing the Department's environmental justice literacy and

expertise, building partnerships inside and outside of government, and fostering trust with communities. In 2023, OEJ, in collaboration with its partners, organized and sought out opportunities to directly engage with communities, in connection with specific cases and more generally.

Transparency is a critical element of the strategy. While there are confidentiality requirements that bear on litigation and settlement negotiations, communities with environmental justice concerns should be able to access information about the benefits achieved by the Department. The strategy requires OEJ to provide annual progress reports to the Deputy Attorney General. In 2023, OEJ and the Department's Environmental Justice Enforcement Steering Committee released the first-ever annual progress report. ENRD and our Department partners look forward to sharing the accomplishments, baseline metrics, and future targets in the next annual report.

ENRD continues to advance environmental justice through its enforcement work. In 2023, ENRD resolved several enforcement actions that helped communities with environmental justice concerns. Examples include:

In *United States v. Logan Square Aluminum Supply* (E.D. Ill.) the Division obtained a settlement requiring Logan Square Aluminum Supply Incorporated to implement a comprehensive lead-safety plan after customers complained about a project performed in Evanston, Illinois. To resolve alleged violations of the federal Lead Renovation, Repair, and Painting regulations, Logan Square will pay a \$400,000 penalty and perform \$2 million of lead-based paint abatement work in lower-income properties located in communities with higher incidence of childhood lead poisoning in the city of Chicago and surrounding suburbs. This settlement is especially important as millions of people, many who live in communities that have environmental justice concerns, continue to be exposed to lead at home and in other buildings where lead-based paint is found in deteriorating condition.

A federal grand jury in *United States v. Luis Enrique Rodriguez Sanchez* (D.P.R.) returned two indictments charging Luis Enrique Rodriguez Sanchez and Pedro Luis Bones Torres with Clean Water Act and Rivers and Harbors Act violations for depositing fill material into the Jobos Bay National Estuarine Research Reserve and the Las Mareas community of Salinas, Puerto Rico. Mr. Rodriguez Sanchez pleaded guilty on January 19, 2024. This case reinforces ENRD and its partners' commitment to protecting wetlands which protect communities from storm surges and hurricanes. The case was also the launching point for a brand-new environmental enforcement task force stood up by the U.S. Attorneys for Puerto Rico and the Virgin Islands, in partnership with ENRD and the FBI.

ENRD continued its efforts in *United States v. City of Jackson* (S.D. Miss.) to enforce the Clean Water Act and protect the health and safety of residents in the City of Jackson, Mississippi. In September 2023, the Division, the Mississippi Department of Environmental Quality, and the City of Jackson agreed to a stipulated order that addresses raw and undertreated sewage spills into homes, businesses, streets, and waterways. The order expedites needed sewer system repairs and brings the city's sewer system under control of an interim third-party manager. It also builds upon ongoing efforts to stabilize the city's drinking water system and deliver clean drinking water to Jackson communities, which have been disproportionately impacted by environmental harm and under-resourced city services. The agreement generated strong public participation, with almost 700 public comments collected via email, mail, and public meetings hosted by ENRD, the United States Attorney's Office, and other federal and state partners.



# Responding to the Climate Crisis

The Division continued its critical work on the front lines of the climate crisis, supporting the “whole-of-government” approach President Biden set forth in Executive Order 14,008. ENRD prioritized addressing greenhouse gas emissions and the impacts of climate change in its civil and criminal actions and other matters. For instance, as pictured above, the Division and federal partners this year announced the formation of a Timber Working Group to combat illegal timber trafficking and its serious climate effects.

*Photo Credit: DOJ*

## **Civil and Criminal Enforcement to Reduce GHG Emissions and Address Climate Change Impacts**

Many industrial and commercial facilities and activities generate significant amounts of greenhouse gas (GHG) emissions and thereby contribute to climate change, including chemical plants, natural gas processing, users of refrigerants, oil and gas production, refineries, and landfills. In 2023, key Clean Air Act and other enforcement actions that reduced GHG emissions included the below cases brought by ENRD's Environmental Enforcement Section and Environmental Crimes Section.

*Flaring cases.* Flaring is the process by which certain industrial plants burn off waste gases. Over more than a decade, the United States has targeted illegal flaring at chemical plants and refineries. This year, in *United States v. Coffeyville Resources Refining and Marketing LLC* (D. Kan.), the Division secured a resolution valued at more than \$23 million to address alleged violations of the Clean Air Act and a 2012 consent decree at a petroleum refinery in Coffeyville, Kansas. The settlement requires the installation of a \$9 million flare gas recovery system, which will reduce carbon dioxide from excessive flaring of waste gas, and the implementation of a \$1 million environmental project, designed to directly benefit Kansas citizens.

*Leak detection.* In collaboration with various states and the Southern Ute Indian Tribe, the Division finalized three Clean Air Act settlements with natural

gas processors (*United States v. The Williams Co.* (D. Colo.), *United States v. MPLX LP* (D. Utah), and *United States v. WES DJ Gathering LLC* (D. Colo.), requiring the companies to pay a combined \$9.25 million in civil penalties and undertake pollution control improvements valued at \$16 million. Each company committed to install equipment that leaks less, repair leaking equipment faster, and improve staff training for leak detection and repair. These efforts, along with other requirements set forth in the settlements, will reduce GHG emissions by 50,633 tons per year across 12 states and Indian Country. This reduction equates to taking 11,267 gasoline-powered passenger vehicles off the road for one year.

Other GHG emissions. Together with the New Mexico Environment Department, ENRD entered into Clean Air Act settlements with Mewbourne Oil Company and Matador Production Company, both oil and gas producers in the Permian Basin. The settlements, filed in the District of New Mexico, require each company to pay a civil penalty, implement a robust program of injunctive relief across its facilities, and implement projects to offset the environmental harm caused by the alleged violations. Specifically, Matador agreed to pay a civil penalty of \$1.15 million, and to spend no less than \$1.75 million on supplemental environmental projects involving diesel engine replacements and aerial monitoring. Mewbourne agreed to pay a civil penalty of \$5.5 million. Taken together, the agreements reduce emissions of methane—a GHG more than 28 times as potent as carbon dioxide at trapping heat in the

atmosphere—by a combined 17,100 tons over five years, among other air quality improvements.

As the United States relies increasingly on renewable energy sources, the Division and its enforcement partners work to ensure that efforts to expand renewable energy use are not tainted by fraud, and that renewable energy sources meet applicable requirements of environmental law.

*Renewable fuels.* Congress created programs to incentivize production of renewable fuels, including biodiesel, and to encourage the use of such fuels in the United States. Under the Clean Air Act, biodiesel producers and importers generate and attach credits, called renewable identification numbers (RINs), to biodiesel they produce or import. These RINs have significant market value, and efforts to undermine the system also undermine Congress’s climate-friendly purposes. In the case of *United States v. Ijomah Oputa* (D.D.C.), Oputa created a fake importing company and fraudulently generated RINs on volumes of biofuel that he claimed to have imported from foreign producers. No such imports actually occurred. Upon pleading guilty to wire fraud in connection with this scheme, Oputa was sentenced to serve 40 months in prison and to pay restitution in the amount of \$495,800 to victims of the scheme.

*Solar energy.* In cases filed in multiple district courts, the Division with state partners entered into consent decrees with the owners of and contractor-builder at large-scale solar farm construction sites in Alabama, Idaho, and Il-

linois. The decrees resolved violations of the Clean Water Act resulting from inadequate stormwater planning, inspections, and on-site management; and obtained injunctive relief where construction remained, site mitigation, and significant civil penalties.

ENRD is also committed to working with enforcement partners on climate change-related initiatives. Among these:

*Methane Enforcement Interagency Working Group (IWG).* Since a kickoff meeting in July 2023, the Department of Justice has held meetings at least bi-monthly with other members of the IWG. This group seeks to use the latest technologies in enforcement activities to detect unlawful venting, flaring, leaking, and catastrophic releases of methane. Member agencies are working to identify complementary methane management authorities, share information and training resources, and coordinate responses to large emissions events that violate the law. The IWG’s initial area of focus is the oil and gas sector.

*Hydrofluorocarbons (HFC) Task Force.* ENRD continued its participation in a multi-agency enforcement and prosecution initiative to prevent the illegal trade, production, use, and sale of climate-damaging HFCs. This effort complements EPA’s work to phase down the use of potent HFCs in refrigeration and air conditioning equipment, as required by the 2020 American Innovation and Manufacturing Act.



## **Civil and Criminal Litigation to Protect Natural Resources and the Environment**

The Division litigates to protect natural resources and the environment from the effects of climate change.

This work includes litigation on behalf of Tribes to ensure safe, sustainable homelands through the protection of reserved water rights and treaty hunting, fishing, and gathering rights. Persistent drought and changing climate patterns due to climate change have put more stress on critical water resources. Reserved water rights cases facilitate tribal resilience and adaptation to changing climate conditions by ensuring water for tribal development and use, food security, and other activities necessary for tribal homelands. For example:

*Tribal water rights.* In 2022, ENRD began the second phase of the Little Colorado River Water Rights Adjudication, advocating on behalf of the Navajo Nation. In 2023, trial was held on domestic, commercial, municipal, and light industrial and livestock claims for the Navajo. The trial lasted four months. The post-trial briefing before the Special Master is ongoing.

ENRD attorneys also helped negotiate the settlement of the Hualapai Tribe's water rights and related federal legislation. In 2023, Congress enacted legislation ratifying the agreement and allowing necessary funds for this settlement, which will provide the Tribe with water to sustain its permanent homeland on the

south rim of the Grand Canyon, protect the Tribe's groundwater from interference by neighboring users, and provide over \$300 million for the Tribe to develop water-related infrastructure.

ENRD's work also recognizes the importance of planning for the impacts of climate change when making long-term infrastructure improvements. For example, this year in the case of *United States v. Guam Waterworks Authority* (D. Guam), the Division entered into a consent decree with the Guam Waterworks Authority and government of Guam which requires the utility to take into account climate change resiliency and impacts such as flooding and sea-level rise in deciding how it will upgrade a wastewater treatment plant and pump stations throughout its wastewater collection system.

The Division also enforces laws that protect critical carbon "sinks," such as forests, soils, prairies, and wetlands. These natural resources serve additional beneficial purposes; for instance, wetlands protect and improve water quality, provide fish and wildlife habitats, store rising floodwaters, and maintain surface water flow during dry periods. Similarly, when ENRD's prosecutors enforce laws designed to stop the illegal flow of timber imports, they are protecting carbon sinks, fighting deforestation, and supporting legal, sustainable forest crops.

*Wetlands protection.* The Department routinely takes civil action against the unlawful filling of wetlands and files criminal enforcement actions in appropriate cases. The civil case of *United States v. Sweeney* (E.D. Cal.) concerns

the discharge of dredged or fill material to tidal-water channels and abutting wetlands marsh on an island, Point Buckler, within the greater San Francisco Bay. Following a favorable 2020 ruling on liability after a bench trial, in December 2022, the court awarded restoration and other relief.

*Timber trafficking. United States v. Quintana* (S.D. Fla.) is a timber trafficking case filed under the Lacey Act and other criminal statutes in April 2021. The case arose from fraud perpetrated to avoid tariffs on timber imports from China. Soon after a pre-indictment search of their premises, Noel and Kelsy Hernandez Quintana fled the United States, ultimately to Montenegro. In 2022, Department prosecutors and Office of International Affairs attorneys extradited the defendants from Montenegro. In 2023, the couple pleaded guilty to, among other offenses, conspiring to import hardwood plywood in violation of the Lacey Act and customs laws and conspiring to sell the illegally imported plywood.

Earlier this year, they were sentenced to 57 months in prison plus three years of supervised release and were ordered to pay more than \$42 million in forfeitures and \$1.6 million in storage costs for wood seized by the United States.

## **Climate-Related Defensive Litigation and Counseling**

ENRD defends agency regulations, resource management plans, and policy documents challenged in courts nationwide. Examples in 2023 related to climate change included:

*Greenhouse gas emissions.* The Division defended against challenges to Clean Air Act regulations and other EPA actions that limit emissions of GHGs, especially from new mobile sources (such as automobiles, trucks, and aircraft). Transportation is the largest source of GHG emissions in the United States. In 2023, ENRD defended in the D.C. Circuit EPA's GHG emission standards for model year 2023 and later light-duty vehicles in *State of Texas v. EPA*. In *State of Ohio v. EPA* (D.C. Cir.), we defended EPA's decision to restore California's authority to develop GHG emissions standards through its Advanced Clean Cars Program that are more stringent than EPA's standards. ENRD also defends challenges to EPA's implementation of the Clean Air Act's renewable fuels program.

*Hydrofluorocarbons.* The Division secured a partially favorable decision in challenges to EPA's regulations that established an allowance allocation and trading program to phase out HFCs. *Heating, Air-Conditioning, & Refrigeration Distributors Int'l v. EPA* (D.C. Cir.). Likewise, the Division secured dismissal of related challenges to EPA's HFC allowances for the 2022 and 2023 compliance years. *Williams v. EPA* (D.C. Cir.).

*Oil and gas leasing pause.* Section 208 of Executive Order 14,008 directed the Department of the Interior to pause oil and natural gas lease sales on public lands and in offshore waters to the extent consistent with applicable law, and to review existing leasing and permitting practices related to fossil fuel development. In 2023, ENRD continued to defend multiple challenges alleging that Section 208 and related actions by the Department of

the Interior violate various federal laws, including in *Louisiana v. Biden* (W.D. La.), *American Petroleum Industry v. Interior* (W.D. La.), *North Dakota v. Interior* (D.N.D.), *Wyoming v. Interior* (D. Wyo.), and *Western Energy Alliance v. Interior* (D. Wyo.). ENRD prevailed in two of these cases on the merits, obtained a voluntary dismissal in a third, and secured favorable holdings along the way confirming the Department of the Interior’s duty and discretion to conduct environmental analyses—including analysis for climate impacts—prior to undertaking oil and gas lease sales. Simultaneously, the Division is defending against several lawsuits challenging Interior’s issuance of new oil and gas leases and related authorizations, including by defending the adequacy of Interior’s new methods for analyzing climate impacts of project-related GHG emissions. These include *Dakota Resource Council v. Interior* (D.D.C.), where the plaintiffs challenged the first oil and gas lease sales to be held following Interior’s review of its leasing and permitting practices pursuant to Executive Order 14,008.

*Wind energy.* Section 207 of Executive Order 14,008 directs Interior to identify steps to double, consistent with applicable law, renewable energy production from offshore wind by 2030. The Division handles litigation relating to the permitting and siting of such renewable energy infrastructure. In 2023, ENRD continued to defend against several challenges to the approval of construction and operation of Vineyard Wind, located 12 nautical miles offshore of Martha’s Vineyard and Nantucket, Massachusetts, and of South Fork Wind, located 30 nautical miles offshore of Long Island, New

York. For Vineyard Wind, we successfully achieved summary judgment in favor of the government in four district court cases. Also, in *Save Long Beach Island v. Interior* (D.D.C.), we successfully concluded a challenge to the Bureau of Ocean Energy Management’s identification of areas in the New York Bight, located offshore of New Jersey and Long Island, for potential wind energy leasing. Relatedly, in *Save Long Beach Island v. Commerce* (D.N.J.), we are defending a challenge to the National Marine Fisheries Service’s issuance of authorizations for the nonlethal “take” of small numbers of marine mammals during offshore wind development in the New Jersey and New York coastal regions.

*Geothermal energy.* In 2023, ENRD continued its defense of federal actions related to the development of geothermal energy resources that would assist western states in meeting state standards requiring electricity providers to obtain a certain percentage of power from renewable energy resources. Division attorneys achieved a dismissal of challenges to the Dixie Meadows Geothermal Development Project, planned for northwestern Nevada. We are similarly defending against a challenge to the Gerlach Geothermal Exploration Project, also planned for northwestern Nevada. The project would provide information on whether geothermal resources in the area can support commercial energy production.

*Availability of critical minerals.* The Division defends other agency decisions critical to the nation’s response to the climate crisis. For example, ENRD obtained a largely favorable result in a set of chal-

lenges to the Bureau of Land Management's (BLM's) approval of the Thacker Pass lithium mine's plan of operations. Lithium is a mineral crucial to battery production for electric vehicles and other energy storage infrastructure.

In *Western Watersheds Project v. McCullough*, for example, the Ninth Circuit agreed with our arguments that BLM's approval of the mine's plan was largely consistent with federal law. On the one issue on which the district court found the plan deficient, the Ninth Circuit affirmed the district court's decision to remand the matter to the agency without vacating the plan, thus allowing work on the mine to proceed while BLM completed the remand.

*International capacity building.* The Division plays critical counseling and technical assistance roles in the international realm, including working on criminal justice matters in international fora, such as INTERPOL. The Division has been particularly focused on transnational capacity-building to detect and prosecute timber trafficking offenses. This is the third most lucrative form of transnational organized crime.

In April 2023, the Department formalized some of this work, by standing up a Timber Working Group. This interagency collaboration targets available resources across the federal government to identify and investigate complex timber trafficking cases domestically and transnationally; develop new tools to investigate and prosecute timber trafficking cases; and build the capacity of partner governments worldwide to combat this devastating illegal trade.



# Civil Litigation to Protect Our Air, Land, Water, and Wildlife

ENRD enforces the Clean Air Act, Clean Water Act, and other environmental laws to protect public health and the environment and uphold the rule of law. In early 2024, for instance, the United States announced a landmark settlement with diesel engine maker Cummins Inc. for alleged violations of the Clean Air Act, including the use of software “defeat devices” that circumvented emissions testing and certification requirements. Cummins agreed to pay \$1.675 billion, the largest civil penalty ever under the Clean Air Act. The team is pictured above with the Division’s Assistant Attorney General (AAG) Todd Kim and EPA Assistant Administrator David Uhlmann.

## Metrics

While dollar figures do not capture the full value of the emission reductions, environmental restoration, and deterrence secured through our work, they do provide some indication of its scope and importance. In 2023, ENRD secured:

- \$2.3 billion—in value of injunctive relief, in orders for environmental cleanup and for securing compliance with pollution control laws and mitigation of harm from past violations;
- \$129 million—in civil and stipulated penalty payments that will deter defendants and others similarly situated from committing similar violations and level the playing field for those that complied;
- \$216 million—in cost recovery of United States expenditures on environmental cleanups; and
- \$23 million—in recoveries for damages to natural resources.

## Protecting the Air We Breathe

ENRD enforces the Clean Air Act in actions that target both stationary and mobile sources of air pollution. Our efforts reduce emissions of conventional and hazardous pollutants that contribute to adverse health and environmental effects such as chronic disease and climate change.

The Clean Air Act regulates air pollution generated by many types of stationary

facilities: for instance, power plants, chemical factories, and oil refineries. Some of the facilities produce, process, handle, or store extremely hazardous substances. ENRD enforces the Act and implementing regulations against companies that fail to comply with their obligation to operate these facilities safely and avoid accidental releases. In 2023, for example:

*United States v. BP Products North America Inc.* (N.D. Ind.). The Division and co-plaintiff State of Indiana reached a settlement with BP Products North America Inc. to resolve Clean Air Act claims and address excess emissions of benzene, other hazardous air pollutants (HAPs), and volatile organic compounds (VOCs) at the company's Whiting Refinery in Indiana. BP Products will implement injunctive relief valued at more than \$197 million and pay a record-setting penalty of \$40 million. BP Products will also spend \$5 million to replace diesel transportation vehicles, such as school buses, owned by local governments and non-profits with cleaner fuel vehicles as part of a supplemental environmental project. The settlement will reduce emissions of the HAPs and VOCs by 400 tons per year and require the installation of air monitoring stations in the community, outside the refinery fence line. Data from the monitoring stations will be made available to the public. The communities surrounding the Whiting Refinery have environmental justice concerns and the case team shared informational materials about the settlement with local community groups.

*United States v. Ingredion Inc.* (S.D. Ind.). The Division and State of Indiana secured a settlement valued in excess of \$8 million settlement with plant-based ingredient maker Ingredion to resolve claims that it violated the Clean Air Act at its corn wet milling facility in Indianapolis. Ingredion agreed to pay a civil penalty of \$1,139,600 and invest nearly \$7 million to reduce (and offset past harm from) emissions of particulate matter, microscopic solids or liquid droplets that can contribute to respiratory illness.

*United States v. Globe Metallurgical, Inc.* (S.D. Ohio). The Division reached a settlement with Globe, a ferroalloy production facility located in Beverly, Ohio. Globe will pay a civil penalty of \$2.6 million and spend an estimated \$6.5 million on new and improved air pollution emissions controls to settle alleged violations of the Clean Air Act. The company also will limit the sulfur content of inputs in its metal production process. Emissions of sulfur dioxide and particulate matter emitted from Globe's operation of five electric arc furnaces may cause adverse environmental and health impacts, including lung disorders such as asthma and bronchitis.

*United States v. Multistar Industries* (E.D. Wash). The Division won a bench trial focusing on violations of the Clean Air Act's risk management requirements at Multistar's facility in Othello, Washington. These requirements aim to minimize or prevent catastrophic chemical accidents at facilities that handle hazardous substances. The court imposed a civil penalty of \$850,000 and required 5 years of semi-annual reporting.

ENRD also enforces the Clean Air Act to address pollution from mobile sources. In 2023, the Division handled several matters related to non-compliant equipment and devices, including diesel engines in trucks, trains, and non-road cranes.

*United States v. eBay Inc.* (E.D.N.Y.). The Division filed an action against eBay for unlawfully selling and distributing hundreds of thousands of products in violation of the Clean Air Act and other laws. The complaint alleges that the e-commerce company offered for sale or caused the sale of more than 343,000 aftermarket defeat devices, which interfere with or disable motor vehicle emissions controls. These devices significantly increase emissions of pollutants that endanger the health of the environment and public such as carbon monoxide, nitrogen oxides, and particulate matter. The complaint further alleges that eBay also sold thousands of illegal pesticides and other chemicals, thereby violating other federal laws.

*United States v. Cummins Inc.* (D.D.C.). In early 2024, the United States announced a landmark settlement with diesel engine maker Cummins Inc. for alleged violations of the Clean Air Act and California law. The settlement's \$1.675 billion civil penalty is the largest penalty ever obtained in a Clean Air Act case and the second largest civil environmental penalty in history, after the one imposed for the Deepwater Horizon oil spill disaster. Cummins also will spend more than \$325 million to remedy the violations, including for: a nationwide recall to repair/replace the emission control software in more than

600,000 pickup trucks; mitigation projects to reduce excess ozone-creating nitrogen oxides; and the establishment of internal procedures to prevent future emissions cheating.

*United States v. Genesee & Wyoming Railroad Services* (D. Del). The Division secured a \$42 million settlement with Genesee & Wyoming Railroad Services Inc. and numerous affiliated companies to resolve violations of Clean Air Act locomotive regulations. The settlement requires that the company bring its fleet of locomotives into compliance with air pollution requirements. The compliance measures include removing 88 older, higher-polluting locomotives from service. The requirements imposed by the consent decree will reduce nitrogen oxide and particulate matter emissions that contribute to health threats in communities along railroad corridors.

*United States v. Tadano Limited* (S.D. Tex.). The Division announced a \$40 million settlement with the Japan-based Tadano Limited and its subsidiaries, collectively known as the Tadano Group. The settlement resolves allegations that the Tadano Group violated the Clean Air Act by importing non-road cranes with diesel engines not certified to applicable emission standards. The Tadano Group also will offset some of its illegal emissions by securing retirement and replacement of a commercial tugboat with outdated diesel engines. The newer vessel's power plant will emit less pollution as it services ships in Port Arthur, Texas. The port is near low-income communities.

## **Protecting Our Nation's Waters**

To enforce the Clean Water Act, the Division brings actions to address discharges of harmful chemicals and pollutants into our waterways. The sources of water pollution that we address include untreated sewage from municipal wastewater systems, storm-water runoff from industrial facilities, and oil spills from pipelines and storage facilities. Our work aims to reduce water pollution that threatens the health of our nation's waters and the communities that depend upon them. ENRD's accomplishments in 2023 include:

*United States v. City of Holyoke & United States v. City of Gloucester* (D. Mass.). In collaboration with the Commonwealth of Massachusetts, the Division obtained settlements with two cities in Massachusetts. The settlements resolve violations of the Clean Water Act regarding discharges into waterways including the Connecticut River and Massachusetts Bay. The City of Holyoke has agreed to spend an estimated \$27 million to implement additional remedial measures, including sewer separation, to reduce ongoing sewage and contaminated storm water discharges. The City of Gloucester will undertake a construction project to add secondary treatment, a process that breaks down harmful elements in sewage, to its water pollution control facility. The remedial measures are expected to cost more than \$150 million.

*United States v. ABF Freight System, Inc.* (W.D. Ark.). Working with the States



of Louisiana, Maryland, and Nevada, the Division reached a settlement with ABF Freight System to resolve claims that the company violated Clean Water Act requirements relating to industrial stormwater. The freight carrier, which operates more than 200 facilities across 47 states and Puerto Rico, agreed to enhance and implement nationwide a comprehensive stormwater compliance program. ABF Freight System also agreed to pay a civil penalty of \$535,000.

*United States v. HVI Cat Canyon, Inc.* (C.D. Cal.). In another favorable outcome, the district court found that the gross negligence of HVI Cat Canyon (formerly known as Greka Oil & Gas) resulted in 12 oil spills into waters of the United States. The spills discharged approximately 27,000 barrels of crude oil and a briny waste byproduct of oil production called produced water. The court ordered the oil company to pay the United States and the State of California a combined total of \$65 million for cleanup costs, natural resource damages, and civil penalties.

*United States v. Belle Fourche Pipeline Co.* (D.N.D) & *United States v. Bridger Pipeline LLC* (D. Mont.). The Division secured a settlement with Belle Fourche and Bridger, affiliated companies that own and operate a network of crude oil pipelines. The settlement resolves alleged violations of the Clean Water Act, as well as of Montana and North Dakota state laws related to oil spills and pipeline safety. In 2015, Bridger's Poplar Pipeline ruptured where it crosses the Yellowstone River in Montana. The Yellowstone River is the longest free-flowing river in the lower 48 states and has historic,

recreational, and economic significance for communities along its banks. In late 2016, Belle Fourche's Bicentennial pipeline ruptured in Billings County, North Dakota, resulting in the discharge of approximately 14,400 barrels of oil into an unnamed tributary to Ash Coulee Creek, Ash Coulee Creek itself, and the Little Missouri River. The companies agreed to pay a combined \$12.5 million civil penalty and to implement measures to prevent future spills.

*United States v. Electron Hydro, LLC* (W.D. Wash.). The Division achieved a victory at the summary judgment phase on claims that Electron Hydro violated the Clean Water Act at its power generating facility along the Puyallup River. The court also found that the chief operating officer and manager of Electron Hydro was liable for the violations, both because he was personally involved in the violations and because he was responsible for them under the responsible officer doctrine. The violations related to the illegal installation of artificial turf during the construction of an in-river diversion channel, and the subsequent discharge of turf and crumb rubber downstream when a portion of the project ruptured. The later company agreed to perform significant remedial measures and pay a \$1,025,000 civil penalty. The Puyallup Tribe of Indians, who joined as plaintiff-intervenors, have fished the river from time immemorial and have treaty-reserved fishing and water rights in the River that they consider essential to their members' existence and culture. The river is also home to Chinook salmon, bull trout, and steelhead trout, which are all protected under the Endangered Species Act.

*United States v. FrieslandCampina Ingredients North America, Inc.*, (N.D.N.Y.). The Division and the State of New York entered into a settlement with food products manufacturer FrieslandCampina Ingredients to resolve violations of the Clean Water Act, the Clean Air Act, and New York State law. The company agreed to pay a civil penalty of \$2.88 million and implement a supplemental environmental project (SEP)—expected to cost \$1.44 million—at its facility. The SEP will reduce groundwater withdrawals needed for Friesland’s operations and the volume of heated water discharges into the Delaware River, which will enhance native trout habitat. This is the first consent decree to include a non-diesel SEP since Attorney General Merrick Garland revived their use in 2022.

*United States v. State of New Hampshire* (D.N.H.). The Division reached an agreement that requires the Powder Mill State Fish Hatchery, New Hampshire’s largest fish hatchery, to comply with Clean Water Act permits and take actions to reduce phosphorous in its discharges that contributes to eutrophication and the growth of toxic cyanobacteria in the Merrymeeting River. Under the settlement, the New Hampshire Fish and Game Department must upgrade this facility, including constructing new wastewater treatment systems, and conduct water quality assessments in downstream waters.

## **Wetlands and Related Enforcement**

ENRD’s Environmental Defense Section brings civil enforcement actions under the Clean Water Act to respond to illegal filling of wetlands and other waters of the United States. These cases often present difficult and fact-intensive questions regarding the nature of the illegal actions taken by the defendants, the presence of ecological indications of wetlands on the subject property, and the connection between those wetlands and adjacent and downstream waterways. Injunctive relief helps to restore the damage from these illegal activities, and civil penalties serve to deter future violations.

Relatedly, we enforce the Rivers and Harbors Act in response to illegal construction in wetlands and other waters of the United States.

During 2023, the Division secured numerous favorable settlements and court decisions in a wide variety of these cases. Examples include:

*United States v. Andrews* (D. Conn.). In this case involving unauthorized discharges into wetlands at a site in Wallingford and North Bradford, Connecticut, the Division secured a favorable liability decision at the summary judgment phase. The court found that the relevant wetlands were protected by the Clean Water Act, after considering the Supreme Court’s decision in *Sackett v. EPA*.

*United States v. Petroff Trucking Co.* (S.D. Ill.). In this enforcement action concerning unauthorized filling of wetlands adjacent to the Cahokia Canal, a tributary of the Mississippi River, the Division secured a consent decree providing for the purchase of mitigation bank credits. The purchase indirectly provides compensation for the loss of wetlands by creating or restoring wetlands in a different location.

*United States v. Maslonka* (E.D. Wash.). In this case, the Division secured restoration, mitigation, and a civil penalty in a consent decree resolving violations impacting a tributary of the Pend Oreille River near Cusick, Washington.

*United States v. Robert Yundt Homes* (D. Alaska). In this case, the Division secured restoration, mitigation, and payment of a civil penalty in a consent decree resolving violations that impacted a site in Wasilla, Alaska.

*United States v. Waco Oil & Gas Co.* (N.D. W.Va.). This case arose from the unauthorized discharges into streams and wetlands in Sutton, West Virginia. The Division resolved the matter in a consent decree that required restoration, mitigation, and payment of a substantial civil penalty.

*United States v. Abbott* (S.D. Tex.). In this Rivers and Harbors Act case, the United States filed a lawsuit to address the State of Texas's unauthorized placement of floating barriers in the Rio Grande River. The court granted a preliminary injunction, which is on appeal.

## **Enforcing Solid and Hazardous Waste Handling Requirements**

ENRD holds producers, storers, and disposers of solid and hazardous waste accountable by enforcing the requirements of the Resource Conservation and Recovery Act.

*United States v. JR Simplot Co.* (D. Idaho). The Division reached an agreement with J.R. Simplot Company addressing waste management, air emissions, and reporting violations at its facility in Idaho. Under the settlement, the fertilizer manufacturer agreed to replace cooling towers with lower-emitting cooling ponds, make process changes to the facility to reduce waste and enable recycling and reuse of phosphate, and invest in efforts that ensure stability and containment of the facility's gypstack (a massive mound that contains waste byproducts from the manufacturing of phosphate fertilizers). The agreement also requires Simplot to dedicate funding for environmentally sound closure of the facility in the future so that taxpayers will not bear these costs (initially estimated at \$108 million). Simplot also agreed to pay a \$1.5 million civil penalty and secure a \$200,000 project that addresses habitat degradation on the Portneuf River, caused in part from past excess phosphorous released from the facility's gypstack.

## **Cleaning Up Contaminated Sites for Reuse**

Under the Comprehensive Environmental Response, Compensation, and Liability Act, the Division requires responsible parties to clean up hazardous substances and reimburse the government for cleanup costs it has incurred. This ensures that polluters, not taxpayers, pay for cleaning up contamination and enables abandoned sites to be put to productive use.

*United States v. Norfolk Southern Railway Co.* (N.D. Ohio). The Division, in coordination with the U.S. Attorney's Office for the Northern District of Ohio, took swift action against Norfolk Southern by filing a complaint on March 30, 2023, to address a February 2023 train derailment in East Palestine, Ohio. The derailment resulted in the release of toxic chemicals into the air, soil, and water, endangering people in the surrounding communities. The complaint seeks a declaratory judgment on liability for past and future costs incurred under the Comprehensive Environmental Response, Compensation, and Liability Act. It also seeks relief under the Clean Water Act for alleged unlawful discharges of pollutants, oil, and hazardous substances into waters of the United States.

*In re Maxus Energy Corporation* (Bankr. D. Del.). Under a payment structure ENRD negotiated in a bankruptcy proceeding, approximately \$160 million was paid to the Environmental Protection Agency and federal natural resource trustees relating to contamination, cleanup, and natural resource damages

at the Diamond Alkali Superfund Site in New Jersey. Additionally, about \$23 million was paid to an environmental response trust established to fund remedial and restoration activities at the Site.

## **Restoring Natural Resources**

On behalf of federal natural resource trustees, such as the Fish and Wildlife Service and the National Oceanic and Atmospheric Administration, the Division recovers compensation for harm to natural resources, including wildlife and their habitat, caused by releases of oil and other substances. The trustees use these recoveries to mitigate those harms.

*United States v Wyeth Holdings LLC* (D.N.J.). On behalf of federal trustees and the New Jersey Department of Environmental Protection, the Division reached a settlement resolving natural resource damage claims relating to the American Cyanamid Superfund Site in Bridgewater, New Jersey. Under the agreement, Wyeth will undertake and fund the "Duke Farms Forested Floodplain Restoration Project," which will restore 112 areas of filed farmland located upstream on the Raritan River to a natural habitat. Wyeth will also reimburse the trustees an estimated \$315,000 in assessment costs and pay \$360,000 in oversight costs.

*United States v Massachusetts Electric Co. d/b/a National Grid* (D. Mass.). The Division reached an agreement with National Grid to resolve claims for natural resource damages from releases of hazardous chemicals. A plant owned by National Grid's predecessor released

coal tar that caused injury to fish, benthic, and avian habitats in Gloucester Harbor during its operations between the years of 1854 and 1952. Under the settlement, National Grid agreed to pay \$5.3 million to compensate the public for natural resource injuries and \$80,000 to reimburse federal and state trustees for damage assessment costs.

## **Enforcing Court Judgements**

The Division also demonstrated its commitment to enforcing court judgments.

*United States v. Southern Coal* (4th Cir.). The Fourth Circuit affirmed the Western District of Virginia's decision ordering Southern Coal to comply with a consent decree entered by the district court in 2016. The 2016 consent decree resolved allegations of approximately 23,700 Clean Water Act violations. The Fourth Circuit agreed that the decree's plain language obligated Southern Coal to maintain National Pollutant Discharge Elimination System permits, and the court refused to allow Southern Coal to circumvent this requirement by not applying to renew permits. Under the judgment, Southern Coal must pay stipulated penalties of \$2,544,000.



# Enforcing the Nation's Criminal Pollution and Wildlife Laws

The Division's criminal prosecutors and specialized litigation support team work closely with their counterparts at United States Attorneys' Offices and with federal, state, and local law enforcement officers. The work is diverse. It addresses willful, knowing, and criminally negligent violations of pollution, wildlife, and worker safety laws. This year, for instance, the Division prosecuted a Clean Air Act case involving a negligent release of 24,000 pounds of highly toxic methyl mercaptan from the plant pictured above. The release killed four company employees. DuPont and a LaPorte, Texas plant operations manager pleaded guilty, resulting in a \$12 million criminal fine and \$4 million community service payment.

*Photo Credit: Chemical Safety Board*

## **Prosecuting Violations of our Pollution Laws**

The Division's criminal program was built around pollution crimes: knowing violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Clean Air Act. The Division prosecuted cases in each of these categories in 2023.

*United States v. Luis Enrique Rodriguez Sanchez & United States v. Pedro Luis Bones Torres* (D.P.R.). In 1981, the National Oceanic and Atmospheric Administration designated 2,800 acres in Puerto Rico as a National Estuarine Research Reserve. Comprised of 15 tear-shaped mangrove islands, the reserve extended inland from the mouth of Jobos Bay. Despite its protected status, in recent years it has suffered a rash of illegal development, with individuals clearing mangroves, depositing fill material into wetlands, and building illegal docks, boat ramps, and other structures. Many of these properties were then rented out as vacation sites. In the first two of several investigations into these conversions, Rodriguez Sanchez and Bones Torres were each indicted for illegally filling wetlands and for building structures within the navigable waters of the United States without authorization.

*United States v. E.I. du Pont de Nemours and Co.* (S.D. Tex.). At Dupont's pesticide plant in LaPorte, Texas, a negligent release of 24,000 pounds of highly toxic methyl mercaptan killed four company employees. In a prosecution led by the U.S. Attorney's Office for the Southern District of Texas, DuPont pleaded guilty

to violating the Clean Air Act and was sentenced to pay a \$12 million criminal fine and make a \$4 million community service payment to benefit air quality in the affected area. The operations manager pleaded guilty to the same charge.

*United States v. Anthony Gilstrap* (D. Haw.). Gilstrap violated the Resource Conservation and Recovery Act by contracting to remove 35 drums of the hazardous waste perchloroethylene from a dry-cleaning operation in Honolulu. Upon learning that the dry cleaner had an accumulated waste problem, he offered to take it away at a steep discount and with no questions asked. He did not use required safeguards like a hazardous waste manifest, which traces waste from its source to its ultimate disposal site. Gilstrap moved the drums to a warehouse he controlled and stored them there for months without a required permit. Later, when government officials asked about the drums, he forged a manifest that falsely indicated that he had shipped them to Oregon. Upon pleading guilty to violating the hazardous waste management laws, Gilstrap was sentenced to serve a 60-month term of incarceration.

*United States v. Rene Morales and Hector Vasquez* (D. Nev.). The dangers and risks arising from removal of asbestos from older buildings have been known for decades. As such, it is remarkable that individuals and companies continue to renovate buildings and otherwise remove asbestos without complying with federal law. Morales's firm was hired to renovate a

Las Vegas warehouse into a facility suitable for growing marijuana. Both Morales and Vasquez—the superintendent he hired for the renovation project—were aware of a survey noting the presence of asbestos in the warehouse. Nevertheless, the defendants hired untrained workers to remove asbestos-containing drywall and ceiling texture, without employing any abatement measures. This resulted in the release of asbestos fibers into the air, placing workers and the community in imminent danger from inhalation of the toxic fibers. Defendants instructed the workers to place the debris in bags labeled “ASBESTOS.” The workers ultimately left 150 unsealed bags of asbestos-containing material in a corner of the warehouse. When inspectors came to the site, the defendants attempted to blame a third party for the illegal removal. Both men pled guilty to Clean Air Act violations, and each was sentenced to serve 6 months in prison.

*United States v. Integral Hygienic Solutions Inc. d/b/a TruClean* (S.D. Cal.). At the beginning of the pandemic, the owners of TruClean applied their own labels to bottles of chemical products purchased from another company, then marketed, sold, and distributed the newly re-labeled products as effective against COVID. The company falsely claimed that its product, TruClean 365, eliminated bacteria and viruses on treated surfaces for one year with a single application. The company also falsely claimed that it submitted its product to the antimicrobials division at the Environmental Protection Agency for testing and that the agency validated their claim of effectiveness through

“rigorous testing.” The company pleaded guilty to wire fraud and violating the Federal Insecticide, Fungicide, and Rodenticide Act. TruClean was sentenced to a five-year term of probation and to pay \$823,669 in restitution to victims.

ENRD continued to address criminal violations related to mobile sources of air pollution. In addition to targeting companies that cheated to improve their ability to sell new vehicles, we also targeted companies that sold “aftermarket defeat devices” for installation in previously purchased vehicles.

*United States v. GDP Tuning* (D. Idaho). GDP Tuning LLC and Custom Auto of Rexburg LLC bought and sold devices and software that allowed customers to reprogram or “tune” a vehicle’s on-board diagnostic systems so that the removal of a vehicle’s emissions control equipment would not be detected. Removing a truck’s emissions controls—known as “deleting”—can increase nitrogen oxide emissions from a diesel engine by up to 310 times. This also can increase the engine’s emissions of non-methane hydrocarbons by up to 1,400 times, its emissions of carbon monoxide by up to 120 times, and its emissions of particulate matter by up to 40 times. EPA estimates that emissions control equipment in more than 500,000 diesel pickup trucks in the United States have been illegally deleted. The two companies and their owner pleaded guilty to Clean Air Act-related violations, including conspiracy and tampering with the monitoring device of an emissions control system of a diesel truck. Under



the plea agreement, the defendants agreed to pay a \$1 million criminal fine. The owner also faces up to two years in prison.

*United States v. Doe Corporation* (7th Cir.). ENRD also litigates cutting-edge issues of criminal procedure. In this case, the Division obtained an important victory regarding the scope of a grand jury's investigative power. The district court had quashed a grand jury subpoena seeking video surveillance footage of the execution of a search warrant at a business under investigation for potential violations of a pollution control statute. After the investigation, the company accused the agents of serious misconduct in violation of the company's Fourth Amendment rights and offered still images to support its accusations.

The issue was novel, but the Seventh Circuit agreed with the United States. In reversing the district court, it reasoned that "it is well within the legitimate purview of the grand jury to inquire about the manner in which evidence was collected."

## **Maintaining the Health of our Oceans**

Every year, the Coast Guard and ENRD track down and punish those who illegally dump oil and other waste into the ocean and then falsify their records to cover up what they have done. Since 1989, the Division has brought criminal cases against over 400 defendants (corporate and individual) for vessel pollution crimes. As of 2023, monetary penalties totaled just under \$800 million dollars and prison sentences totaled 38

years. Here are examples from ports around the country this year:

*United States v. Zeus Lines Management S.A.* (D.R.I.). Zeus Lines Management, operator of the oil tanker *M/V Galissas*, pleaded guilty to failing to maintain an accurate oil record book in violation of the Act to Prevent Pollution from Ships (the record book did not record/reflect discharges of oily bilge water directly into the ocean). It also pleaded guilty to failure to report a hazardous condition on board the ship in violation of the Ports and Waterways Safety Act for sailing into a United States port with an inoperable inert gas generator. Zeus was sentenced to pay a \$1,687,500 criminal fine and make a \$562,500 community service payment to the National Fish and Wildlife Fund. Zeus must also complete a four-year term of probation to include implementing an environmental compliance plan with third party monitoring. The captain and chief engineer of the *Galissas* also pleaded guilty and were sentenced to terms of probation.

*United States v. Denys Korotkiy* (S.D. Cal.). Upon conviction by a jury for failure to maintain an accurate oil record book, obstruction of justice, and conspiracy, *M/V Donald* chief engineer Denys Korotkiy was sentenced to one year and one day of incarceration. The chief engineer ordered his crew to transfer oily bilge water directly into the ocean through the vessel's sewage tank. He then obstructed the Coast Guard's investigation of the matter. The ship's operator, Interunity Management (Deutschland) GmbH, relatedly pleaded guilty to maintaining false and

incomplete records and was sentenced to a total monetary penalty of \$1.25 million (including a \$312,500 community service payment to benefit the Tijuana River National Estuarine Research Reserve). The company must also complete a four-year term of probation that includes an environmental compliance plan.

*United States v. Zeaborn Ship Management (Singapore) PTE Ltd.* (S.D. Calif.). Zeaborn, operator of the *M/V Star Maia*, pleaded guilty to violations arising out of direct discharges of oily bilge water into the ocean through the general services pump, as well as overboard discharges of garbage, including plastics and oily rags. Zeaborn was sentenced to pay a total monetary penalty of \$2 million (\$1.5 million fine; \$500,000 community service payment), and to complete a four-year term of probation that includes an environmental compliance plan. The chief engineer of the *Star Maia* also pleaded guilty for his role in the crime and was sentenced to a two-month term of incarceration.

*United States v. Clipper Shipping A.S.* (S.D. Tex.). Clipper Shipping A.S. was sentenced to pay a \$1.5 million fine, complete a four-year term of probation, and implement an environmental compliance plan with third party monitoring. The crew of the *M/T Clipper Saturn* made illegal transfers of bilge water through the grey water system and then overboard, bypassing pollution prevention equipment.

## **Stopping Environmental Crime at Our Border**

In 2020, ENRD began coordinating with EPA, the Department of Homeland Security, and the U.S. Attorney's Office for the Southern District of California to target smugglers who bring banned pesticides into California from Mexico. These products—used in illegal marijuana grow sites, livestock farming, and beekeeping, among other applications—pose serious dangers to humans and the environment. The crime most often charged in these cases is smuggling based on violations of the Federal Insecticide, Fungicide, and Rodenticide Act. In 2023, ENRD obtained six convictions, bringing the total number of convicted defendants under this program to 61, with seizure and destruction of over 1,900 containers of pesticides.

## **Protecting our Wildlife and Natural Resources**

The Division works with state, tribal, and federal law enforcement to protect natural resources taken in violation of laws of a state, Tribe, or foreign nation. The Lacey Act makes illegal trafficking in these wildlife resources a felony, and the statute can be a powerful tool when investigators collaborate to address cross-boundary violations. The Endangered Species Act helps ensure the survival of threatened and endangered fish, wildlife, and plants. As criminals must hide illegal harvests from conservation officers and other law enforcement agents, prosecutors often bring obstruction and fraud charges.

*Operation Fishing for Funds* (W.D. Mich.). In response to the decline of lake trout populations in the Great Lakes, federal, state, tribal, and foreign entities took expensive actions to reestablish the fishery. Extensive over-fishing continued to harm the restoration efforts and led to a series of prosecutions through Operation Fishing for Funds. One such prosecution involved Robert Jensen, and his son, Joseph, enrolled members of the Sault Ste. Marie Tribe, who commercially fished Lake Michigan pursuant to licenses issued by their Tribe. Working with James and Michael Hermes, who ran a non-tribal fish wholesaler called Garden Bay Fisheries, the Jensens repeatedly harvested lake trout in excess of established daily trip limits. These fish were purchased by the Hermes, who sold them in interstate commerce. To conceal the illegal conduct, the Jensens falsified the monthly catch reports filed with the Tribe and the Hermeses falsified the wholesale reports filed with the State of Michigan. All defendants pleaded guilty to violating the Lacey Act and, the defendants' sentences included restitution payments to the Fish and Wildlife Service National Fish Hatchery System totaling more than \$400,000.

*United States v. Christopher Winkler* (E.D.N.Y.). A jury convicted Christopher Winkler, captain of the *F/V New Age* of conspiracy, mail fraud, and obstruction of justice for illegally overharvesting 200,000 pounds of fluke and black sea bass.

*United States v. FeelGood Natural Health Stores, Ltd.* (E.D. Mich.). FeelGood Natural Health Stores pleaded guilty to a Lacey Act violation for

shipping harp seal oil pills from Canada to the United States, knowing that importing marine mammal products such as seal oil without a permit is prohibited by the Marine Mammal Protection Act.

*United States v. Stanlee Fazi* (E.D. Va.); *United States v. Tony Lee Coffman* (S.D. Ohio). In these two cases the Lacey Act served as the basis of prosecution for resources taken in violation of a state law and then sold in interstate commerce. Stanlee Fazi was sentenced to imprisonment after pleading guilty to illegally trafficking in eastern box turtles taken in violation of Virginia law. Fazi bound the turtles and placed them in socks for shipment to various states. Tony Coffman was fined \$50,000 and sentenced to home confinement for illegally transporting and selling wild American ginseng taken in violation of Ohio law.

In April 2023, the Division hosted a Timber Trafficking Enforcement Roundtable to announce the creation of the Timber Interdiction Membership Board and Enforcement Resources (TIMBER) Working Group. The purpose of the TIMBER Working Group is to target available resources across the federal government to identify and investigate complex timber trafficking cases domestically and transnationally; to develop new tools and techniques to investigate and prosecute timber trafficking cases; and to build the ability of partner governments worldwide to combat this devastating illegal trade.

The TIMBER Working Group's membership includes the Department of Justice, the Department of Agriculture, the Department of the Interior, and the Department of Homeland Security, as well as the U.S. Council on Transnational Organized Crime's Strategic Division. This event was attended by members of the Working Group, other federal agencies, and a wide array of non-governmental organizations who work to combat deforestation and timber trafficking.

## **Protecting the Rights of Victims**

*National Crime Victims' Rights Week Event.* In observance of the 2023 National Crime Victims' Rights Week, ENRD jointly hosted a stakeholder listening session with EPA. This event continued ENRD's outreach to raise awareness of environmental crime victims, including the relationship with environmental justice, and how to close the gap in resources and assistance available to environmental crime victims. The stakeholders in attendance included state victim compensation boards, state and non-profit victim service providers, and environmental justice groups. The event opened with keynote remarks by Associate Attorney General Vanita Gupta and EPA's Assistant Administrator for the Office of Enforcement and Compliance Assurance David Uhlmann.

The event also included a survivors' panel with remarks from three survivors of separate environmental criminal prosecutions to provide the stakeholders an opportunity to hear directly from them about the types of harm

environmental crime victims experience and the assistance that they need.

*2023 Victims of Crime Act (VOCA) National Joint Training Conference.* A survivor from the explosion at issue in *United States v. Nebraska Railcar Cleaning Services, LLC* (D. Neb.) was invited to speak during a survivors' panel at the 2023 National Joint Training Conference for VOCA Assistance and Crime Victim Compensation Administrators. The defendants in this case were prosecuted for willful violations of worker safety standards that resulted in two worker deaths, knowing violations of the Resource Conservation and Recovery Act involving hazardous waste and endangerment to others, knowing submission of false documents to the Occupational Safety and Health Administration, and perjury. The survivor spoke about his immediate injuries and longer term physical and mental injuries, the types of services that were provided to him, and how victims of environmental crimes could be helped in the future. His remarks raised awareness of the existence of environmental crime victims and the types of support they need from victim assistance and compensation organizations.



# Enforcing the Nation's Animal Welfare Laws

ENRD is a critical part of the federal government's effort to see that animals are treated properly and with compassion. With U.S. Attorneys' Offices and law enforcement partners at the Department of Agriculture and U.S. Marshals Service, the Division uses civil and criminal enforcement tools to ensure the lawful, humane treatment of captive, farmed, and companion animals. An example of this work is the civil enforcement action to address legal violations committed by a Michigan animal dealer, Even Keel Exotics, which led to the surrender of 150 animals, including kinkajous, wallabies, porcupines, foxes, prairie dogs, ground squirrels, and ring-tailed lemurs, like those pictured above.

*Photo Credit: Smithsonian's National Zoo and Conservation Biology Institute*

## **Civil and Criminal Enforcement of Animal Welfare Laws**

ENRD has responsibility for civil judicial enforcement of the Animal Welfare Act (AWA), for securing civil forfeiture of animals under the Animal Fighting Venture Prohibition Act, and for criminal enforcement of federal animal welfare laws.

Fiscal year 2023 was a groundbreaking year for the Division's Wildlife and Marine Resources Section in civil enforcement of the AWA. A team of attorneys achieved a settlement with the Commonwealth of Puerto Rico to ensure the health and safety of several hundred animals, including birds, reptiles, rhinos, hippopotamus, and an elephant, housed at a hurricane-ravaged facility in Puerto Rico. The animals were in squalid conditions. Through pre-filing negotiation, the team secured a plan to transfer the animals to sanctuary facilities on the mainland with proper veterinary care and far more humane conditions.

The Division also found success in other civil AWA matters. In *United States v. Keeler* (E.D. Mich.), ENRD filed a civil enforcement action to address AWA violations involving 150 exotic animals (and also Endangered Species Act violations), while in *United States v. Mikirticheva* (E.D. Va.), ENRD filed a civil enforcement action to address violations involving over 125 cats. Attorneys obtained emergency injunctive relief from the courts in both of these cases, securing the removal of the animals, which were then re-situated in improved conditions.

In addition, ENRD continued to pursue civil forfeiture of dogs seized from criminal dogfighting ventures and provide training and support for Assistant United States Attorneys pursuing such cases. Actions by ENRD and the U.S. Attorneys' Offices secured the seizure and forfeiture of dozens of dogs from dogfighting operations, resulting in significant taxpayer savings and more humane treatment for the dogs.

ENRD, working together with U.S. Attorneys' Offices, also continued to otherwise address criminal violations of the animal welfare laws. We have prosecuted 64 defendants for animal welfare crimes since 2016, leading to more than 193 years of incarceration. The Division's efforts, in cooperation with U.S. Attorneys' Offices, the U.S. Marshals Service, and non-governmental organizations, have led to the rescue of more than 4650 dogs from brutal circumstances. Among the prosecutions during 2023 were the following:

*United States v. Herman T. Washington* (E.D. Va.). Herman Washington was the seventh and final defendant to be sentenced in a dog-fighting ring that spanned four states and many years. Washington received a 46-month prison term for his role, which involved coordinating fights for as much as \$20,000 per match and posting videos of fights and training techniques. During the investigation, six residential search warrants led to the seizure of 93 dogs. Among the other six individuals prosecuted was Kenneth L. Otey, Jr., who was sentenced to serve a total term of 300 months in

prison after pleading guilty to two drug offenses, a firearm offense, and conspiracy to participate in an animal fighting venture. For animal fighting offenses alone, Connell Stukes was sentenced to serve 63 months in prison; Raymond Johnson and Jerome Dante Smith each 37 months; Antonio Ruffin 36 months; and Royal Washington 15 months.

*United States v. Antonio Damon Atkins* (M.D. Ala.). An Organized Crime and Drug Enforcement Task Force investigation uncovered a dog-fighting ring across the Eastern and Middle Districts of Louisiana. This investigation involved the execution of seven residential search warrants resulting in the seizure of 89 fighting dogs. Antonio Damon Atkins, the final of the seven co-defendants, was sentenced to serve 41 months in prison. Also sentenced in 2023 were Aquintas K. Singleton and David Guidry, III; each was sentenced to serve a year and a day in prison. In 2022, Clay Turner and Dangelo Dontae Cornish were sentenced to serve, respectively, 36 and 16 months in prison. The final two defendants, Eric “EZ” Williams and Corey Brown, pleaded guilty to drug and firearm offenses in addition to the dog-fighting activities. They were sentenced to serve 70 and 50 months in prison, respectively.

*United States v. Armard Davis* (M.D. Ga.). Armard Davis was the thirteenth and final member of a far-ranging conspiracy to sponsor and gamble on brutal dogfights held throughout Georgia, Florida, and Alabama. Having pleaded guilty to involvement in the dog-fighting venture and to a drug-distribution conspiracy, Davis was sentenced to serve 190 months in prison. During the investiga-

tion, law enforcement seized more than 150 dogs that were being used for organized dog fighting. Other co-conspirators were sentenced to serve a total of 541 months in prison.

*United States v. Kenneth Herrera* (W.D. Wisc.). The Division secured its first conviction under the Animal Crush statute, 18 U.S.C. § 48, against Kenneth Herrera. Herrera was a member of a group known as “Million Tears” that sent money to individuals in Indonesia who—following the directions of the group—physically and sexually abused monkeys and captured the acts on video, which was then distributed to the group.



# Promoting Tribal Rights and Resources

The Division brings affirmative litigation to protect almost 60 million acres of lands held in trust for Tribes and their members. In one example, the Division reached a settlement that provides mechanisms to fund tribally led pilot projects and ultimately reintroduce salmon in blocked habitats in the Upper Basin of the Columbia River. ENRD, represented by AAG Todd Kim (pictured center), participated in a signing ceremony at the Department of the Interior to announce the historic agreement between the United States and the Confederated Tribes of the Colville Reservation represented by Jarred-Michael Erickson (center left); the Coeur d'Alene Tribe represented by Gene (Hemene) James (center right) and Caj Matheson (far left); and the Spokane Tribe of Indians represented by Greg Abrahamson (far right).



## **Affirmative Litigation to Defend Tribal Homelands, Tribal Governmental Authority, and Treaty Resources**

The Division, through the Indian Resources Section, brings affirmative litigation to protect almost 60 million acres of lands held in trust for Tribes and their members, as well as the rights, authorities, and resources associated with those lands. These cases promote sustainable homelands, tribal governmental authority over land use and resources, economic development, and tribal cultural activities.

The Division litigated the following cases to protect tribal fishing rights under treaties:

*United States v. State of Michigan* (W.D. Mich.). The Division litigated in conjunction with the Tribes along the Great Lakes in Michigan to preserve treaty fishing and hunting rights in the Tribes' aboriginal territory. Since the first case securing these rights in the 1970s, the Division has worked to negotiate decrees between the Tribes and the State of Michigan to promote cooperative management of the resources, quantify "take," and ensure the sustainability of the fish and game populations in the Great Lakes. Over the past four years, the Division worked with the Tribes and the State of Michigan to negotiate a new decree concerning the fisheries. The district court entered the decree in 2023, and ENRD is defending the court's decision in the Sixth Circuit. This decree would govern

the Great Lakes fishery for the next 24 years.

*United States v. State of Washington* (W.D. Wash.). Over the past 50 years, ENRD has litigated alongside Tribes to protect treaty fishing rights in the Puget Sound area, including to establish and quantify the tribal share of the fisheries and to ensure that fish populations can travel to and from their spawning grounds. The Division has participated in annual negotiations between the Tribes and the State of Washington to ensure adequate salmon harvests while implementing the requirements of the Endangered Species Act and working to ensure sustainability. In the past several years, ENRD has actively worked with the Tribes and the State to move from an annual to a multi-year allocation of the fishery.

Trespass on trust lands is pervasive in Indian country. The trespasses infringe on tribal sovereignty and interfere with Tribes' ability to enjoy the benefit of those lands. In some instances, trespass poses a threat to the health and safety of tribal members or to critical cultural resources. In 2023, the Division increased its efforts to address trespass on tribal lands, including:

*United States v. Town of Lac du Flambeau*, (W.D. Wis.). ENRD brought suit against the Town of Lac du Flambeau for trespass involving use of rights-of-way that lapsed almost a decade ago.

*United States v. City of Española* (D.N.M.). ENRD continues to seek to address the City of Española's long-

standing trespass arising from expired rights-of-way for the City’s water and sewer system. The United States is seeking past damages and ejectment from the lands of the Pueblo of Santa Clara.

In addition to these cases, the Division filed a series of trespass actions in 2023 against long-term trespassers on lands held in trust for the Colorado River Indian Tribes in California.

*Oklahoma reservations.* In the wake of the Supreme Court’s 2020 decision in *McGirt v. State of Oklahoma*, which held that the Creek Reservation in Oklahoma remained intact, ENRD has worked with U.S. Attorneys’ Offices, the Department of the Interior, and Tribes in Oklahoma to address whether other reservations in Oklahoma remain intact. The Oklahoma Court of Criminal Appeals subsequently determined that the reservations of the remaining members of the “Five Tribes” (Cherokee, Choctaw, Chickasaw, and Seminole) also remain intact. Most recently, ENRD worked closely with the U.S. Attorney’s Office in the Northern District of Oklahoma to prevail in *United States v. Stark* (N.D. Okla.), where the criminal defendant argued unsuccessfully that the Ottawa Reservation did not constitute Indian country.

## **Tribal Water Rights Adjudications and Settlements**

The Division plays an important role in water rights adjudications throughout the arid West, asserting federal reserved water rights held by the United States for the benefit of Tribes, helping to ensure

that reservations serve as viable permanent homelands. Establishing and quantifying these water rights generally requires extensive expert testimony addressing unique scientific and economic questions. These issues include riparian flow, lake levels, and water quality necessary for fish habitat; projected reservation population and water use over the next century; the feasibility of future irrigation projects on arable reservation land; and the economic viability and water use of projected on-reservation commercial ventures.

For many years, the Executive Branch’s policy has been to settle tribal water rights claims where possible. The settlements resolve longstanding water conflicts among parties and often turn adversaries into partners with common interests. The settlements provide much needed certainty to the Tribes and their neighbors, and secure water, infrastructure, and economic development that allow the Tribes to maintain a viable homeland.

These water rights settlements involve a unique three-step process. First, the parties negotiate a proposed settlement agreement that resolves the extent of the Tribe’s water right and provides the Tribe with the ability to develop infrastructure to access additional water and ensure delivery of potable water to its communities. Second, Congress enacts legislation that ratifies the settlement agreement and authorizes the appropriation of necessary funds. Third, the parties to the agreement (with ENRD representing the United States) file a joint motion with the adjudication court seeking entry of the

settlement. At this stage, other parties to the adjudication often object to the settlement. ENRD, in conjunction with the Tribe and other parties to the settlement, respond to the objections.

Examples of recent tribal water rights settlements include:

*Hualapai Tribe.* ENRD attorneys helped negotiate the settlement of the Hualapai Tribe's water rights and related federal legislation. In 2023, Congress enacted legislation ratifying the agreement and providing necessary funds for this settlement, which will provide the Tribe with the following: water to sustain its permanent homeland on the south rim of the Grand Canyon; protection of the Tribe's groundwater from interference by neighboring users; and over \$300 million to develop water-related infrastructure.

*New Mexico water rights settlements.* Over the past two years, ENRD attorneys, alongside multiple Tribes and pueblos, negotiated four proposed agreements with the State of New Mexico and local water users. Once ratified and funded by Congress, these settlements would resolve all claims for these Tribes and pueblos and eliminate several cases filed many years ago.

Not all tribal water rights are susceptible to settlement. In these situations, the Division litigates in support of tribal water rights claims. In 2023, the Division litigated the following matters:

*Little Colorado River Water Rights Adjudication* (Super. Ct., Apache County, Ariz.). During more than 40 days of trial

involving over 70 witnesses, Division attorneys, working with the Navajo Nation, presented evidence in support of water rights claims to water for livestock, wildlife, domestic, municipal, and commercial uses on the nation's nearly six-million-acre Reservation. Division attorneys are preparing to litigate additional claims for the benefit of the nation in the future.

*United States v. Abousleman* (D.N.M.). Having previously successfully argued in the Tenth Circuit that the Pueblos of Jemez, Santa Ana, and Zia retained aboriginal rights to water and that actions by Spain had not extinguished those rights, the Division secured a favorable district court decision on remand. The district court agreed that actions taken by Mexico prior to the 1848 Treaty of Guadalupe Hidalgo did not extinguish several Pueblos' water rights.

## **Defensive Actions to Support Agency Decision-making in Support of Tribes**

The Division defends federal agency decisions (primarily decisions of the Department of the Interior) that seek to promote tribal interests. The Division also defends challenges to the constitutionality of statutes relating to Tribes and tribal resources.

In recent years, ENRD has defended the constitutionality of the Indian Child Welfare Act, the Indian Gaming Regulatory Act, and provisions of the Indian Reorganization Act.

*Haaland v. Brackeen* (S. Ct.). In 2023, the Supreme Court upheld the constitutionality of the Indian Child Welfare Act (ICWA). The State of Texas and a few foster and adoptive parents challenged the constitutionality of ICWA, which is a landmark 1978 statute establishing procedural protections for Indian parents and children, tribal communities, and Tribes to address the wide-spread removal of Indian children from their families and communities. The State claimed the statute violated the Equal Protection Clause and the Tenth Amendment, while also asserting that the Act exceeded the bounds of Congress's authority over Indian Affairs. ENRD defended ICWA in the district court and Fifth Circuit and assisted the Solicitor General before the Supreme Court.

The Division also defends Department of the Interior decisions to acquire land in trust for Tribes. Such acquisitions empower Tribes to rebuild their land bases for housing, economic development, and environmental and cultural stewardship.

*Littlefield v. Interior* (1st Cir.). ENRD successfully defended the Department of the Interior's decision to acquire land in trust for the Mashpee Wampanoag Tribe. The plaintiffs claimed that the agency lacked authority under the Indian Reorganization Act to acquire land in trust for the Tribe.

*Legend Lake Homeowners' Association v. Interior* (E.D. Wis.). Division attorneys successfully defended the Department of the Interior's acquisition of land in trust for the Menominee Indian Tribe under the Menominee Restoration Act. While the plaintiff (an association of

property owners) claimed that certain restrictive covenants that it adopted in 2009 precluded the acquisition, the district court agreed with the Division that federal law preempted the covenants.

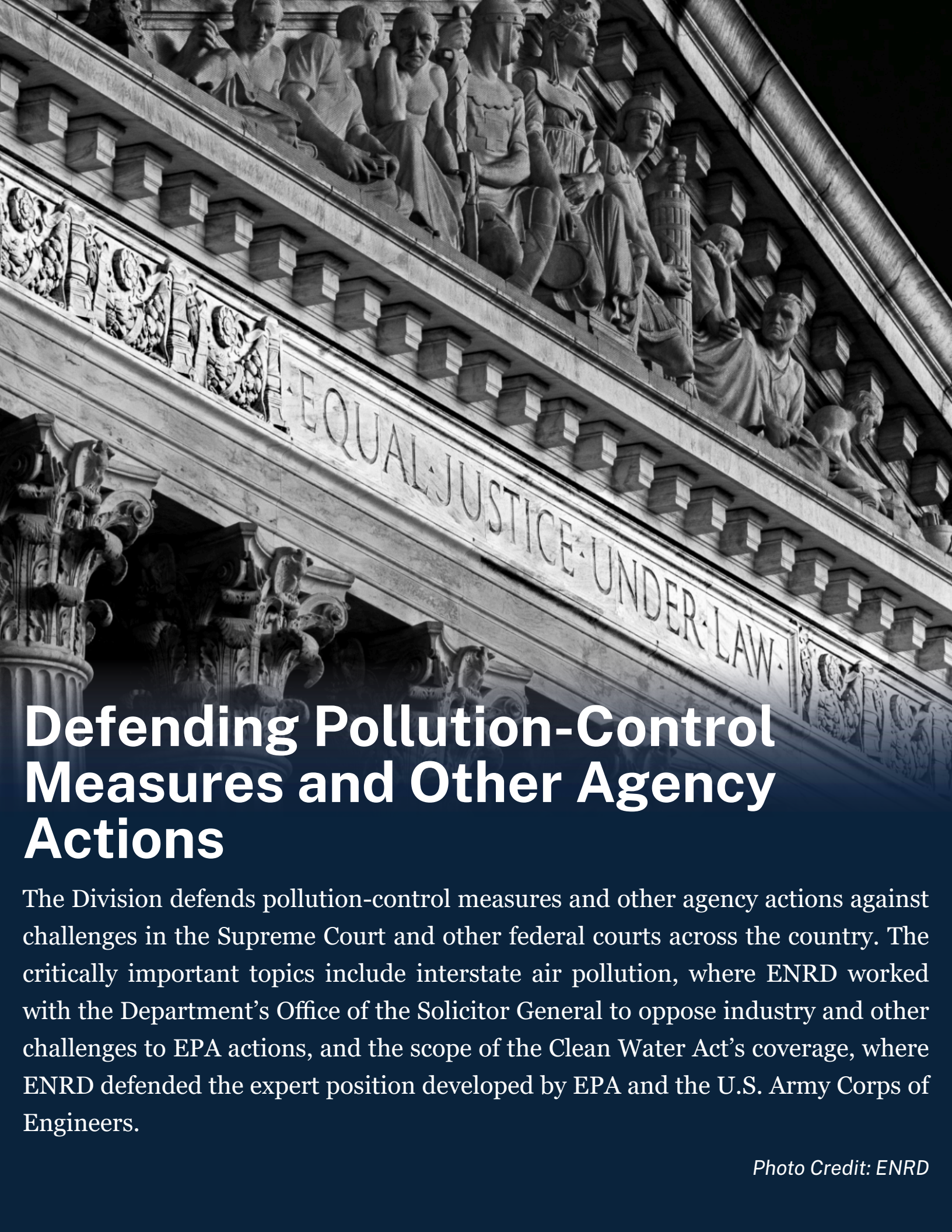
The Division also defends Department of the Interior and National Indian Gaming Commission decision-making under the Indian Gaming Regulatory Act.

*West Flagler Associates v. Haaland* (D.C. Cir.). ENRD secured a reversal of an unfavorable district court decision on the legality of the Secretary of the Interior's approval by operation of law of a tribal-state gaming compact between the State of Florida and the Seminole Tribe. That compact includes provisions that allow the Tribe to offer online sports wagering, where persons located anywhere within the State can place bets with sport books located on tribal lands. The Division argued, and the D.C. Circuit agreed, that the Indian Gaming Regulatory Act permits such an arrangement because the compact only authorizes the portion of the wager occurring on Indian lands (state law authorizes the activities occurring outside Indian lands).

### **Finding Creative Solutions to Long-Running Disputes Involving Tribes**

In long-running challenges to the operation of the Columbia River System, the Division negotiated the first meaningful settlement in the 20 years of the litigation. This was an historic achievement that settled litigation in a

manner that respected Columbia River Treaty Tribes' fishing rights. The construction of Grand Coulee and Chief Joseph dams in 1942 and 1955, respectively, cut off hundreds of miles of salmon habitat on the Columbia River and its tributaries in Washington, depriving three Tribes of the ability to harvest salmon. Following a two-year mediation process, the Division reached a settlement that provides mechanisms (including \$200 million from the Bonneville Power Administration over 20 years) to fund tribally led pilot projects and ultimately reintroduce salmon in blocked habitats in the Upper Basin of the Columbia River. This agreement will bring salmon to the Upper Columbia River basin above these dams for the first time in 80 years.



# Defending Pollution-Control Measures and Other Agency Actions

The Division defends pollution-control measures and other agency actions against challenges in the Supreme Court and other federal courts across the country. The critically important topics include interstate air pollution, where ENRD worked with the Department's Office of the Solicitor General to oppose industry and other challenges to EPA actions, and the scope of the Clean Water Act's coverage, where ENRD defended the expert position developed by EPA and the U.S. Army Corps of Engineers.

Examples of the Division’s work defending pollution-control measures and other agency actions against petitions for review filed in the federal courts of appeals include:

*Interstate air pollution.* The Clean Air Act’s “good neighbor” provision seeks to ensure that upwind states do not interfere with the ability of downwind states to comply with federal ambient air quality standards. In 2023, the Division handled 43 petitions for review in eight judicial circuits challenging EPA disapprovals of state implementation plans that did not satisfy “good neighbor” obligations for ozone. The Division also defended against challenges to the federal implementation plan promulgated by EPA to ensure “good neighbor” obligations are satisfied in the absence of adequate state implementation plans. This included litigation in the D.C. Circuit and assisting the Office of the Solicitor General with the government’s opposition to applications filed in the Supreme Court for a stay of the federal implementation plan pending resolution of judicial review in the D.C. Circuit.

*Renewable fuels program.* The Division continued to defend challenges to EPA’s implementation of the Clean Air Act’s renewable fuels program.

*Pesticide registration.* The Division continued to handle petitions for review filed to challenge EPA’s pesticide registration decisions and related actions. Many of these cases raise issues arising under both the Federal Insecticide, Fungicide, and Rodenticide Act and the Endangered Species Act.

The Division also defended against a diverse array of challenges to important EPA regulatory actions filed in federal district court.

*Waters of the United States.* We continued to handle challenges to regulations issued by EPA and the U.S. Army Corps of Engineers that define the term “waters of the United States” for purposes of identifying the reach of the Clean Water Act. The current challenges (including in the Southern District of Texas and the District of North Dakota) focus on the agencies’ January 2023 rule, which was amended in September 2023 to respond to the Supreme Court’s decision in *Sackett v. EPA*.

The Division also handled numerous “deadline suits” and secured favorable settlements that provide EPA with adequate time to complete overdue actions required by various environmental statutes.



# Supporting Infrastructure Development and Strengthening National Security

ENRD works in several areas to support infrastructure development and strengthen national security in matters relating to border security. In an unusual example, the Division brought suit on behalf of the Forest Service, the Bureau of Reclamation, and the United States section of the International Boundary and Water Commission when the State of Arizona began constructing a “wall” composed of shipping containers on federal land.

*Photo Credit: ENRD*



## Challenges to Alternative Energy Projects

The Division defends challenges to federal agency actions that strengthen our nation's energy security. Examples of our work include defending federal approvals issued for wind energy and federal agency actions related to geothermal energy projects. We also defend federal decisions that allow mining on federal lands of critical minerals needed for alternative energy development. This work is described in the chapter above entitled "Responding to the Climate Crisis."

## Overview of the Division's Land Acquisition Section

The Division's Land Acquisition Section (LAS) is a group of trial lawyers, paralegals, and appraisers who assist federal agencies to acquire real property in support of vital public missions. LAS files condemnations to acquire land for congressionally authorized public uses and also conducts title reviews to support direct purchases of real estate by federal agencies. Additionally, LAS conducts annual live trainings for hundreds of federal employees on title review and condemnation matters.

Condemnation cases involve all facets of civil litigation, including extensive expert discovery, complex motions practice, and trials.

The Division's work helps the federal government pay just compensation that is fair to both the landowners from whom

land is taken and the federal taxpayers who bear the resulting financial burden.

Our focus on good governance resulted in several successful dispositive motions in 2023, as well as numerous settlements that collectively involved property worth hundreds of millions of dollars. LAS filed 8 additional condemnation cases in 2023. It resolved over 20 cases without having to file a condemnation action, and additionally resolved over 35 filed condemnation cases, saving the federal government more than \$2 billion and avoiding delays in important projects. LAS has over 45 active cases, involving property valued by the federal government at more than \$875 million (LAS also supports condemnations filed by U.S. Attorneys' Offices).

## Addressing Border Security

ENRD works closely with the Departments of Defense, Homeland Security, and State in matters relating to border security, including with land acquisition decisions and other litigation related to border security. The following are examples of our work:

*United States v. 0.892 Acres of Land* (S.D. Tex.). The Division acquired land for the construction and maintenance of border wall infrastructure along the Texas-Mexico border, achieving a favorable result due to strong motions practice and trial preparation. While the landowner demanded \$600,000, the jury awarded \$65,000, matching precisely our appraiser's opinion on valuation.

*United States v. 3 Acres of Land* (S.D. Cal.). The Division filed an action for

Customs and Border Protection to acquire a 3-acre parcel for use as an immigration checkpoint.

*United States v. Ducey* (D. Ariz.). When the State of Arizona began aggressively constructing a “wall” composed of shipping containers on federal land along the Arizona-Mexico border—destroying trees, filling drainages, and blocking wildlife passages—the Division brought suit on behalf of the Forest Service, the Bureau of Reclamation, and the United States section of the International Boundary and Water Commission. We concurrently defended a lawsuit filed by the State Governor asking the court to declare the State’s actions lawful. Ultimately, the State of Arizona agreed to remove of all shipping containers from federal land and to fully remediate the damage it caused.

## **Assisting the United States Armed Forces**

ENRD’s national security work also supported the United States armed forces.

*United States v. 400 Acres of Land in Lincoln County* (D. Nev.). The United States brought this case to acquire patented and unpatented mining claims for the Air Force’s Nevada Test and Training Range. The property is surrounded by federal land and provides an unobstructed view of highly sensitive military operations. The landowners sought as much as \$2.1 billion for the property, but the court awarded the landowners roughly \$1.2 million. The Division then successfully defended the district court judgment in the Ninth Circuit.

*Fighter jet training.* The Division is defending against claims related to the Navy’s changes in training operations involving the EA18 Growler Electronic Warfare Fighter Jets at Naval Air Station Whidbey Island in Washington, and claims related to the Air Force’s changes in training operations involving the F-15E Strike Eagle aircraft at the Mountain Home Air Force Base in Idaho.

*Removal of the Confederate Memorial from Arlington National Cemetery.* After a congressionally established naming commission determined that the Confederate Memorial must be removed from Arlington National Cemetery because of its depictions of the Confederacy and slavery, the Division successfully defended multiple lawsuits challenging the Department of Defense’s removal of the Memorial.

## **Acquisition of Land for Federal Infrastructure Projects**

The Division also acquired land for federal infrastructure projects from coast to coast.

*United States v. 8.929 Acres of Land* (E.D. Va.). This action was filed to support Arlington National Cemetery’s plans to expand its grounds by closing and relocating local roads, moving maintenance facilities, and enhancing the tranquility and size of our nation’s most hallowed ground. The project will increase the cemetery’s burial capacity with approximately 60,000 plots.

*United States v. 331.42 Acres of Land in Madera County* (E.D. Cal.). The Division, acting on behalf of the Bureau of Reclamation, acquired 331.42 acres of agricultural land along the Columbia Canal that flows into the San Joaquin River in support of the San Joaquin River Restoration Project. The Project is part of a long-term program implementing a litigation settlement to restore flows in the San Joaquin River.

*United States v. 0.6388 Acres of Land* (E.D. Va.). The Division acquired land for the construction of the long-planned Atlantic Intracoastal Waterway Bridge Replacement Project, near Deep Creek, Chesapeake, Virginia. The project involves demolishing an obsolete bridge and replacing it with a five-lane, dual-leaf drawbridge.

*Washington Metropolitan Area Transit Authority v. 119,593 Square Feet of Land* (D. Md.) and other cases. The Division also assisted the Washington Metropolitan Area Transit Authority with acquisitions valued at approximately \$60 million. We resolved three cases for the construction of a consolidated Metrorail repair facility in Prince George's County, Maryland, and additional cases for the reconstruction of a Metrobus terminal in Northeast Washington, D.C., that will include electric bus infrastructure.

## **Defending Challenges to Transportation Projects**

ENRD defends challenges to transportation projects carried out across the country. The litigation often involves claims that federal agencies failed to comply

with the National Environmental Policy Act and/or National Historic Preservation Act before approving or funding the projects. The projects often replace aging infrastructure or modify existing public highways to improve safety and efficiency. The Division's efforts in these cases support the objectives of the Infrastructure Investment and Jobs Act of 2021.

*National Trust for Historic Preservation v. Buttigieg* (D. Me.). The Division successfully defended an environmental challenge to a plan to remove and replace the aging Frank J. Wood Bridge across the Androscoggin River in Maine.

*North Carolina Wildlife Federation v. North Carolina Department of Transportation* (E.D.N.C. & 4th Cir.). The Division also successfully defended a challenge to the Federal Highway Administration's approval of the Mid-Currituck Bridge Project, which will connect the northern barrier islands of North Carolina's Outer Banks with the mainland.

*Friends of Pine Street v. Mavela Sosa* (D. Vt.). The Division prevailed at the summary judgment stage in litigation over a proposed road improvement project leading into downtown Burlington, Vermont. The plaintiffs asserted National Environmental Policy Act and Endangered Species Act claims.

*Tahoe Cabin, LLC v. Federal Highway Administration* (D. Nev.). The Division successfully rebuffed a challenge to the Round Hill Pines Access Project, under which an access road to a publicly owned recreational facility and resort on the east shore of Lake Tahoe was to be relocated.

*Friends of Del Norte v. California Department of Transportation*, (N.D. Cal.). The court upheld federal agencies' analysis of a highway construction project. The court concluded among other things that the agencies considered a broad array of potential impacts on species protected by the Endangered Species Act and reasonably determined that the project is not likely to adversely affect the species or their critical habitat.

*El Puente v. U.S. Army Corps of Engineers* (D.D.C.). The Division prevailed in district court in a challenge to the environmental analyses completed for a dredging project involving the widening and deepening of channels in the San Juan Harbor, Puerto Rico. We are currently defending the case before the D.C. Circuit.



# Defending Stewardship of Wildlife and Management of Public Lands

ENRD defends federal agencies against claims they failed to comply with federal laws governing the protection and stewardship of the nation's federal lands, waters, wildlife, and marine resources. This year, ENRD successfully defended the Fish and Wildlife Service's evaluation of a petition to list the Tucson shovelnose snake (pictured above) as a threatened species under the Endangered Species Act.

*Photo Credit: Fish and Wildlife Service*

## **Defending Federal Water Rights and the Operation of Water Supply Projects**

ENRD defends federal water rights, primarily by representing the United States in numerous water rights adjudications across the West (judicial determinations of the amounts and priorities of the rights to the use of water in a given watershed). The Division also defends against challenges to the Bureau of Reclamation's operation of water supply projects. Examples of our efforts to protect federal waters rights in water rights adjudications include:

Montana general water rights adjudication. This is a statewide general stream adjudication for all 90 basins in Montana. Our work includes asserting the United States' water rights and litigating objections levied to competing private water rights claims that have the potential to adversely impact federal water rights and interests. At any given time, the Division is handling between 100 and 150 cases within this adjudication on behalf of the Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Reclamation, and the Forest Service. In a recent success in this adjudication, the court issued a favorable order substantially reducing claimed irrigation water rights along the Beaverhead River. This win protects Reclamation's interests in the East Bench Unit, which provides irrigation service to 21,800 acres and supplemental irrigation service to 28,000 acres in southwest Montana.

*Other adjudications.* The Division is also representing federal agencies in other state court general stream adjudications in Colorado, Utah, Nevada, California, Oregon, New Mexico, Idaho, and Arizona. One example is the Gila River Adjudication, which commenced in the 1970s, and includes over 20,000 parties that have asserted approximately 100,000 water rights claims.

ENRD also defends water rights that have been previously decreed to the United States.

*United States v. State of Idaho* (D. Idaho). The State of Idaho enacted legislation that could result in the loss of thousands of water rights, property rights held by the United States, and make management of federal grazing allotments increasingly difficult. The Division filed a complaint in federal district court challenging the legality of the legislation and the State's implementation of the state law.

Other notable water rights litigation includes the United States' participation in actions for the apportionment of interstate streams—or the enforcement of interstate compacts addressing the division of interstate water—in which the parties invoke the highly limited original jurisdiction of the Supreme Court. Although such litigation is not common, the United States often participates in these actions to protect its interests in the use and development of interstate waters and the operation of federal water projects. Supporting the Office of the Solicitor General, ENRD's Natural Resources Section has played a prominent role in litigating these original actions.

*State of Texas v. State of New Mexico* (S. Ct.). The State of Texas filed this action in 2014 to enforce its rights under the Rio Grande Compact, which apportions the water of the upper part of Rio Grande among the States of Colorado, New Mexico, and Texas. The Court allowed the United States to intervene to pursue its own claims. In the most recent litigation, the United States is objecting to a special master’s recommendation that the Court enter a consent decree negotiated by the States (without the United States’ consent) that does not resolve the United States’ claims and that, in the United States’ view, is contrary to the Compact. The United States has an interest in the matter because the Compact requires New Mexico to deliver water to the Bureau of Reclamation’s Elephant Butte Reservoir; the water is then delivered by Reclamation to irrigation districts pursuant to contractual obligations.

ENRD also secured favorable rulings in defending lawsuits filed against the Bureau of Reclamation, which operates large-scale water supply projects throughout the western and mid-western United States. These projects, among other things, provide irrigation water for approximately 9.3 million acres—approximately 19% of the nation’s total irrigated acreage. In 2023, the Division managed complicated, high-profile litigation involving the intersection of Reclamation’s water delivery systems and Endangered Species Act-protected species. Some examples of our work in these areas include the following successful outcomes:

*Yurok Tribe v. Bureau of Reclamation* (N.D. Cal.). This is one of many cases concerning how the Bureau of Reclamation operates the Klamath Project, an irrigation project in southern Oregon and northern California, to meet its potentially competing obligations related to Endangered Species Act compliance, tribal water rights, and contractual obligations. The Division challenged an order of the Oregon Water Resources Department that prohibited the Project from releasing water to meet obligations under the Endangered Species Act relating to salmon. ENRD attorneys secured a favorable ruling declaring that Oregon’s order is preempted under the Supremacy Clause. The favorable ruling successfully concluded at the district-court level the United States’ multiyear efforts to secure judicial affirmance of Reclamation’s ability to operate the Project in a manner that complies with the Endangered Species Act and is consistent with tribal trust responsibilities.

*Pacific Coast Federation of Fishermen’s Associations v. Ross* (E.D. Cal.). In this challenge to the operation of the Central Valley Project in California, Division attorneys obtained relief that allowed the federal government to continue to operate the Central Valley Project without interference throughout 2023.

## **Management of National Forests and Public Lands**

Federal land management agencies, including the Forest Service and the Bureau of Land Management, manage national forests and public lands under

statutory mandates to enable often competing multiple uses, including timber harvest, mineral resource extraction, wildlife protection, recreation, and grazing. This mandate has become increasingly challenging as climate change and catastrophic wildfires alter ecosystems across the West. ENRD plays a key role in defending efforts by these agencies to carry out their statutory mandates to manage and protect federal lands.

ENRD attorneys defend projects designed to thin timber to promote improved forest health and resilience and to reduce risk of catastrophic wildfire. Examples include:

*Earth Island Institute v. Muldoon* (9th Cir.). The Division successfully defended a decision by the National Park Service to allow tree thinning and other efforts in Yosemite National Park to protect sequoia trees, park communities, and other human and natural resources from wildfire. The Ninth Circuit upheld the district court's decision to deny a request for a preliminary injunction, noting the absence of any serious question about whether the Park Service had complied with the National Environmental Policy Act before allowing the fire-control work.

*Other Cases.* Successful forest health district court litigation also included defense of the Twisp Restoration Project on the Okanogan-Wenatchee National Forest in Washington, the Camp Lick Project on the Malheur National Forest in Oregon, the Reyes Peak Forest Health and Fuels Reduction Project on the Los Padres National Forest, and the Sunny Oaks Project on the Wayne National

Forest. The Division also defended other federal land management decisions.

*Western Watersheds Project v. Vilsack* (D. Wyo.). ENRD successfully defended the Forest Service's 2020 amendment to a land management plan for the Thunder Basin Grasslands. The amendment focused on management of the black-tailed prairie dog (important because other species rely on it for food and protection in its underground burrows) but may have reduced opportunities for future reintroduction of the endangered black-footed ferret. The court upheld the agency's approach of balancing interests related to the wild, undeveloped parts of the Grassland with the interests of neighboring State and private landowners.

*Cascadia Wildlands v. Bureau of Land Management* (D. Or.). Division attorneys successfully defended a challenge to a rule that increased efficiencies in the process for vegetation management on public lands by eliminating an administrative protest process.

*Western Watersheds Project v. Perdue* (D. Ariz.). The Division successfully defended the Forest Service's authorization of the Stateline project, which involved livestock grazing in Arizona and New Mexico. The court agreed that the grazing would not adversely impact endangered Mexican wolves.

ENRD attorneys also defended a range of Forest Service and Bureau of Land Management mineral management decisions, such as the following:



*Twin Metals v. United States* (D.D.C.). The Division successfully obtained dismissal of the mining company's challenge to the United States' decision to cancel a mining lease for a large copper and nickel mine near the Boundary Waters Canoe Area Wilderness.

*Idaho Conservation League v. Forest Service* (D. Idaho). The Division defended the Forest Service's approval of mineral exploration plans for a gold mine on the Caribou-Targhee National Forest.

*Onshore oil and gas development.* ENRD attorneys successfully defended decisions of the Department of the Interior in numerous lawsuits challenging federal approvals for oil and gas development on public lands. Examples include our defense on the merits of the Willow Project in the National Petroleum Reserve-Alaska and a dismissal on jurisdictional grounds of challenges to drilling permits in the Permian and Powder River Basins. In many other instances, ENRD attorneys coordinated federal litigation efforts to provide agencies with opportunities to reevaluate anticipated environmental impacts and National Environmental Policy Act compliance.

## **Responsible Stewardship of Wildlife**

ENRD defends federal agencies against claims that they failed to comply with federal laws governing the protection and stewardship of the nation's wildlife and marine resources. The cases often arise under the Endangered Species Act, which protects species listed as

endangered or threatened by the Fish and Wildlife Service or National Marine Fisheries Service, as well as critical habitat designated for them. Some cases also involve claims arising under the Magnuson-Stevens Fishery Conservation and Management Act, which charges the National Marine Fisheries Service with the difficult task of managing ocean commercial fishing to provide for sustainable fishing while optimizing fishing yield. Examples of success in 2023 include:

*Defenders of Wildlife v. Forest Service*, (D. Colo.). The court upheld the Fish and Wildlife Service's biological opinion evaluating the revised forest plan for Rio Grande National Forest. The court found, among other things, that the agency's conclusions analyzing the impacts of logging were scientifically sound and sufficient to protect the endangered Canada lynx. This decision was recently affirmed by the Tenth Circuit.

*Center for Biological Diversity v. Fish & Wildlife Service* (D. Ariz.). ENRD successfully defended the Fish and Wildlife Service's evaluation of a petition to list the Tucson shovelnose snake as a threatened or endangered species under the Endangered Species Act. The court endorsed the agency's scientific determinations concerning the snake and entered summary judgment in our favor.

*Red Wolf Coalition v. Fish and Wildlife Service* (E.D.N.C.). The Division resolved a long-running dispute concerning the management of endangered red wolves in North Carolina.

*State of Louisiana v. National Marine Fisheries Service* (E.D. La. & 5th Cir.). We prevailed in a challenge brought by the State of Louisiana to National Marine Fisheries Service rules that require boats over a certain size that participate in certain fisheries to use specified turtle excluder devices to protect Endangered Species Act-listed sea turtles.

*WildEarth Guardians v. Forest Service*, (D. Idaho). The court agreed with ENRD's arguments that the Forest Service had satisfied its obligations under the Endangered Species Act with respect to the regulation of certain hunting practices.

*WildEarth Guardians v. Department of Agriculture* (D. Nev.). Division attorneys successfully defended the Department of Agriculture Wildlife Service's Nevada State Predator Damage Management Plan, which allows the agency to assist state and private entities in managing human-predator interactions across the State.

*Center for Biological Diversity v. EPA* (N.D. Cal.). ENRD attorneys resolved a decade-old sweeping challenge to EPA's compliance with the Endangered Species Act in connection with registration of pesticides.

## **Defending the Establishment of National Monuments**

ENRD attorneys defend the President's establishment of national monuments under the Antiquities Act and modifications of monument boundaries.

*Fehily v. Biden* (D.N.J.). Commercial fishermen challenged President Biden's Proclamation affirming the establishment of the Northeast Canyons and Seamounts Marine National Monument off Cape Cod and the restoration of a ban on commercial fishing within the Monument. The Division obtained dismissal of the action, which sustained the President's authority to act under the Antiquities Act.

Defending proclamations enlarging National Monuments. In 2023, ENRD secured a favorable decision from the U.S. District Court for the District of Utah that dismissed challenges to President Biden's proclamations expanding the boundaries of the Grand Staircase-Escalante National Monument and Bears Ears National Monument. In addition, in separate cases, the Ninth and D.C. Circuits upheld a different proclamation enlarging the Cascade-Siskiyou National Monument against arguments that another statute that governs some of the affected land (the Oregon and California Railroad and Coos Bay Wagon Road Grant Lands Act) did not permit the withdrawal of that land from timber production.

## **Defending the Management of National Wildlife Refuges**

*Alaska Industrial Development and Export Authority v. Biden* (D. Alaska). Section 4 of Executive Order 13,990 directed the Department of the Interior to place a temporary moratorium on activities relating to implementation of the Coastal Plain Oil and Gas Leasing Program, which addresses the development of oil

and gas leases in the Arctic National Wildlife Refuge. In 2023, Division attorneys prevailed at the summary judgment phase of the litigation in defending against claims that the temporary moratorium violated the 2017 Tax Cuts and Jobs Act.

## **Defending Lease Sales Mandated by Congress**

ENRD attorneys successfully defended (and are continuing to defend) the Department of the Interior's implementation of the Inflation Reduction Act's mandate that it hold three lease sales for oil and gas development on the Outer Continental Shelf in the Gulf of Mexico and a fourth sale in Cook Inlet, Alaska.

## **Protecting the United States' Interests in Federal Land**

The Division defends the United States from efforts to claim title in, or control over, federal lands. These cases include situations where plaintiffs dispute the United States' ownership and ask the court to rule that they own the property in question. The cases also may involve scenarios where the plaintiffs are trespassing on federal land.

*Disputes with the State of Alaska.* The Division manages a large docket of cases in Alaska arising under the Quiet Title Act. The State of Alaska claims in these cases that it owns the lands under lakes and rivers within National Park units, national monuments, congressionally designated wild and scenic rivers, and other federal lands.

*Disputes with the State of Utah.* In Utah, the Division manages an even larger docket defending against that State's claims that it owns over 12,000 rights-of-way in highways traversing federal lands.

*Round v. Department of Agriculture (D. Colo.).* Division attorneys successfully rebuffed claims to ownership of federal land and water rights on the Comanche National Grasslands by an individual who held grazing permits. This preserved federal ownership and jurisdiction over the land.

## **Management of Wild Horses**

The Division achieved a number of victories in defending the federal government's management of wild horses on public lands.

*Central Oregon Wild Horse Coalition v. Vilsack (D. Or.).* The court upheld the Forest Service's gather plan concerning the Ochoco herd of wild horses in Oregon's Ochoco National Forest. The court found that the agency's determination of the appropriate management level of horses in the territory, and the measures designed to achieve that level, were reasonable.

*Wild Horse Education v. Interior (D. Nev.).* The court rejected an emergency motion for injunctive relief in which the plaintiffs sought to halt the Bureau of Land Management's gather of wild horses from the Antelope Complex Herd Management Area. The plaintiffs alleged violations of the Wild Free-Roaming Horses and Burros Act, the National Environmental Policy Act, and the First Amendment.

*Friends of Animals v. Haaland* (D. Nev.). ENRD attorneys prevailed in convincing the court to reject a request to halt the transfer of gathered wild horses to an off-range corral for housing in Winnemucca, Nevada.

## **Other Litigation**

The Division also handled many other cases in furtherance of its core mission that do not fit neatly into any of the categories above.

*Oklahoma v. Interior* (W.D. Okla.). In a challenge brought by the State of Oklahoma, we successfully defended the Department of the Interior's exercise of regulatory jurisdiction over coal mining activities within certain Indian reservations following the Supreme Court's decision in *McGirt v. Oklahoma*. Our position and the court's decision recognized the continuing existence of the reservations.

*Massachusetts Coalition for Immigration Reform v. Department of Homeland Security & Huhn v. Department of Homeland Security* (D.D.C.). In consolidated cases, the plaintiffs challenge more than 80 Department of Homeland Security immigration-related decisions and policies, alleging they result in population growth and thus require analysis under the National Environmental Policy Act. While litigation remains ongoing, ENRD and other Department of Justice attorneys have successfully obtained the dismissal of the claims against all but two agency decisions.

*Revisited regulations.* Division attorneys also continued their work in fostering judicial economy and administrative effi-

ciencies across various cases where this Administration reevaluated challenged regulations. One example involves the Council on Environmental Quality's 2020 revision of its regulations implementing the National Environmental Policy Act, which various groups challenged in five separate lawsuits. The Council has been conducting a new rule-making during this Administration, and ENRD attorneys have furthered this work by obtaining stays in the pending litigation, thereby ensuring that the Council's limited resources can be focused on the new rule, rather than litigation. Division attorneys similarly facilitated the Department of the Interior's work in promulgating replacements for several rules, including one governing drilling on the Outer Continental Shelf and another governing Interior's oversight of state regulation of surface coal mining. Specifically, the Division negotiated a series of stays in corresponding litigation pending the finalization of the new rules.

*United States v. A&G Coal Corp.* (W.D. Va.). Division attorneys initiated a civil enforcement action in 2013 against thirteen coal companies and their principal officer to recover over \$3 million in fines and penalties flowing from three of the companies' persistent violations of the terms of the federal mining permits and ten other companies' failure to pay statutorily required reclamation fees.



# Preserving the Federal Fisc

The Division preserves the federal fisc against unjustified claims for money judgments—for instance, in litigating Fifth Amendment takings claims based on flooding in the vicinity of federal dams and flood control projects around the country. In *Orr v. United States* (Fed. Cl.), the Division successfully defended against claims brought by property owners located downstream of the Olympus Dam (pictured above) in Colorado who experienced flooding attributed to the Bureau of Reclamation's releases of water from that dam during a heavy rainfall event.

*Photo Credit: Bureau of Reclamation*

## **Fifth Amendment Takings Cases**

ENRD's Natural Resources Section defends a wide variety of constitutional claims brought under the Just Compensation Clause of the Fifth Amendment. That clause requires the payment of "just compensation" when private property is taken for a public purpose. Claims for inverse condemnation under the Fifth Amendment—commonly referred to as "takings" claims—can be brought against almost any federal agency based on either regulatory action or a claimed physical intrusion by the government. The amount at issue in takings cases often involves billions of dollars.

Takings claims are often highly complex, requiring proficiency in making use of electronic discovery tools, developing highly technical and scientific evidence, and presenting the government's cases at trial. ENRD has had notable successes in traditional takings litigation, including in cases related to rails-to-trails conversions and flooding. Examples include:

*Flooding during historic rainfall events.* The Division is defending Fifth Amendment takings claims based on flooding in the vicinity of federal dams and flood control projects around the country. In *Orr v. United States* (Fed. Cl.), the Division successfully defended against claims brought by property owners located downstream of the Olympus Dam in Colorado who experienced flooding that they attributed to the Bureau of Reclamation's releases of water from that dam in connection

with operations during a heavy rainfall event.

*Wildfire takings cases.* The Division is defending a growing number of Fifth Amendment takings cases based on the burning of private property from wildfires. The circumstances under which wildfires ignite and spread vary in these cases and are heavily dependent on natural conditions such as drought, lightning strikes, and high winds, which the government does not control. Pending cases involve wildfires that occurred in Oregon, California, New Mexico and Montana.

*Rails-to-trails cases.* The Division continues to defend in the Court of Federal Claims a significant docket of Fifth Amendment takings cases related to "rails-to-trails" conversions that occur across the country. The Division has been successful in narrowing the scope of these cases. The Division also continues to explore early settlement options in cases involving viable claims to reduce the burdens and costs of litigation. In the process, the Division is protecting the conversion of former railroad rights of way into important public transportation and recreational infrastructure.

*Lemon Bay Cove v. United States* (Fed. Cl.). In this case, the United States successfully defended against a \$3.8 million claim in which a real estate developer alleged a taking of his property due to the U.S. Army Corps of Engineers' denial of a permit under Section 404 of the Clean Water Act. The developer sought the permit in order to construct a 12-unit housing development on a barrier island consisting of submerged

land and a high quality, functioning forested mangroves wetlands, and small uplands regions.

## **Tribal Trust Cases**

The Division continues to represent the United States' interests in litigation involving tribal claims for money damages associated with alleged breaches of trust or treaty responsibilities, helping to preserve the federal fisc against unwarranted monetary claims.

*White Mountain Apache Tribe v. United States* (Fed. Cl.). The Tribe alleged, among other things, breaches of trust duties related to management of on-reservation natural resources and infrastructure. Division attorneys had earlier secured the dismissal of certain claims and, during 2023, reached a negotiated resolution of the Tribe's remaining claims.

## **Condemnation Actions**

As described above in the section entitled "Supporting Infrastructure Development and Strengthening National Security," the Division's Land Acquisition Section files condemnation actions to acquire land needed for important federal agency programs. Part of this work is defending against egregious claims for compensation by landowners; the Division saved the United States roughly \$2 billion in addressing these claims in 2023.



# Training, Diversity, and Operations

ENRD invests in its staff in three main areas: the Professional Development Program; Diversity, Equity, Inclusion, and Accessibility; and wellness. The ENRD Speakers Series brings officials from collaborating agencies to discuss developments in environmental law. Pictured above is Monica Medina, Assistant Secretary for Oceans & International Environmental and Scientific Affairs & Special Envoy for Biodiversity and Water Resources, at a Speakers Series event this year.

*Photo Credit: ENRD*



## **ENRD’s Professional Development Program— Advancing Our Mission by Investing in Our People**

The American public can count on our attorneys, professional staff, and management teams to achieve results for the public interest in part because every employee has access to high-quality training that matches their needs and the evolving needs of our cases. ENRD prioritizes professional development and is proactive. ENRD’s Office of Professional Development & Diversity, the E Litigation Group, the Office of Litigation Support, and the Department’s Library and Office of Legal Education collaborate to ensure our attorneys and professional staff can sharpen their litigation and negotiation skills and prepare to meet future challenges.

ENRD provides a strong foundation for our newest litigators. In fall 2023, lateral attorneys who recently joined the Division and our class of newly minted attorneys who entered the Division through the prestigious Attorney General’s Honors Attorney Program participated in a multi-week program to acclimate them to the Division. This annual training features interactive, high-level orientation sessions to welcome new attorneys and introduce them to the resources available to support their success. Highlights include sessions on working with client agencies, principles of discovery, handling expert witnesses, coordinating with professional staff, negotiations, brief writing, and practicums on oral advocacy and depositions.

Through ENRD’s advanced skills training sessions, our seasoned attorneys develop deeper understandings of core legal skills and are exposed to new perspectives to incorporate into their practice. In 2023, ENRD offered legal writing and appellate writing workshops and a three-day seminar on discovery best practices, among other training. Individual sections within ENRD also offered statute- and issue-specific training. Courses for our professional staff—paralegals and legal assistants—on witness interviewing, advanced legal research and citation, and business writing and editing were also crucial to ENRD’s success in 2023.

ENRD also partnered with the National Advocacy Center (NAC) in Columbia, South Carolina, the Department’s world-class residential and virtual training center run by the Office of Legal Education. Here, ENRD attorneys attended multi-day seminars on Civil and Criminal Trial Advocacy, Evidence, Pre-Trial Preparation, Trial Presentation Skills, and other courses. ENRD is honored that our attorneys are some of the most sought-after faculty for the NAC’s courses.

Finally, exceptional lawyering requires keen “soft skills”—managing workflow, solving problems, building teams, and interacting with colleagues. All attorneys and professional staff have free, on-demand access to soft skills training courses—as well as job skills and ethics courses—through the Department of Justice’s learning management system, LearnDOJ.

## **Diversity, Equity, Inclusion, and Accessibility**

As it has for over a decade, ENRD is continually improving its efforts to diversify its workforce to better reflect American society. In 2023, our **Diversity Working Group** began assessing the Division's long-standing Diversity Management Plan with the goal of refining our recruitment and hiring practices in 2024. We aim to build on our efforts to ensure that competitive applicants from across the nation, including from communities that have been historically underrepresented in the legal and environmental fields, learn about our career opportunities and how rewarding public service at ENRD can be.

ENRD also knows that by creating an even more inclusive, welcoming work culture, our current and future employees will be more satisfied and have more fulfilling and longer careers with the Division. In 2023, the Office of Professional Development & Diversity revamped the **Division's Mentoring Programs** to incorporate more mentor resources and training. With a more proactive approach to mentoring, all ENRD employees will have opportunities to mentor and be mentored when it supports their needs—whether as a new employee or a seasoned one who is evaluating how to continue advancing in their career with ENRD.

ENRD continued to support the Department's popular **Diversity and Inclusion Dialogue Program**. Six ENRD employees were accepted into the Program; two employees served as facilitators. This six-month program

allows small groups of DOJ employees to come together to discuss commonalities and differences based on the many dimensions of diversity that are represented in the DOJ's workforce.

## **Wellness**

Like state bars across the country, ENRD recognizes that lawyer well-being is part of a lawyer's ethical duty of competence. Wellness, mindfulness, and meditation build resilience to manage work and life obligations and the stresses that come with them, and foster better overall mental health. This past year, as we have for several years, ENRD has offered Mindful Wednesdays, a half-hour respite each Wednesday for employees to participate in a guided meditation. ENRD's wellness programming also benefits from the monthly programs that the Department's Employee Assistance Program and WorkLife4You Program offer.

ENRD is proud of its investments in its attorneys and professional staff. Our mission requires that we ensure that our employees are prepared to meet the challenges we face. In 2024 and beyond, we will continue to pursue excellence by creating a welcoming and diverse work culture and by investing in the skills and wellbeing of our most valuable resource—our employees and the individual talents they bring to their work every day.



# Career Opportunities

Working for ENRD has enormous benefits. Pictured above, the ENRD, Civil Rights, Criminal, and Antitrust Division AAGs and over 100 interns gathered at the Great Hall for a panel discussion on careers in public service.

*Photo Credit: DOJ*

The Environment and Natural Resources Division of the U.S. Department of Justice handles environmental and natural resources litigation on behalf of the United States. Working for ENRD has enormous benefits.

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## Reasons to Work at ENRD

**Impact**—Make a difference! The Division is the largest environmental law firm in the country, and we work on issues of nationwide importance every day. Our attorneys have cases in all 50 States and the U.S. Territories.

**Challenging Experiences from Day One**—New attorneys are given responsibility for their own cases, and many will have an opportunity to make court appearances within a few months of their arrival.

**Growth**—Learn something new. ENRD offers professional development opportunities for attorneys, paralegals, and professional staff, including hands-on learning with excellent training opportunities in advocacy, federal practice, litigation, legal support, information technology, management, and leadership.

**Great Coworkers**—Our employees come from diverse backgrounds but have a common goal: working in a collegial environment to help promote a healthier and cleaner environment for our Nation and preserve its abundant natural resources.

**Service to America**—Representing the United States in court is fulfilling and meaningful. The rewards of public service have led to uncommonly high job satisfaction in our Division.

**Meaningful Benefits**—Federal service offers many outstanding benefits. More information is available here:

[https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Employee\\_Benefits.pdf](https://www.justice.gov/sites/default/files/enrd/legacy/2015/04/13/Employee_Benefits.pdf)

## Types of Employment

*Attorney Employment.* The Attorney General's Honors Program is the nation's premier entry-level federal attorney recruitment program. The application process opens in late July and closes in early September; details are available at:

<https://www.justice.gov/legal-careers/entry-level-attorneys>

Individual sections within the Division also advertise for lateral attorneys (attorneys of varying experience levels) to join us. Details are available at:

<https://www.justice.gov/enrd/attorney-employment>

*Volunteer Legal and Non-Legal Internships.* The Division hires volunteer law students and undergraduates both in the summer and during the school year for its various litigating sections. Information and vacancy announcements are available at:

<https://www.justice.gov/enrd/employment/internships>

*Pathways for Students and Recent Graduates to Federal Careers.* Through the Pathways Program, the Division offers paid positions for students and recent graduates, including legal assistant and paralegal positions. More information is available here:

<https://www.justice.gov/enrd/pathways-students-and-recent-graduates-federal-careers>

*Paralegals, Legal Assistants, and Administrative and Technical Staff.* The Division has opportunities for paralegals and legal assistants, as well as for technical and administrative staff. More information is available here:

<https://www.justice.gov/enrd/administrative-technical-and-paralegal-employment>