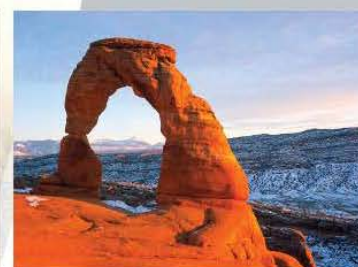
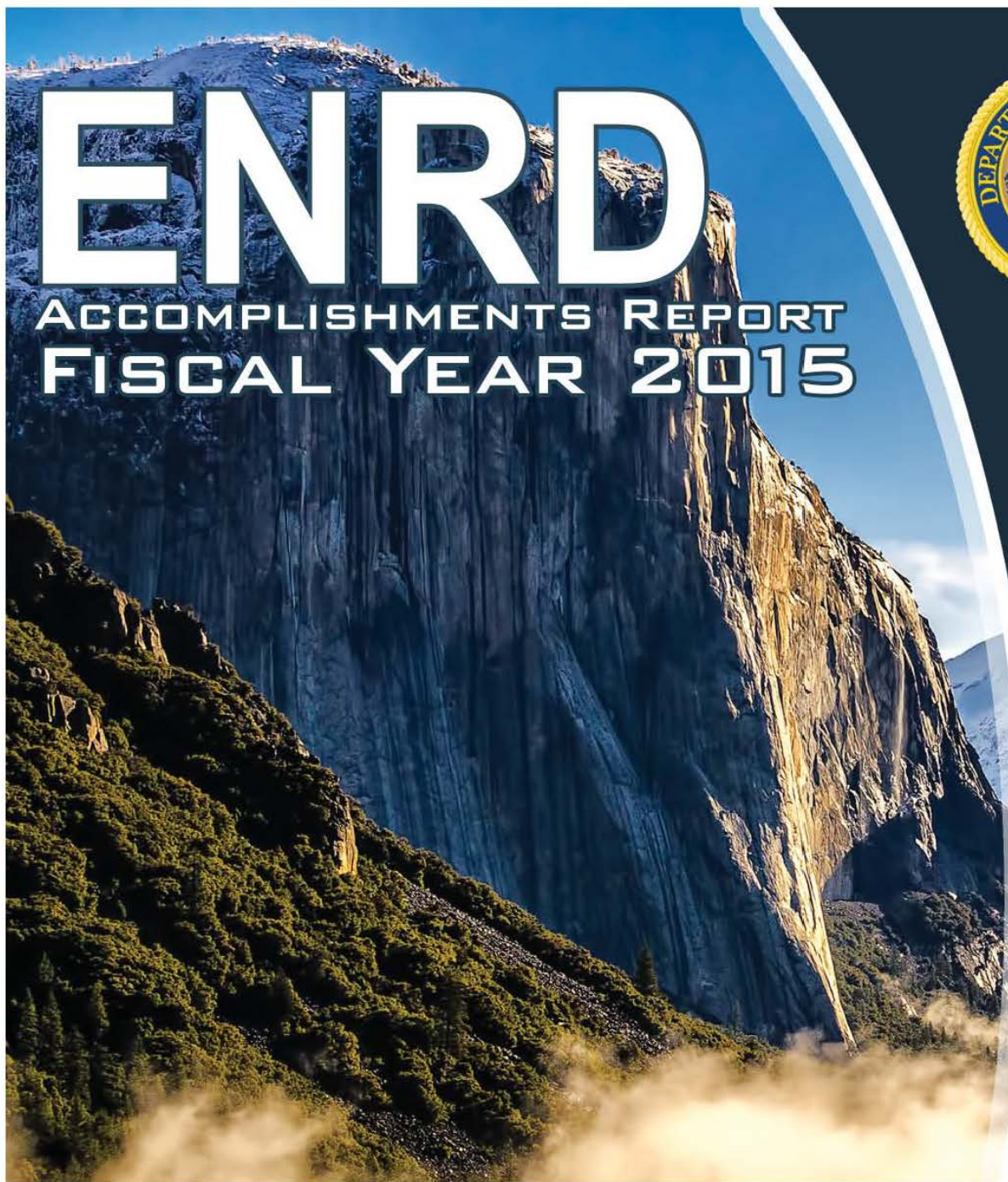




ENRD

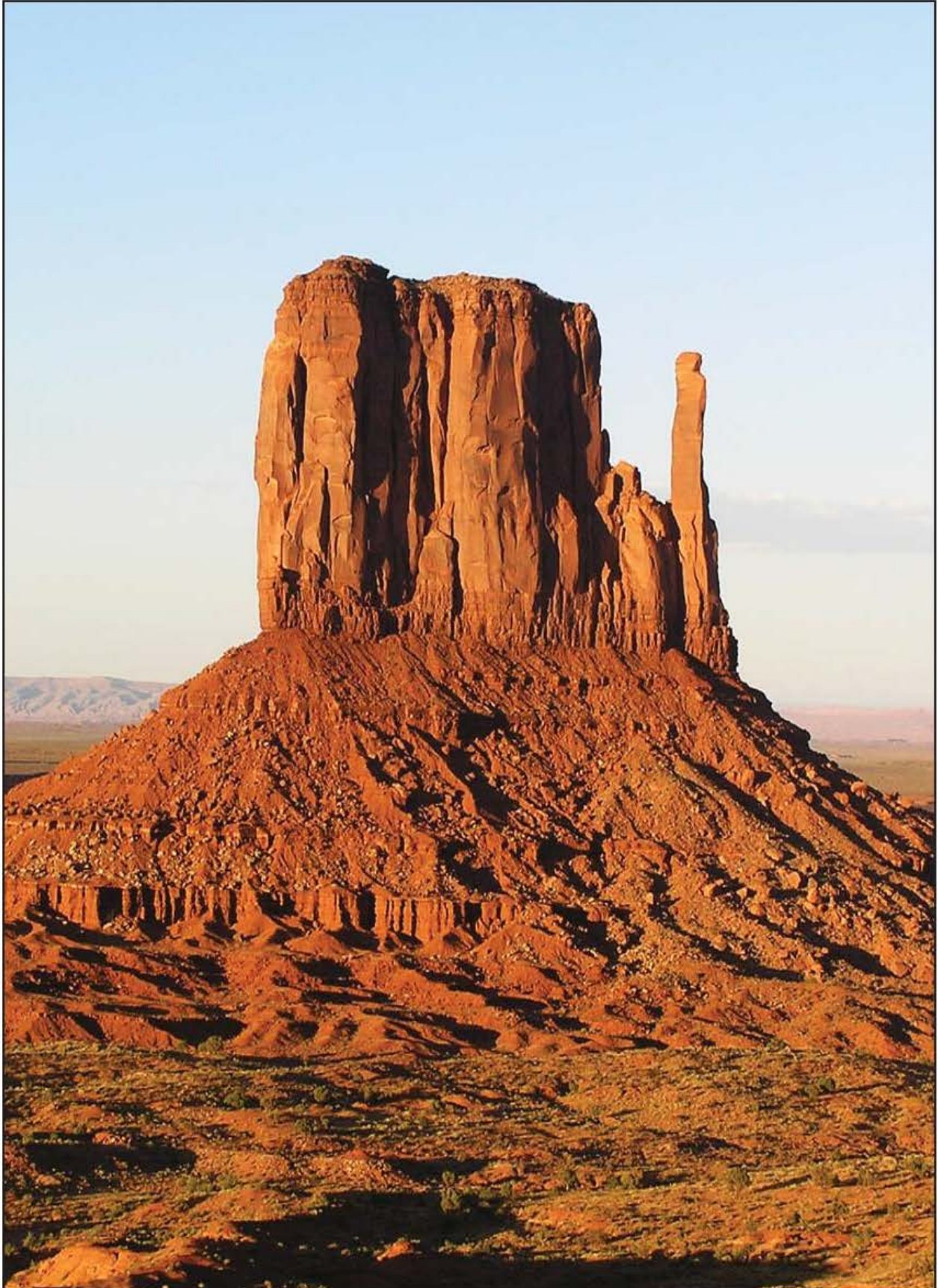
ACCOMPLISHMENTS REPORT FISCAL YEAR 2015



United States Department of Justice
Environment & Natural Resources Division

SUMMARY OF DIVISION ACCOMPLISHMENTS

FISCAL YEAR 2015



Mitten Butte in Monument Valley, Utah, USA, at sunset,

Photo by Wikimedia Commons

CONTENTS

FOREWORD 7

OVERVIEW OF THE ENVIRONMENT AND NATURAL RESOURCES DIVISION 12

PROTECTING OUR NATION'S AIR, LAND, AND WATER 18

ENSURING CLEANUP OF OIL AND HAZARDOUS WASTE 35

**PROMOTING RESPONSIBLE STEWARDSHIP OF AMERICA'S WILDLIFE AND
NATURAL RESOURCES 45**

**MAKING PROGRESS TOWARD ACHIEVING THE GOAL OF ENVIRONMENTAL
JUSTICE 56**

ENFORCING THE NATION'S CRIMINAL POLLUTION AND WILDLIFE LAWS 69

PROTECTING VITAL FEDERAL PROGRAMS AND INTERESTS 80

**PROMOTING NATIONAL SECURITY, ENERGY SECURITY, AND MILITARY
PREPAREDNESS 91**

**PROTECTING TRIBAL RIGHTS AND RESOURCES AND ADDRESSING TRIBAL
CLAIMS 98**

SUPPORTING THE DIVISION'S STAFF 105



Bald Eagle,

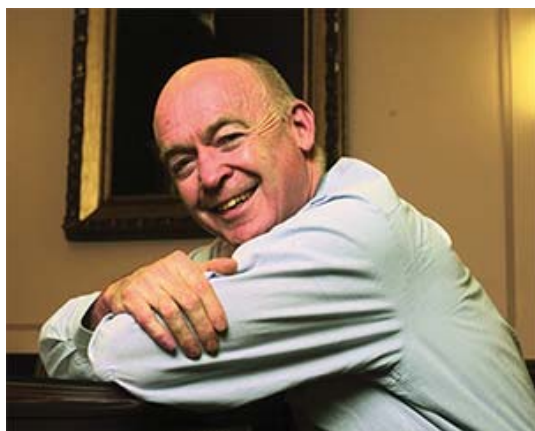
Photo by Wikimedia Commons



Wildflowers, Copper Basin, Nevada,

Photo by Wikimedia

FOREWORD



Assistant Attorney General John C. Cruden

This is my second year as Assistant Attorney General of the Environment and Natural Resources Division. I have previously had the honor and privilege of spending over two decades at the Department of Justice, first as Chief of the Environmental Enforcement Section and then as a career Deputy Assistant Attorney General. During that time, I have witnessed the extraordinary efforts of public servants who work countless hours representing the United States in federal courts across our great nation. Those career professionals who have dedicated their lives to public service are the backbone of the Division: upholding our laws, improving the environment, protecting our natural resources, and ensuring the

health and safety of our citizens.

In existence for over one hundred years, the Division is built upon a history of service, integrity, and adherence to the rule of law. Our litigation responsibilities are broad: enforcing the nation's civil and criminal pollution-control laws, defending environmental challenges to federal agency programs and activities, representing the United States in matters concerning the stewardship of the nation's natural resources and public lands, acquiring real property, bringing and defending cases under the wildlife protection statutes, and litigating cases concerning the resources and rights of Indian tribes and their members.

In this report you will find the highlights of the Division's exceptional success in 2015. The Division successfully litigated 864 cases and handled a total of 6,729 cases, matters, and appeals. We achieved over \$2.7 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief—clean-up and pollution prevention actions funded by private parties—exceeded \$6.4 billion. ENRD also saved the taxpayers money, avoiding claims of over \$3 billion. The Division achieved a favorable outcome in 96 percent of cases, resulting in cleaner air, land, and water in the United States. In several areas, our achievements were the highest in the Division's history.

A key accomplishment of the past year was the negotiation of a historic settlement in the Deepwater Horizon litigation that resolves civil claims of the United States and five Gulf States against BP, arising from the April 20, 2010 blowout of the Macondo well and the massive oil spill in the Gulf of Mexico. BP will pay the U.S. and the Gulf States more than \$20 billion, including: a \$5.5 billion (federal) civil penalty, more than \$8.1 billion in natural resource damages, \$600 million in further reimbursement of clean-up costs and some royalty payments, and up to \$6 billion in economic damage payments for the Gulf States or their local units of government. This resolution is extraordinary in its size and scope. It is the largest settlement with a single entity in the Department of Justice's history, including the largest civil penalty ever awarded under the Clean Water Act, the largest ever natural resources damages settlement, and massive economic damages payments to our State partners. The final settlement includes a comprehensive natural resource damages restoration plan that will guide the recovery of the Gulf for many years into the future. Joining in the consent decrees were the Governors and Attorneys General of the five Gulf States and five federal agencies.

The Division continues to partner with many states to enforce our nation's pollution laws, prosecute traffickers in protected wildlife, and defend challenges to critical infrastructure projects. For example, the Division worked closely with the State of California to settle a Clean Air Act case against Hyundai Motor Company. The complaint alleged that the defendants sold nearly 1.2 million cars and SUVs that will emit approximately 4.75 million metric tons of greenhouse gases in excess of what the automakers certified to EPA. Under the settlement, the automakers paid a \$100 million civil penalty, the largest ever under the Clean Air Act, to resolve the alleged violations and will spend approximately \$50 million on measures to prevent future violations. In 2015, I established a Counselor for State and Local Affairs to emphasize our commitment to cooperative federalism. Under her leadership, we were able to work with 14 states in joint enforcement, providing them over \$8 million in civil penalties and achieving exceptional environmental results.

In 2015, the Division continued its record of achievement in bringing successful civil and criminal enforcement, filing more cases and realizing exceptional results that received national attention. In *Duke Energy*, subsidiaries of the nation's largest utility pled guilty to nine criminal violations of the Clean Water Act. They also agreed to pay a \$68 million criminal fine and spend \$34 million on environmental projects and land conservation to benefit rivers and wetlands in North Carolina and Virginia. Charges in this case resulted from the massive coal ash spill from the Dan River steam station into the Dan River near Eden, North Carolina, in February 2014. Coal ash contains contaminants like mercury, cadmium and arsenic. Without proper management, these contaminants can pollute waterways, groundwater, drinking water and the air.

In 2015, ENRD also brought cases to address new areas of concern, such as prosecuting renewable fuel fraud under the Clean Air Act. Congress created the renewable fuel standard (RFS) program to curtail greenhouse gas emissions and expand the nation's renewable fuels sector while reducing reliance on imported oil. The RFS program was authorized under the Energy Policy Act of 2005 and expanded under the Energy Independence and Security Act of 2007. Under the RFS program, properly manufactured biodiesel is eligible for a tax credit as well as another valuable credit called a Renewable Identification Number. Programs like the RFS open the path toward energy independence and curb the impact of climate change. When individuals seek to exploit them, these purposes are blocked, American businesses are hurt and the Treasury of the United States is depleted. The results of our efforts in this area have already been exemplary, including significant jail sentences and over \$180 million in restitution and forfeiture. In 2015, ENRD also sought and was given responsibility for criminal worker safety prosecutions. Under the new initiative, ENRD and the U.S. Attorneys Offices will work with several offices within the Department of Labor, including the Occupational Safety and Health Administration, to investigate and prosecute worker endangerment

violations. ENRD has embraced its new role, which will enable it to prevent and deter crimes that put the lives and the health of workers at risk.

In our civil enforcement cases, we have increasingly sought company-wide relief for environmental violations, and this report details some of our most significant achievements in this area. For example, hydrochlorofluorocarbons (HCFCs) deplete the stratospheric ozone layer, allowing dangerous amounts of cancer-causing ultraviolet rays from the sun to reach the earth and lead to adverse health effects including skin cancers, cataracts, and suppressed immune systems. In *United States v. Costco Wholesale Corp.* (N.D. Cal.), Costco, one of the nation's largest retailers, settled a case after violating the Clean Air Act by failing to promptly repair refrigeration equipment leaking HCFC-22. In the settlement reached last year, the company agreed to cut its emissions of HCFC-22 from leaking refrigeration equipment at more than half of its stores nationwide. Company-wide case settlements such as this one benefit the communities located near the facilities covered by these settlements, the government, which achieves an expedited resolution on an efficient scale of past and ongoing violations, and industry, which can obtain a negotiated schedule for technological upgrades that is efficient and consistent with company operations. We also continued our initiative against coal-fired power plants that were operating illegally, and have now achieved settlements that will reduce harmful pollution by over 2 million tons each year once the more than \$17 billion in required pollution controls are installed and functioning.

One of my goals for the year was advancing environmental justice, and I have worked closely with the Division's counselor for environmental justice to achieve that goal. ENRD is a key member of the Interagency Working Group on Environmental Justice and, at our request this group agreed to establish a new subgroup focused on Native American issues. We have provided training, participated in community outreach, integrated environmental justice principles into our litigation, and prepared a comprehensive plan of action. And, we have now delivered on specific cases, such as the litigation described in this report concerning the Four Corners Power Plant, located within the boundaries of the Navajo Nation in New Mexico. The Consent Decree we reached in this important Clean Air Act case requires the owner of the coal-fired power plant to install state-of-the-art pollution controls to eliminate harmful pollution. While that act alone will dramatically improve the lives of the Native Americans in the area, the settlement also provides for a health care trust fund and the replacement of the tribes' wood-burning stoves with modern energy-efficient stoves.

The Division also represents the Department of Defense in a number of cases, many with significant national security and military readiness implications. We have litigated cases to expand and modernize the military's presence throughout the country, and defended the military from challenges concerning its presence on Okinawa Island and in the Pacific Ocean. Our energy docket is expanding, and we achieved a number of key victories in cases involving the intersection of energy security issues and natural resources law. In particular, we have successfully defended a number of solar and wind power projects on public land. Our Native American docket of cases is quite significant, and we filed an important number of affirmative cases this year. We have supported tribal authority over their land and resources and defended tribal interests in water adjudications, agency authority to acquire land in trust for tribes, as well as the federal recognition process. For example, in *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (C.D. Cal.), a district court found—as the tribe and United States had argued—that the tribe's federal reserved water right included groundwater. In addition, we expanded our Indian Child Welfare Act initiative with successful amicus briefs, and our vigorous defense of the Indian Child Welfare Act.

ENRD also obtained many favorable decisions while defending challenges to federal agency actions. For example, the Division defended the President's Clean Power Plan, which addresses the Nation's most important and urgent environmental challenge, climate change. The Division will continue

to defend that rule in 2016. The Division also successfully defended EPA's Cross-State Air Pollution Rule. This ground-breaking rule requires states to significantly improve air quality by reducing power plant emissions that contribute to ozone and fine particle pollution in other states. Separately, in the Third Circuit Court of Appeals, we successfully turned back challenges to nitrogen, phosphorus, and sediment effluent standards developed to protect the Chesapeake Bay. These standards established the Chesapeake Bay Total Maximum Daily Load (TMDL), a historic and comprehensive "pollution diet" for the District of Columbia and six states within the Chesapeake Bay watershed. This TMDL includes accountability features to guide actions to restore clean water in the Bay. The Supreme Court denied a petition for certiorari in the case on February 29, 2016. Finally, in another case, ENRD attorneys successfully defended a National Marine Fisheries Service penalty assessment of \$1.5 million for violations of regulations intended to protect tuna stocks after the defendants knowingly set purse seine fishing gear on whales to harvest tuna. In so doing, ENRD ensured that all participants in the fishery operate on a level playing field and that the fishery remains sustainable into the future.

Another important priority of mine has been the critical work the Division does to combat illegal wildlife trafficking, an area that is also a high priority for the entire Administration. Along with senior leadership from the Departments of State and the Interior, I am a co-chair of the Task Force to Combat Wildlife Trafficking. The Task Force is comprised of 17 federal agencies and offices that seek through coordinated efforts to bring a "whole of government" approach to combatting the pernicious trade in wildlife that is decimating some of our most iconic species. This year I testified on the issue before the House Foreign Affairs Committee, and was honored to lead the U.S. delegation to the Kasane Conference on the Illegal Wildlife Trade, held in Botswana. Our wildlife enforcement activities are at an all-time high, with significant prosecutions in a multitude of cases, including *United States v. Xiao JuGuan* (S.D.N.Y.). On November 12, 2015, a United States federal court convicted the defendant, a Canadian national and partner in a Chinese art and antiques business. The defendant was sentenced to two years in prison for his role in an on-line scheme to traffic in and smuggle from the United States to China 16 libation cups carved from rhinoceros horn and valued at more than \$1 million. The defendant pleaded guilty to smuggling the rhino horn products without the required declarations and permits. The defendant was also ordered to serve two years of supervised release and to forfeit \$1 million and 304 pieces of carved ivory.

These are only a few examples of the extraordinary work of the Division. I am very proud of the Division's accomplishments last year. At the end of 2015, I had the pleasure of attending the Awards Ceremony conducted by the Partnership for Public Service and accepting, on behalf of our Division, the award for being one of The Best Places to Work in the Federal Government 2015. Based on information collected through the Office of Personnel Management's 2015 Federal Employee Viewpoint Survey, ENRD was ranked number four among 320 federal agency subcomponents. The Division's scores once again make ENRD the number one best place to work at the Department of Justice, and the Department itself ranked as the number three "large agency" in the Federal Government. Every day that I come to work, I am awed by the warmth, intelligence and dedication of the women and men who work in this great Division.

In closing, I would like to highlight my goals for the Division for coming year:

- **Goal 1:** Enforce the nation's bedrock environmental laws that protect air, land, and water for all Americans
- **Goal 2:** Vigorously represent the United States in federal trial and appellate courts, including by defending EPA's rulemaking authority and effectively advancing other agencies' missions and priorities

- **Goal 3:** Protect the public fisc and defend the interests of the United States
- **Goal 4:** Advance environmental justice through all of the Division's work and promote and defend tribal sovereignty, treaty obligations, and the rights of Native Americans
- **Goal 5:** Provide effective stewardship of the nation's public lands, natural resources and animals, including fighting for the survival of the world's most iconic species and marine resources, and working across the government and the globe to end the illegal trade in wildlife.

John C. Cruden
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
April 22, 2016

OVERVIEW OF THE ENVIRONMENT AND NATURAL RESOURCES DIVISION



Source: DOJ Website

The richness and complexity of the Division's history is inseparable from the larger story of the growth and maturation of American society. During the 19th Century, the federal government sought to encourage settlement by transferring the nation's public lands to private owners. Federal land policy changed abruptly at the turn of the century, when the government began to focus on retaining ownership of public lands, and managing the resources on those lands, for the benefit of the entire nation.

On November 16, 1909, Attorney General George Wickersham signed a two-page order creating "The Public Lands Division" of the Department of Justice to step into the breach and address the critical litigation that ensued. He assigned all cases concerning "enforcement of the Public Land Law," and relating to Indian affairs, to the new Division, and transferred a staff of nine—six attorneys and three stenographers—to carry out those responsibilities.

As the nation grew and developed, so did the responsibilities of the Division, and its name changed to the "Environment and Natural Resources Division" (ENRD) to better reflect those responsibilities. The Division celebrated its 100th anniversary on November 16, 2009. Today, we are mindful of the strong legacy that we have inherited and the opportunities and challenges that lie ahead of us. The Division has a main office in Washington, D.C., and field offices across the United States. It has a staff of over 600 people, and is organized into ten sections. It currently has over 3,183 active cases and matters and has represented virtually every federal



Yellowstone National Park,

National Park Service photo



Everglades National Park,

National Park Service photo

WHAT WE DO

The Environment and Natural Resources Division has primary responsibilities for litigation as well as policy work on behalf of United States regarding:

- Prevention and Cleanup of Pollution
- Environmental Challenges to Federal Programs and Activities
- Stewardship of Public Lands and Natural Resources
- Property Acquisition for Federal Needs
- Wildlife Protection
- Indian Rights and Claims

The Division has the largest environmental law practice in the country.

agency in connection with cases arising in all fifty states and the United States territories.

One of the Division's primary responsibilities is to enforce federal civil and criminal environmental laws, such as the Clean Air Act, the Clean Water Act, the Oil Pollution Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation, and Liability Act, and the Safe Drinking Water Act. The main federal agencies that the Division represents in these areas are the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers. The Division's sections that carry out this work are the **Environmental Enforcement Section**, the **Environmental Defense Section**, and the **Environmental Crimes Section**. The Chiefs of these sections are W. Benjamin Fisherow, Letitia Grishaw, and Deborah L. Harris, respectively.

A substantial portion of the Division's work includes litigation under a wide array of statutes related to the management of public lands and associated natural and cultural resources. All varieties of public lands are affected by ENRD's litigation docket, ranging from entire ecosystems, such as the nation's largest sub-tropical wetlands (the Everglades) and rain forest (the Tongass), to individual rangelands or wildlife refuges, to historic battlefields and monuments. Examples of ENRD's land and natural resources litigation include original actions before the U.S. Supreme Court to address interstate boundary and water allocation issues, and suits challenging federal agency decisions that affect economic, recreational, and religious uses of the national parks, national forests, and other public lands; challenges brought by individual Native Americans and Indian tribes relating to the United States' trust responsibility; and actions to recover royalties and revenues from development of natural resources, including subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, including the U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's (Interior) National Park Service, Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). **The Natural Resources Section** is primarily responsible for these cases. The Chief of the Natural Resources Section is Lisa L. Russell.

The Division's **Wildlife and Marine Resources Section** handles civil cases arising under the fish and wildlife conservation laws, including suits defending agency actions under the Endangered Species Act (ESA), which protects endangered and threatened animal and plant

species; the Marine Mammal Protection Act, which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act, which regulates fishery resources. The Chief of the Wildlife and Marine Resources Section is Seth Barsky. The **Environmental Crimes Section** brings criminal prosecutions under these laws and under the Lacey Act against people who are found smuggling wildlife and plants into or out of the United States or across state boundaries. The main federal agencies that ENRD represents in this area are FWS and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS).

Division cases frequently involve allegations that a federal program or action violates constitutional provisions or environmental statutes. Examples include Fifth Amendment takings claims, in which landowners seek compensation based on the allegation that a government action has precluded development of their property, and suits alleging that a federal agency has failed to comply with the National Environmental Policy Act (NEPA). Both takings and NEPA cases can affect vital federal programs, such as those governing the nation's defense capabilities (including military preparedness, weapons programs, nuclear materials management, and military research), renewable energy development, and food supply. In other cases, plaintiffs challenge regulations promulgated to implement the nation's pollution control statutes, such as the Clean Air Act and Clean Water Act, or activities at federal facilities that are claimed to violate such statutes. The Division's main clients in these areas include the Department of Defense, EPA, the U.S. Army Corps of Engineers, the U.S. Department of Transportation, and Interior's various components. The **Natural Resources Section** and the **Environmental Defense Section** handle these cases.

Another portion of the Division's caseload consists of eminent domain litigation. This important work, undertaken with Congressional direction or authority, involves the acquisition of land for the federal government, including for national parks, the construction of federal buildings, and national security-related purposes. The **Land Acquisition Section** is responsible for this litigation. The Chief of the Land Acquisition Section is Andrew Goldfrank.

The Division's **Indian Resources Section** litigates on behalf of federal agencies to protect the rights and resources of federally recognized Indian tribes and their members. This includes defending against challenges to statutes and agency actions that protect tribal interests, and bringing suits on behalf of federal agencies to protect tribal rights and natural resources. The Chief of the Indian Resources Section is Craig Alexander. The rights and resources at issue include water rights, the ability to acquire reservation land, and hunting and fishing rights, among others. In addition, the **Natural Resources Section** defends claims asserted by Indian tribes and tribal members against the United States. The main federal agency that the Division represents in connection with this work is Interior's Bureau of Indian Affairs.

The **Appellate Section** handles the appeals of all cases litigated by Division attorneys in the trial courts, and works closely with the Department of Justice's Office of the Solicitor General on ENRD cases that reach the U.S. Supreme Court. The Chief of the Appellate Section is James Kilbourne.

The **Law and Policy Section** advises and assists the Assistant Attorney General on environmental and natural resources legal and policy questions, particularly those that affect multiple sections in the Division. It reviews and analyzes legislative proposals on environmental and natural resources issues of importance to the Division, handles the Division's response



Source: DOJ Website

to congressional requests, provides comments on behalf of ENRD on federal agency rulemakings, and handles, with the Appellate Section, amicus curiae participation in cases of importance to the United States. The Law and Policy Section leads the Division's efforts on international issues, often in collaboration with the Environmental Crimes Section, and handles various special projects on behalf of Division leadership. Attorneys in the Law and Policy Section also serve as the Division's ethics and professional responsibility officer and counselor, its alternative dispute resolution counselor, and coordinate the Division's Freedom of Information Act and correspondence work. The Chief of the Law and Policy Section is Karen Wardzinski.

The **Executive Office** is the operational management and administrative support section for ENRD. It provides financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services to the Division's workforce. The Executive Office takes advantage of cutting-edge technology to provide sophisticated automation facilities to ENRD employees. By utilizing new technologies and innovative business processes—and by in-sourcing services traditionally provided by contractors and equipping employees to better serve themselves—the Executive Office is able to achieve significant cost savings for the American public on an annual basis. The Executive Officer of the Division is Andrew Collier.

The **Front Office** is a cadre of extraordinary attorneys who ensure the Division's work is accomplished in a timely and professional manner each day. The Principal Deputy Assistant Attorney General is Sam Hirsch, who supervises the Appellate Section and Indian Resources Section. Lisa Jones supervises the Law and Policy Section and Environmental Defense Section. Career Deputy Jean Williams supervises the Natural Resources Section, the Environmental Crimes Section, and Wildlife and Marine Resources Section. Career Deputy Bruce Gelber supervises the Environmental Enforcement Section and the Land and Acquisition Section. In addition, Cynthia Ferguson is the Counselor for Environmental Justice, Andrea Berlowe is the Counselor for State and Local Matters, and Sarah Himmelhoch is the Senior Litigation Counsel for E-Discovery. The Chief of Staff is Varu Chilakamarri. Finally, the Division special assistant is Paulo Palugod.

ENRD CLIENT AGENCIES

To learn more about the client agencies referenced in this report, visit their websites:

United States Department of Agriculture

United States Forest Service

Animal and Plant Health Inspection Service

www.usda.gov

www.fs.fed.us

www.aphis.usda.gov

United States Department of Commerce

National Marine Fisheries Service

National Oceanic and Atmospheric Administration

www.nmfs.noaa.gov

www.noaa.gov

United States Department of Defense

United States Air Force

United States Army

United States Army Corps of Engineers

United States Marine Corps

United States Navy

www.af.mil

www.army.mil

www.usace.army.mil

www.marines.mil

www.navy.mil

United States Department of Energy

www.energy.gov

Environmental Protection Agency

www.epa.gov

General Services Administration

www.gsa.gov

United States Department of Homeland Security

United States Customs and Border Protection

Federal Emergency Management Agency

United States Coast Guard

www.dhs.gov

www.cbp.gov

www.fema.gov

www.uscg.mil

United States Department of the Interior

Bureau of Indian Affairs

Bureau of Land Management

Bureau of Ocean Energy Management

Bureau of Reclamation

Bureau of Safety and Environmental Enforcement

National Park Service

Office of Surface Mining Reclamation and Enforcement

United States Fish and Wildlife Service

United States Geological Survey

www.doi.gov

www.bia.gov

www.blm.gov

www.boem.gov

www.usbr.gov

www.bsee.gov

www.nps.gov

www.osmre.gov

www.fws.gov

www.usgs.gov

United States Department of Transportation

Federal Aviation Administration

Federal Highway Administration

Federal Transit Administration

Pipeline Safety and Hazardous Materials Administration

United States Maritime Administration

www.dot.gov

www.faa.gov

www.fhwa.dot.gov

www.fta.dot.gov

www.phmsa.dot.gov

www.marad.dot.gov

United States Department of Veterans Affairs

www.va.gov

PROTECTING OUR NATION'S AIR, LAND, AND WATER

The Division remains committed to civil and criminal enforcement of the nation's environmental laws to address air pollution from the largest and most harmful sources; improve municipal wastewater and stormwater treatment and collection to keep raw sewage, contaminated stormwater, and other pollutants out of our nation's rivers, streams, and lakes; compel polluters to clean up hazardous waste or repay the government for the costs it incurs conducting cleanups; and prosecute criminal violations of environmental and other federal laws. The Division continues to enforce applicable laws and regulations to ensure that we protect human health and the environment.

Obtaining Company-Wide Relief for Environmental Violations

Company-wide case settlements benefit everyone. Communities located near the facilities covered by these settlements benefit from lower levels of pollution and, where appropriate, environmentally beneficial projects. The government benefits through expedited resolution on an efficient scale of historic and ongoing violations. Industry benefits because it gains the certainty of knowing that it is bringing its operations into compliance with the nation's laws, avoids the cost and risk of additional litigation, and can obtain a negotiated schedule for important technological upgrades that is efficient and consistent with company operations.

- Permits issued under the CWA can allow for the discharge of certain pollutants in limited amounts to rivers, streams, and other water bodies. Permit holders are required to monitor discharges regularly and report results to the state agency that issued the permit. In *United States v. Alpha Natural Resources, Inc.* (S.D. W.Va.), the government complaint alleged that, between 2006 and 2013, Alpha and its subsidiaries routinely violated limits in 336 of its state-issued CWA permits, resulting in the discharge of excess amounts of pollutants into hundreds of rivers and streams in Kentucky, Pennsylvania, Tennessee, Virginia, and West Virginia. The violations also included discharge of pollutants without a permit. Alpha Natural Resources is one of the nation's largest coal companies.

In the settlement, Alpha Natural Resources, Alpha Appalachian Holdings (formerly Massey Energy), and 66 subsidiaries agreed to spend an estimated \$200 million to install and operate



USGS photo



BLM photo

wastewater treatment systems and to implement comprehensive, system-wide upgrades to reduce discharges of pollution from coal mines in Kentucky, Pennsylvania, Tennessee, Virginia, and West Virginia. The settlement covers approximately 79 active mines and 25 processing plants in the five states.

In total, EPA documented at least 6,289 violations of permit limits for pollutants that include iron, pH, total suspended solids, aluminum, manganese, selenium, and salinity. The violations occurred at 794 different discharge points, or outfalls. Monitoring records also showed that on many occasions multiple pollutants were discharged in amounts of more than twice the permitted limit. Most violations stemmed from the companies' failure to properly operate existing treatment systems, install adequate treatment systems, and implement appropriate water handling and management plans.

EPA estimated that the upgrades and advanced treatment required by the settlement will reduce discharges of total dissolved solids by over 36 million pounds each year, and will cut metals and other pollutants by approximately nine million pounds per year. The companies also paid a civil penalty of \$27.5 million for thousands of permit violations, the largest penalty in history under Section 402 of the CWA.

In addition, the companies must build and operate treatment systems to eliminate violations of selenium and salinity limits, and implement comprehensive, system-wide improvements to ensure future compliance with the CWA. These improvements, which apply to all of Alpha's operations in Appalachia, include developing and implementing an environmental management system and periodic internal and third-party environmental compliance audits.

The settlement also resolved violations of a prior 2008 settlement with Massey Energy, and applies to the facilities and sites formerly owned by the company. Under the 2008 settlement, Massey paid a \$20 million penalty to the federal government for similar CWA violations, in addition to over a million dollars in stipulated penalties over the course of the next two years. Alpha purchased Massey in June 2011 and, after taking over the company, worked cooperatively with the government in developing the terms of the settlement. Alpha's Wyoming operations are not included in the settlement.

The State of West Virginia and the Commonwealths of Pennsylvania and Kentucky were co-plaintiffs with the United States and received portions of the penalty based on the number of violations in each state. West Virginia received \$8,937,500, Pennsylvania \$4,125,000, and Kentucky \$687,500.

- Hydrochlorofluorocarbons (HCFCs) deplete the stratospheric ozone layer, allowing dangerous amounts of cancer-causing ultraviolet rays from the sun to reach the earth, which leads to adverse health effects including skin cancers, cataracts, and suppressed immune systems. Pursuant to the Montreal Protocol, the United States is implementing strict reductions of ozone-depleting refrigerants, including a production and importation ban by 2020 of HCFC-22, also known as R-22, a common refrigerant used by supermarkets. Moreover, as a greenhouse gas, HCFC-22 is up to 1,800 times more potent than carbon dioxide.

In *United States v. Costco Wholesale Corp.* (N.D. Cal.), Costco, one of the nation's largest retailers, agreed to cut its emissions of ozone-depleting and greenhouse gases from leaking refrigeration equipment at more than half of its stores nationwide. Specifically, Costco will fix refrigerant leaks and make other improvements at 278 of its stores, which EPA estimates will cost about \$2 million over three years. Costco also will pay \$335,000 in civil penalties.

Costco violated the Clean Air Act by failing to promptly repair refrigeration equipment leaking HCFC-22 between 2004 and 2007. Costco also failed to keep adequate records of the servicing carried out on its refrigeration equipment to prevent harmful leaks.

The settlement requires Costco to retrofit or replace commercial refrigeration equipment at 30 of its stores to reduce ozone-depleting and greenhouse gas emissions. Costco must also implement a refrigerant management system to prevent and repair coolant leaks and reduce its corporate-wide average leak rate at least 20 percent by 2017. In addition, Costco will install and operate environmentally-friendly glycol refrigeration systems and centrally monitored refrigerant-leak detection systems at all new stores.

DEFENDING THE CLEAN POWER PLAN

Pursuant to the President's Climate Action Plan, EPA has developed regulations under the Clean Air Act to set carbon dioxide emission standards for new and existing coal and natural gas-fired power plants. When fully implemented in 2030, the rules will reduce carbon dioxide emissions from coal and natural gas-fired power plants by over 30% from 2005 levels. Those CO₂ emission reductions make up a primary part of the United States' commitment in the 2015 Paris Climate Change Agreement to reduce domestic greenhouse gas emissions. The Clean Power Plan was published in the Federal Register on October 23, 2015, and formally consists of two separate but related rules—one for existing power plants and one for new and modified power plants.

Opponents of the rules brought multiple rounds of litigation even before the rules were finalized. In *Murray Energy Corp. v. EPA* (D.C. Cir.) and *West Virginia v. EPA* (D.C. Cir.), petitioners challenged EPA's proposed Clean Air Act rule to limit carbon dioxide emissions from fossil fuel-fired power plants and sought an extraordinary writ prohibiting conclusion of the rulemaking. ENRD briefed the cases and presented oral argument. In orders issued on June 9, 2015, the D.C. Circuit dismissed the petitions, holding that the court lacked jurisdiction because EPA had not taken final agency action. With respect to the

request for an extraordinary writ of prohibition, the court explained that the All Writs Act provides no authority for the court to "circumvent bedrock finality principles in order to review proposed agency rules."

Opponents of the rules tried again after the rules were signed by EPA's Administrator in August 2015, but before they were published in the federal Register. In *In re West Virginia* (D.C. Cir.) and *In re Peabody Energy* (D.C. Cir.), West Virginia and 14 other states, and a group of coal industry interests, filed "Emergency Petitions for Extraordinary Writ" asking the D.C. Circuit to stay all of the deadlines in the Clean Power Plan pursuant to the All Writs Act. On September 9, 2015, the D.C. Circuit denied the petitions. In a short order, the court held that "petitioners have not satisfied the stringent standards that apply to petitions for extraordinary writs that seek to stay agency action."

Since the rules were published in October 2015, 39 petitions for review of the existing source rule were filed on behalf of over 100 state and industry parties, and 16 petitions for review of the new and modified source rule were filed. On February 9, the Supreme Court stayed the Clean Power Plan's implementation while the litigation is pending. ENRD is confident that the rule will be upheld when the courts consider it on the merits. ENRD will continue its vigorous defense of the Clean Power Plan in FY16 as the litigation continues in the D.C. Circuit.

Reducing Air Pollution from Power Plants

The Coal-Fired Power Plant Enforcement Initiative

The Division has continued to litigate civil claims under the Clean Air Act against operators of coal-fired electric power generating plants. Through fiscal year 2015, these matters have settled on terms that will reduce emissions of SO₂ and NO_x by approximately 2.5 million tons each year once the more than \$17.3 billion in required pollution controls are fully functioning. The violations at issue in these cases arose when companies engaged in major life-extension projects on aging facilities

without installing required state-of-the-art pollution controls. The result was excess air pollution that degraded forests, damaged waterways, contaminated reservoirs, and otherwise adversely affected the health of our citizens, especially the elderly, the young, and asthma sufferers.

Coal-fired power plants emit, among other things, SO₂, NO_x, and particulate matter. SO₂ and NO_x contribute to acid rain and ground-level ozone, or smog. SO₂ and NO_x can irritate the lungs and aggravate preexisting heart or lung conditions. NO_x and particulate matter can cause serious respiratory illnesses and aggravate asthma. Particulate matter, for example, contains microscopic particles that can travel deep into the lungs and cause difficulty breathing and decreased lung function.

In fiscal year 2015, the Division concluded two settlements under the Coal-Fired Power Plant Enforcement Initiative, bringing the total to 30.

- In *United States v. Consumers Energy* (E.D. Mich.), the United States alleged that Consumers Energy, a subsidiary of CMS Energy Corporation that provides electric service in the Lower Peninsula of Michigan, violated the Clean Air Act by modifying its facilities in a way that caused the release of excess SO₂ and NO_x. To settle the United States' claims, Consumers Energy agreed to install pollution control technology, continue operating existing pollution controls, and comply with emission rates to reduce harmful air pollution from the company's five coal-fired power plants located in West Olive, Essexville, Muskegon, and Luna Pier, Michigan. EPA expects that the actions required by the settlement will reduce harmful emissions by 46,500 tons per year, which includes approximately 38,400 tons per year of SO₂ and 8,100 tons per year of NO_x. The company estimates that it will spend approximately \$1 billion to implement the required measures.

The settlement requires that the company install pollution control technology and implement other measures to reduce SO₂ and particulate matter emissions from its five coal-fired power plants, which comprise 12 operating units. Among other requirements, the company must comply with declining system-wide limits for SO₂ and NO_x, meet emission rates, retire five operating units, and retire two other units or convert them to run on natural gas.

The settlement requires Consumers Energy to pay a civil penalty of \$2.75 million and spend at least \$7.7 million on projects that will benefit the environment and local communities. Five hundred thousand dollars of the \$7.7 million will go to the National Park Service to restore land, watersheds, or forests in, or to combat invasive species in, the Cuyahoga Valley National Park and the Sleeping Bear Dunes National Lakeshore Park. The remaining \$7.2 million will be spent on a series of mitigation projects. Potential projects include efforts to reduce vehicle emissions, install renewable-energy and energy-efficiency projects, replace or retrofit wood-burning appliances, and protect and restore ecologically-significant lands in Michigan. Consumers Energy has five years to complete its selected projects.



Cuyahoga Valley National Park,

NPS photo

- The State of Iowa; Linn County, Iowa; and the Sierra Club joined the United States as co-plaintiffs in *United States v. Interstate Power and Light Co.* (N.D. Iowa). To resolve alleged violations of the Clean Air Act, Interstate Power and Light, a subsidiary of Alliant Energy, agreed to install pollution control technology and meet stringent emission rates to reduce harmful air pollution from the company's seven coal-fired power plants in Iowa. The settlement also requires Interstate Power and Light to spend a total of \$6 million on environmental mitigation projects and pay a civil penalty of \$1.1 million.

Under the settlement, Interstate Power and Light will install and continuously operate new and existing pollution control technology at its two largest plants in Lansing and Ottumwa, Iowa and will retire or convert to cleaner-burning natural gas its remaining five plants in Burlington, Cedar Rapids, Clinton, Dubuque, and Marshalltown, Iowa. The new, state-of-the-art pollution controls required by the settlement are expected to cost approximately \$620 million. EPA estimates that the settlement will reduce SO₂ emissions by 32,500 tons per year and NO_x emissions by 3,800 tons per year once the settlement is fully implemented.

Interstate Power and Light will also be required to spend \$6 million on environmental mitigation projects. The company will choose from five potential projects, including solar-energy and anaerobic-digester installations, replacing coal-fired boilers at schools, an alternative-fuel vehicle-replacement program, and a residential program to change out wood-burning stoves and fireplaces.

Defending EPA's First-Ever Hazardous Air Pollutant Standards for Power Plants

In April 2014, the D.C. Circuit issued a sweeping decision rejecting all challenges to EPA's hazardous air pollutant standards for power plants in *White Stallion Energy Center, LLC v. EPA* (D.C. Cir.), upholding the standards in their entirety and rejecting numerous arguments advanced by power plants, states and environmental groups. The court endorsed EPA's threshold finding that such regulation was "appropriate and necessary" to protect the public from identified health hazards, and rejected various additional challenges to the threshold finding, as well as a multitude of separate attacks on EPA's decisions concerning standard levels and subcategories. In June 2015, the Supreme Court reversed on a narrow issue in a decision captioned *Michigan v. EPA*. The Supreme Court found only that EPA was required to consider costs in some fashion in making the "appropriate and necessary" finding. On remand of the case to the D.C. Circuit to consider the appropriate remedy, ENRD argued that the standards should stay in place, and should not be vacated, while EPA concluded further administrative proceedings to consider the single issue remanded by the Supreme Court. On December 15, 2015, the D.C. Circuit issued a favorable order remanding the rule to EPA while leaving the standards in effect.

Defending EPA Stationary Source Rulemakings

Preserving EPA's Greenhouse Gas Permitting Authority for Stationary Sources

In its June 2014 decision in *Utility Air Regulatory Group v. EPA*, the Supreme Court held that greenhouse gas emissions, by themselves, cannot trigger CAA stationary source permit requirements, but that EPA can regulate greenhouse gas emissions from sources already subject to such permit requirements due to their emissions of other pollutants (so-called "anyway" sources). While this was a mixed decision, the result gave the agency a win on the most important issues, since the overwhelming majority of greenhouse gas emissions come from "anyway" sources. However, on remand of the case to the D.C. Circuit, certain industry parties argued that EPA would need to complete additional rulemaking before even this requirement could continue to be implemented. ENRD opposed those arguments, and on April 10, 2015, the D.C. Circuit issued a favorable remedy order confirming that Prevention of Significant Deterioration permitting for greenhouse gas emissions from "anyway" sources could continue. The D.C. Circuit denied

rehearing on these issues in August 2015, and the Supreme Court denied a petition for certiorari on January 19, 2016.

Successfully Defending the Cross-State Air Pollution Rule

In *EME Homer City Generation v. EPA*, numerous petitioners sought review of EPA's Cross-State Air Pollution Rule under the Clean Air Act. The Supreme Court issued a favorable decision on two major legal issues in April 2014, and the case returned to the D.C. Circuit for resolution of the remaining issues. On July 28, 2015, ENRD obtained a mostly-favorable decision from the D.C. Circuit, remanding the rule to EPA for further administrative proceedings consistent with the court's opinion, but leaving the rule in effect in the interim. On the issues we lost, the court identified a number of specific pollution "linkages" between emissions in upwind states and air quality in downwind states that the court believed presented examples of potential "overcontrol," and remanded those aspects of the rule to EPA for further consideration. The court then rejected petitioners' remaining claims, holding, for example, that EPA had ample authority to issue federal implementation plans under the circumstances, used air quality modeling that was reasonable even if it did not perfectly predict real-world results, and properly evaluated whether upwind contributions of pollutants "interfere with maintenance" in downwind areas.



Homer City Power Plant, [Wikipedia photo](#)

Addressing Air Pollution from Oil Refineries and Chemical Plants

Improperly operated industrial flares, which are used to burn waste gases, can send hundreds of tons of hazardous air pollutants into the air. As a result, the Division is making a national effort to reduce air pollution from refinery and chemical plant flares. The goals of the effort are to have companies send less waste gas to flares and, when gas must be sent to a flare, to have the flare completely combust harmful chemicals. Flares and leaking equipment can emit volatile organic compounds, including benzene. Volatile organic compounds are a key component in the formation of smog (ground-level ozone), a pollutant that irritates the lungs, exacerbates diseases such as asthma, and can increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis. Chronic exposure to benzene, which EPA classifies as a carcinogen, can cause numerous health impacts, including leukemia and adverse reproductive effects in women. While addressing flares, the Division is also addressing emissions of toxic air pollutants from leaks from industrial equipment such as valves and pumps.

- In *United States v. Flint Hills Resources Port Arthur, LLC* (E.D. Tex.), Flint Hills Resources agreed to implement innovative technologies to control harmful air pollution from industrial flares and leaking equipment at the company's chemical plant in Port Arthur, Texas. The company paid a \$350,000 penalty for Clean Air Act violations. Once

fully implemented, EPA estimates that the settlement will reduce emissions of volatile organic compounds, including benzene and other hazardous air pollutants, by an estimated 1,880 tons per year. The settlement will reduce emissions of greenhouse gases by approximately 69,000 tons per year.



Flint Hills Facility, Port Arthur

EPA photo

The settlement is part of EPA's national effort to advance environmental justice by protecting communities such as Port Arthur that have been disproportionately affected by pollution. The settlement requires Flint Hills to operate state of the art equipment to recover and recycle waste gases and to ensure that gases sent to flares are burned with 98 percent efficiency. At the time that the settlement was announced, the company had spent approximately \$16 million implementing the required controls. When the agreement is fully implemented, the company estimates it will have spent an additional \$28 million to reduce what are called "fugitive" pollutant emissions that may leak from valves, pumps, and other equipment. Under the settlement, the company must monitor leaks more frequently, implement more aggressive repair practices, adopt innovative new practices designed to prevent leaks, and replace valves with new "low emissions" valves or use packing material to reduce leaks.

To further mitigate pollution impacting the community, the company will spend \$2 million on a diesel retrofit-or-replacement project that is estimated to reduce carbon monoxide by 39 tons, and NO_x and particulate matter by a combined 85 tons, over the next 15 years. The company will also spend \$350,000 to purchase and install technologies to reduce energy demand in low-income homes.

For the past several years, Flint Hills has operated a system to monitor the ambient levels of the hazardous air pollutants benzene and 1,3-butadiene at the boundaries of the facility, also known as the "fence line." The company has used the information to identify and reduce potential pollutant sources for communities living near the facility. In this settlement, Flint Hills has agreed to make its fence line monitoring data available online to the public.

The complaint, filed by the Department on behalf of EPA at the same time as the settlement, alleged that the company improperly operated its steam-assisted flaring devices in a way that emitted excess amounts of VOCs, including benzene and other hazardous air pollutants. It also alleged violations of EPA regulations designed to limit emissions from leaking equipment.

Reducing Air Pollution at Other Facilities

In *United States et al v. Gateway Energy & Coke Co, LLC, et al.* (S.D. Ill.), SunCoke Energy Inc. and two of its subsidiaries agreed to pay \$1.995 million in civil penalties to resolve alleged Clean Air Act violations of emission limits at the Gateway Energy and Coke plant in Granite City, Illinois, and the Haverhill Coke plant in Franklin Furnace, Ohio. The companies will pay \$1.27 million in penalties to the United States, \$575,000 to the State of Illinois, and \$150,000 to the State of Ohio. The two states were co-plaintiffs with the United States.

The companies will spend approximately \$100 million at the two heat-recovery coking facilities to install equipment known as heat-recovery steam generators to ensure that hot coking gases are routed to pollution control equipment and not vented directly into the atmosphere. If future

emissions exceed a threshold at a third facility in Middletown, Ohio, then SunCoke will have to install an additional heat-recovery steam generator at that facility to prevent uncontrolled venting of coking gases. The defendants will also spend as much as \$700,000 on equipment to continuously monitor SO₂ emissions at the Gateway and Haverhill facilities.

The companies also agreed to accept more stringent emission limits than required in their current permits for SO₂ and particulate matter. SO₂ contributes to acid rain and exacerbates respiratory illness, particularly in children and the elderly. Exposure to particulate pollution has been linked to health impacts that include decreased lung function, aggravated asthma and premature death in people with heart or lung disease.

The companies will also spend \$255,000 on a lead abatement project in southern Illinois to reduce lead hazards in owner-occupied low-income residences with priority given to families with young children or pregnant women.

The primary violations alleged relate to excessive bypass venting of hot coking gases directly to the atmosphere, resulting in excess SO₂ and particulate matter emissions from the facilities' waste-heat and main stacks, in violation of applicable permit limits. Coke oven emissions are a known human carcinogen. Chronic (long-term) exposure in humans can result in conjunctivitis, severe dermatitis, and lesions of the respiratory system and digestive system. The additional equipment installed at the facilities will result in estimated emissions reductions of over 1,200 tons per year of SO₂, over 130 tons per year of particulate matter, 252 tons per year of hydrochloric and sulfuric acid gases, and over 1800 pounds per year of lead.

Both facilities are located in areas that do not meet federal health-based standards for soot. The Illinois facility is located in an area that also does not meet the federal air pollution standard for lead. Coke is used as a carbon source and as a fuel to heat and melt iron ore at steel making facilities.

Carbon Black Plant Investigation

As part of its National Enforcement Initiative to control harmful emissions from large sources of pollution, EPA investigated all 15 of the carbon black plants in the United States, focusing on possible violations of the Clean Air Act's Prevention of Significant Deterioration requirements. Carbon black is a fine carbonaceous powder used in tires, plastics, rubber, inkjet toner, and cosmetics. Because the oil used to make carbon black is high in sulfur, carbon-black production creates large amounts of NO_x, SO₂, and particulate matter. SO₂ and NO_x have numerous adverse effects on human health and are significant contributors to acid rain, smog, and haze. These pollutants are converted in the air to particulate matter that can cause severe respiratory and cardiovascular impacts and premature death.

- In *United States, et al. v. Continental Carbon Co.* (W.D. Ok.), the United States and the States of Alabama and Oklahoma alleged that Houston-based Continental violated the Clean Air Act by modifying its facilities in a way that caused the release of excess SO₂ and nitrogen oxides. To resolve the allegations, Continental agreed to install pollution control technology that will significantly cut emissions of harmful air pollutants at manufacturing facilities in Alabama, Oklahoma, and Texas. The settlement requires Continental to pay a civil penalty of \$650,000, which was shared with co-plaintiffs Alabama and Oklahoma. Continental must also spend \$550,000 on environmental projects to help mitigate the harmful effects of air pollution on the environment and to benefit local

communities, including at least \$25,000 on energy efficiency projects in the communities near each of the three facilities.

EPA expects that the actions required by the settlement will reduce harmful emissions by approximately 6,278 tons per year of SO₂ and 1,590 tons per year of nitrogen oxides. Continental estimates that it will spend about \$98 million to implement the required measures. The pollution reductions will be achieved through the installation, upgrade, and operation of state-of-the-art pollution control devices designed to reduce emissions and protect public health.



John Coffee Memorial Bridge, Alabama,

NPS photo

Continental manufactures carbon black at facilities in Phenix City, Alabama; Ponca City, Oklahoma; and Sunray, Texas. This settlement supports EPA's and the Justice Department's national efforts to advance environmental justice by working to protect communities such as Phenix City and Ponca City, which have been disproportionately affected by pollution. With this settlement, six of the 15 facilities in the United States will be covered by consent decrees with EPA.

A Systematic Approach to Emissions

The first-of-its-kind settlement in United States and the *State of Colorado v. Noble Energy, Inc.* (D. Col.), took a basin-wide, systematic approach to address emissions from oil and gas exploration and production activities. The settlement resolved alleged Clean Air Act violations against Houston-based Noble Energy stemming from the company's activities in the Denver-Julesburg Basin, north of Denver, Colorado. Specifically, the settlement resolved claims that Noble failed to adequately design, size, operate, and maintain vapor-control systems on certain condensate storage tanks, resulting in emissions of volatile organic compounds. Volatile organic compounds are a key component in the formation of smog or ground-level ozone, a pollutant that irritates the lungs, exacerbates diseases such as asthma, and can increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis.

As part of the settlement, Noble will spend an estimated \$60 million on system upgrades, monitoring, and inspections to reduce emissions; \$4.5 million on environmental mitigation projects; \$4 million on supplemental environmental projects; and \$4.95 million on a civil penalty. Co-plaintiff the State of Colorado will receive \$1.475 million of the civil penalty.

Mitigation projects include offloading condensate from storage tanks into tanker trucks in a closed system to prevent vapors from being emitted to the atmosphere, and retrofitting diesel engines

and pumps to lower emissions of nitrogen oxides and ozone precursors. One of the supplemental environmental projects will provide financial incentives to residents in the ozone non-attainment area to replace or retrofit inefficient, higher-polluting wood-burning or coal appliances with cleaner burning, more efficient heating appliances and technologies. Noble will spend \$2 million on additional State-approved supplemental environmental projects, proposed by Noble for State approval.

The case arose from a joint investigation by EPA and Colorado that found significant volatile organic compound emissions coming from storage tanks, primarily due to undersized vapor-control systems. Noble will perform engineering evaluations and make modifications to ensure that its vapor-control systems are properly designed and sized to capture and control volatile organic compound emissions. Noble has agreed to provide its evaluations of vapor-control-system designs to the public. These reports will give other companies the opportunity to apply this information to emissions estimates and vapor-control-system designs.

EPA estimates that modifications to the vapor-control systems will reduce volatile organic compound emissions by at least 2,400 tons per year and that significant additional reductions will be achieved with operational and maintenance improvements. The settlement covers more than 3,400 tank batteries. This settlement is part of EPA's national enforcement initiative to reduce public health and environmental impacts from energy extraction activities.

The National Acid Manufacturing Plant Initiative

In *United States and the Louisiana Department of Environmental Quality v. PCS Nitrogen Fertilizer, L.P., et al.* (M.D. La.), three subsidiaries of the Potash Corporation of Saskatchewan (PCS), the world's largest fertilizer producer, agreed to take steps to reduce harmful air emissions at eight U.S. production plants. The settlement resolves claims that these PCS subsidiaries violated the Clean Air Act when they modified facilities in ways that released excess SO₂ into surrounding communities.

The settlement requires PCS Nitrogen Fertilizer, AA Sulfuric Inc., and White Springs Agricultural Chemicals Inc. to install emissions monitors at, and to

install, upgrade, and operate state-of-the-art pollution reduction measures at, any of eight sulfuric acid plants the defendants choose to continue operating: one plant in Geismar, Louisiana; four in White Springs, Florida; and three in Aurora, North Carolina. Upgrading all eight plants would cost an estimated \$50 million. The three companies also paid a \$1.3 million civil penalty.



PCS Nitric Acid Plant, Geismar, Louisiana

Google Maps photo

The settlement also includes a supplemental environmental project, estimated to cost between \$2.5 and \$4 million, to protect the community around the PCS Nitrogen nitric acid plant in Geismar, Louisiana, and requires PCS Nitrogen to install and operate equipment to reduce emissions of nitrogen oxides and ammonia. This project is part of EPA's commitment to advancing environmental justice by reducing the disproportionate environmental impacts on communities near industrial facilities—in this instance, by reducing fine particulates that can aggravate respiratory disease.

SO₂, the predominant pollutant emitted from sulfuric acid plants, has numerous adverse effects on human health and is a significant contributor to acid rain, smog and haze. SO₂—along with nitrogen oxides—is converted in the air into particulate matter that can cause severe respiratory and cardiovascular impacts, and premature death.

This settlement is part of EPA's national enforcement initiative to control harmful emissions from large sources of pollution, which includes acid production plants, under the Clean Air Act's Prevention of Significant Deterioration requirements. It is the tenth settlement reached under EPA's National Acid Manufacturing Plant Initiative and the seventh settlement addressing pollution from sulfuric acid plants. Today's settlement covers more sulfuric acid production capacity—roughly 24,000 tons per day or approximately 14 percent of total U.S. capacity—than all previous sulfuric acid settlements under this initiative combined.

The settlement also resolves alleged violations based on Louisiana state law at the Geismar, Louisiana, facility, and the Louisiana Department of Environmental Quality will receive \$350,000 of the \$1.3 million penalty.

Landfill Air Pollutants

Decomposing refuse in a large landfill generates hazardous air pollutants such as benzene, carbon tetrachloride, chloroform, ethylene dichloride, perchloroethylene, trichloroethylene, vinyl chloride, and vinylidene chloride. Many air pollutants identified in landfill gas are either known or suspected carcinogens. The federal Clean Air Act requires landfills to have a system to collect and control the gases. Air emissions of methane from landfills can also contribute to global methane emissions, a greenhouse gas with about 25 times the global warming potential of carbon dioxide.

- In *United States v. City and County of Honolulu* (D. Haw.), Honolulu resolved air violations at its closed Kapaa Landfill in Kailua, Oahu, by agreeing to pay a civil penalty of \$875,000 and build a \$16.1 million solar power system as a supplemental environmental project. The Kappa landfill first received solid waste in 1969 and closed in May 1997. The city failed to have an operating gas collection and control system by a 2002 deadline. The required gas collection and control system at the landfill was not in place until April 2013.

The supplemental environmental project involves the installation of photovoltaic arrays on more than 250,000 square feet of buildings and open space at the city's waste-to-energy facility in the Campbell Industrial Park by 2020. The new solar panels will have a capacity of 3.1 megawatts and will generate over five million kilowatt-hours of electricity per year, enough to power 800 Oahu households.

Enforcing EPA's Significant New Alternatives Policy Program

As part of the United States' transition away from ozone-depleting substances, the EPA's Significant New Alternatives Policy Program evaluates and approves substitute refrigerants so that they can safely and legally replace ozone-depleting substances. EPA evaluates potential substitute refrigerants according to health, safety, and environmental criteria. The Clean Air Act addresses ozone-depleting substances and establishes standards and requirements that must be met before a substitute for an ozone-depleting substance can be introduced into the marketplace.

- In *United States v. Enviro-Safe Refrigerants* (C.D. Ill.), Enviro-Safe Refrigerants Inc. of Pekin, Illinois, agreed to pay a \$300,000 civil penalty and cease the marketing and sale of two unapproved flammable refrigerants as substitutes for ozone-depleting refrigerants. According to the complaint filed simultaneously with the settlement, Enviro-Safe violated Clean Air Act requirements by marketing and selling two flammable hydrocarbon-refrigerant products, ES 22a and ES 502a, as substitutes for ozone-depleting substances without providing the requisite information to EPA for review and approval. EPA has not approved any flammable hydrocarbon as a replacement for ozone-depleting substances in systems not specifically designed for flammable refrigerants and has warned that use of flammable refrigerants in those systems presents a risk of fire or explosion.

Ensuring the Integrity of Municipal Wastewater Treatment Systems

Through enforcement of the CWA, the Division addresses one of the most pressing infrastructure issues in the nation's cities—discharges of untreated sewage from aging collection systems. Raw sewage contains organic matter, toxics, metals, and pathogens that threaten public health, deter recreational use of beaches and waterways, and contaminate fish in downstream water bodies. Untreated or poorly treated sewage can also contain total suspended solids, biologically degradable material that consumes oxygen ("biological oxygen demand"), nitrogen, and phosphorus. High levels of these pollutants can reduce oxygen levels in water bodies, threatening the health of aquatic plants and animals. Too much nitrogen and phosphorus in the water cause algae to grow faster than ecosystems can handle. Large growths of algae, known as algal blooms, contribute to the creation of hypoxia or "dead zones" in water bodies where oxygen levels are so low that most aquatic life cannot survive.

Our work helps to protect some of our most vulnerable communities, including low-income and minority communities who often live in older urban areas with the worst infrastructure problems. We also preserve national treasures like the Chesapeake Bay and the Great Lakes.

The Division has made it a priority to bring cases nationwide to improve municipal wastewater and stormwater treatment and collection. From January 2009 through September 2014, courts entered 81 such settlements, requiring, in total, an estimated \$28.7 billion in long-term control measures and other relief to bring municipalities into compliance with the CWA.

In fiscal year 2015, courts approved five settlements or partial settlements negotiated by the Division. Collectively, the settlements required more than an estimated \$1.0 billion in improvements, \$410,000 in civil penalties, and \$618,000 in supplemental environmental projects.

- The most important case was *United States and the State of Arkansas v. City of Fort Smith, Arkansas* (W.D. Ark.). To reduce discharges of raw sewage and other pollutants into local waterways, the city of Fort Smith agreed to spend what it estimates will be more than \$480 million over 12 years on upgrades to its sewer collection and treatment system.



Fort Smith Wastewater Treatment Facility

Google Maps photo

Fort Smith will also pay a \$300,000 civil penalty and spend \$400,000 on a program to help qualified low-income residential property owners to repair or replace defective private sewer lines that connect to the city collection system.

The settlement agreement resolves alleged CWA violations related to Fort Smith's failure to properly operate and maintain its sewer collection and treatment system.

Since 2004, Fort Smith had reported more than 2,000 releases of untreated sewage, resulting in more than 119 million gallons of raw sewage flowing into local waterways, including the Arkansas River. These types of releases, known as sanitary sewer overflows, cause serious water quality and public health problems. Fort Smith also violated limits on the discharge of various pollutants from its Massard and P Street wastewater treatment plants numerous times over the last decade. Many of the manholes and pump stations from which Fort Smith's sanitary sewer overflows occur are located in low-income and minority communities.

To reduce sanitary sewer overflows, Fort Smith will conduct a comprehensive assessment of its sewer system to identify defects and places where stormwater may be entering the system. The city will repair all sewer pipe segments and manholes that are likely to fail within the next 10 years. It will also implement a program to reduce the introduction of fats, oil, and grease into its system; reduce root intrusion; and clean the system of debris that can cause sanitary sewer overflows. Fort Smith will also implement a program to determine whether human waste is entering into and being released from the city's stormwater system.

The implementation of the consent decree will reduce releases of approximately 3,492 pounds of total suspended solids, 3,343 pounds of biological oxygen demand, 543 pounds of nitrogen, and 78 pounds of phosphorus from the Fort Smith sewage system each year.

- The Metropolitan Water Reclamation District of Greater Chicago ("District") is the water service provider for the City of Chicago and 125 suburban communities located within Cook County, Illinois. On July 9, 2015, in *United States v. Metro. Water Reclamation Dist. of Greater Chicago* (7th Cir.), the Seventh Circuit upheld a consent decree entered into by the District to resolve claims asserted by the United States and the State of Illinois that it was not addressing long-standing discharges from its combined sewer overflow outfalls that were violating the CWA. Environmental groups had intervened as plaintiffs and objected to the decree, maintaining that it did not require the District to do enough, fast enough. The district court disagreed and entered the decree. The district court also concluded that the environmental intervenors could not continue to prosecute their own CWA claims against the District regarding the same matters



Pollution along the Coast; Chicago, IL

USGS photo

addressed by the decree entered into by the United States and Illinois. The Seventh Circuit affirmed.

The court concluded that although the intervenors could appeal from the entry of the consent decree, the CWA citizen-suit provision did not allow them to continue with their separate claims once the United States resolved its case. On the merits, the panel rejected the environmental groups' arguments that the

decree was unreasonable. The panel found that it was reasonable to give the District a chance to see if its remedial scheme would work, in contrast to imposing the vastly more expensive alternative being proposed by the intervenors.

Otherwise Protecting the Nation's Water and Wetlands

The Division also obtained notable results enforcing and defending other CWA programs that protect the nation's navigable waters and wetlands.

Addressing Stormwater-Related Pollution

Stormwater often carries pollution and sediment from construction sites into local waterways damaging water quality. Under the federal CWA, developers and contractors responsible for operations at construction sites one acre or larger are required to implement stormwater pollution prevention plans to keep soil and contaminants from running into nearby waterways. These plans can include measures such as sediment barriers and means of reducing the flow of stormwater onto the construction site. Stormwater typically carries soil and contaminants off of construction sites at a rate 10 to 20 times greater than the rate at which they are carried off of agricultural lands, and 1,000 to 2,000 times greater than the rate from forested lands.

- In *United States v. Garden Homes, Inc.* (D.N.J.), the United States reached an agreement with residential-builder Garden Homes and its affiliated companies to settle alleged failures to control stormwater discharges. These failures potentially resulted in pollutant discharges to the Passaic, Hackensack, Rahway, Raritan, Saddle, and Delaware River watersheds. The agreement requires Garden Homes to pay a \$225,000 penalty and implement measures to improve the company's stormwater practices. In addition, the company agreed to provide 108 acres of land for preservation within the Highlands Preservation Area in Morris County, New Jersey, including approximately 23 acres of wetlands adjacent to the Berkshire Valley Wildlife Management Area—a critical drinking-water-protection area for the State of New Jersey.

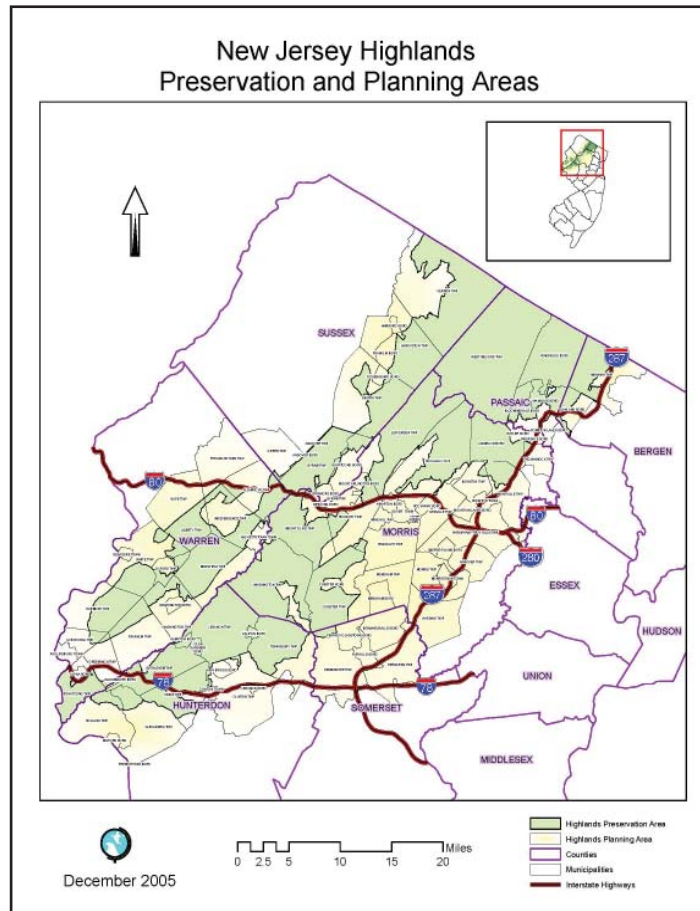
Under the settlement, Garden Homes will undertake a corporate-wide evaluation of its existing stormwater practices and develop a corporate-wide stormwater management program. In addition, Garden Homes will designate one of its employees as its company stormwater manager, who will be responsible for preparing all stormwater pollution prevention plans, developing and overseeing stormwater-compliance training and conducting unannounced site inspections, among other responsibilities. The company will also designate individual site stormwater managers. EPA estimates the value of these measures to be \$539,000 for the first year and approximately \$380,057 annually thereafter.

The complaint alleged that Garden Homes violated numerous stormwater requirements at ten of the company's sites in New Jersey by failing to conduct and document weekly inspections; failing to install perimeter silt fencing along the perimeter of construction sites; failing to maintain a spill kit on-site; and allowing fuel to spill on the ground uphill from an unprotected catch basin, among other allegations. The violations at issue in this case were found at multiple construction sites owned and/or operated by Garden Homes through their affiliates. These repetitive violations continued to persist despite two administrative penalty actions taken by EPA Region 2 against affiliates of Garden Homes.

Under the terms of the settlement, Garden Homes will donate land within the Highlands Preservation Area as a supplemental environmental project. This donation of land will further aid in the recovery of threatened and endangered species, particularly the Indiana Bat and bog turtle, which have a known presence in the vicinity.

Maintaining Effluent Standards for the Chesapeake Bay

On July 6, 2015, in *American Farm Bureau Federation v. EPA* (3d Cir.), the Third Circuit rejected the American Farm Bureau's challenges to EPA's development of effluent standards for protection of the Chesapeake Bay and its tributaries. EPA's development of total maximum daily loads ("TMDL") for nitrogen, phosphorus, and sediment was the product of years of multi-jurisdictional coordination between six states and the District of Columbia. Plaintiffs challenged three aspects of the TMDL: (1) allocation of pollution loads to sources and sectors within states; (2) EPA's requirement that states provide "reasonable assurances" that their pollution controls will achieve Bay water quality standards; and (3) interim and final deadlines for implementation of the TMDL. The appellate court rejected these claims, holding that the CWA authorizes EPA to promulgate a TMDL that contains each of the challenged features.



Highlands Preservation Area

NJDEP photo

REDUCING AUTOMOBILE AIR POLLUTION

The Clean Air Act requires automakers to certify the amount of greenhouse gases their cars will emit. In addition, automakers earn greenhouse-gas emissions credits for building vehicles with lower emissions than required by law. These credits can be used to offset emissions from less fuel efficient vehicle models or be sold or traded to other automakers for the same purpose.

In *United States and California Air Resources Board v. Hyundai Motor Co., et al.* (D.D.C.) the complaint filed jointly by the United States and the California Air Resources Board alleged that the car companies sold close to 1.2 million cars and SUVs from model years 2012 and 2013 that will emit approximately 4.75 million metric tons of greenhouse gases in excess of what the automakers certified to EPA. This case involves five related entities: Hyundai Motor Company, Hyundai Motor America, Kia Motors Corporation, Kia Motors America, and Hyundai America Technical Center Inc. The allegations concerned the Hyundai Accent, Elantra, Veloster, and Santa Fe models and the Kia Rio and Soul models.

Additionally, Hyundai and Kia allegedly gave consumers inaccurate information about the real-world fuel economy of many of these vehicles. Hyundai and Kia overstated the fuel economy by one to six miles per gallon depending on the vehicle.

Under a historic settlement, the automakers paid a \$100 million civil penalty, the largest

under the Clean Air Act, to resolve the alleged violations and will spend approximately \$50 million on measures to prevent future violations. Hyundai and Kia will also forfeit 4.75 million greenhouse-gas emission credits that the companies previously claimed, which are estimated to be worth over \$200 million. The greenhouse-gas emissions that the forfeited credits would have allowed are equal to the emissions from powering more than 433,000 homes for a year. The California Air Resources Board joined the United States as a co-plaintiff in the settlement, and received \$6,343,400 of the \$100 million civil penalty.

In order to reduce the likelihood of future vehicle greenhouse-gas-emission miscalculations, Hyundai and Kia have agreed to reorganize their emissions certification group, revise test protocols, improve management of test data, and enhance employee training before they conduct emissions testing to certify their model year 2017 vehicles. Hyundai and Kia also had to audit their fleets for model years 2015 and 2016 to ensure that vehicles sold to the public conform to the description and data provided to EPA.

EPA discovered these violations in 2012 during audit testing. Subsequent investigation revealed that Hyundai's and Kia's testing protocol included numerous elements that led to inaccurately high fuel economy ratings. In November 2012, Hyundai and Kia responded to the EPA's findings by lowering the fuel economy ratings for many of their 2011, 2012, and 2013 model year vehicles and establishing a reimbursement program to compensate owners for increased fuel costs due to the overstated fuel economy ratings.

ENSURING CLEANUP OF OIL AND HAZARDOUS WASTE

Recovering Penalties and Damages from Oil Spills

The CWA makes it unlawful to discharge oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in quantities that may be harmful to the environment or public health. Penalties paid for oil spills under Section 311 of the CWA are deposited in the federal Oil Spill Liability Trust Fund, which is used to pay for federal response activities and to compensate for damages when there is a discharge or substantial threat of discharge of oil or hazardous substances to waters of the United States or adjoining shorelines.

- On March 29, 2013, ExxonMobil's Pegasus Pipeline, carrying Canadian heavy crude oil from Illinois to Texas, ruptured in the Northwoods neighborhood of Mayflower, Arkansas. Oil flowed through the neighborhood, contaminating homes and yards, and entered a nearby creek, wetlands, and a cove of Lake Conway. Some residents were ordered to evacuate their homes after the spill and remained displaced for an extended period of time. The spill volume was estimated at approximately 3,190 barrels (134,000 gallons).



Deepwater Horizon offshore drilling unit on fire,

Wikimedia Photo

The United States and the State of Arkansas filed their joint complaint in 2013 in *United States and State of Arkansas v. ExxonMobil Pipeline Co. and Mobil Pipe Line Co.* (E.D. Ark.). To settle the alleged violations of the CWA and state environmental laws, ExxonMobil agreed to pay approximately \$5 million and take steps to address pipeline safety and oil-spill-response capability. Specifically, ExxonMobil Pipeline Company and Mobil Pipe Line Company agreed to



Louisiana Wetlands area

USGS photo



Coast Guard Cutter Decisive,

Department of Ecology, WA photo

pay \$3.19 million in federal civil penalties, \$1 million in state civil penalties, \$600,000 for a project to improve water quality at Lake Conway, and \$280,000 for the state's litigation costs.

The penalties imposed under the consent decree are in addition to the money that the company had already paid to reimburse federal and state response efforts and comply with orders and directives issued by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA). The segment of the Pegasus Pipeline that includes the rupture site has not been used since the March 2013 spill, and under the terms of the settlement agreement, ExxonMobil must comply with all PHMSA corrective action requirements before returning the pipeline to operation. The consent decree also requires ExxonMobil to provide additional training to its oil spill first responders and to establish caches of spill response equipment and supplies at three sites along the pipeline, including one location near Mayflower, Arkansas.

- On April 28, 2012, ExxonMobil's "North Line" pipeline ruptured near Torbert, Louisiana, about 20 miles west of Baton Rouge, and crude oil spilled into the surrounding area and flowed into an unnamed tributary connected to Bayou Cholpe. The United States' complaint in *United States v. ExxonMobil Pipeline Co.* (M.D. La.), alleged that ExxonMobil discharged at least 2,800 barrels (117,000 gallons) of crude oil in violation of Section 311 of the CWA. To settle the action, ExxonMobil agreed to pay a \$1,437,120 civil penalty. Outside of the district court matter, ExxonMobil received an administrative clean-up order from the Louisiana Department of Environmental Quality and a corrective action order from the PHMSA.
- In *United States v. Superior Crude Gathering, Inc.* (S.D. Tex.), Superior Crude agreed to pay a \$1.61 million civil penalty for alleged violations of the CWA stemming from a 2010 crude oil spill from two tanks at Superior's oil storage facility in Ingleside, Texas. The United States' complaint alleged that Superior discharged at least 2,200 barrels (92,400 gallons) of crude oil in violation of Section 311 of the CWA. The complaint also included related violations of the CWA's spill prevention, control, and counter-measure regulations and spill response plan regulations. Superior ceased operations at the facility, which is located within the former Falcon Refinery.

Conserving the Superfund by Compelling Parties to Clean Up Hazardous Waste and Recovering Superfund Monies

The Division brings actions under CERCLA to require responsible parties to clean up hazardous waste and to recover the costs of cleanups conducted by EPA. In fiscal year 2015, ENRD concluded a number of settlements requiring responsible parties to reimburse the United States for EPA's clean-up costs, to undertake the clean-up work themselves, or both.

In *United States v. Pechiney Plastic Packaging, Inc.* (D.N.J.) (and the related case, *United States v. Bristol-Myers Squibb Company, et al.*), the United States reached a settlement with five companies—Pechiney Plastic Packaging Inc., Albéa Americas Inc., Bristol-Myers Squibb Company, Citigroup Inc., and Rexam Beverage Can Company—regarding the



Exxon Mobil Pipeline Cleanup, Mayflower, AR

Arkansas AG photo

cleanup of the Pohatcong Valley Groundwater Contamination Superfund Site in Warren County, New Jersey. The Pohatcong site is contaminated with trichloroethylene (TCE) and perchloroethylene (PCE).

RESTORING THE GULF: Affirmative Litigation Responding to the Deepwater Horizon Explosion and Oil Spill in the Gulf of Mexico

After five years of fast-paced litigation, including a three-phase trial of the United States' civil penalty claim, and intense work on the claim for natural resource damages, the Division led many interested federal agencies and the five Gulf States in negotiating a settlement that resolves the governments' civil claims against BP arising from the April 20, 2010, blowout of the Macondo well and the massive oil spill in the Gulf of Mexico.

BP will pay the U.S. and the States more than \$20 billion—almost \$15 billion of which will be paid under a federal consent decree to which the five Gulf States are parties. Under the consent decree, BP will pay a civil penalty of \$5.5 billion, \$8.1 billion in natural resource damages, \$600 million in further reimbursement of clean-up costs and some royalty payments, and up to another \$700 million that will be used for adaptive management of natural resources and to address any later-discovered natural resource conditions that were unknown at the time of the agreement.

In addition to the federal consent decree, the five Gulf States also settled their own economic-damages claims against BP (including those asserted by local governments within those States) for an additional \$6 billion.

The United States received numerous comments on both the proposed federal consent decree and the 1,700-page draft damage assessment and restoration plan published by the Deepwater Horizon Trustees Council, a council comprised of representatives of the five Gulf States and four federal agencies. The plan includes a comprehensive assessment of natural resource injuries resulting from the oil spill and a detailed framework for how the trustees will use the natural resource damage recoveries from BP to restore the Gulf environment.

Penalties recovered in connection with the litigation will be distributed under the framework established in the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The RESTORE Act will direct about eighty percent of civil penalties to environmental and economic projects that will benefit the Gulf of Mexico region in the five Gulf States.

Previously, BP entered into a plea agreement with the Department that resolved certain criminal claims against the company for this same disaster. Under that agreement, BP is liable for fines and other sums in excess of \$4 billion.

Under the settlement, Pechiney will have primary responsibility for cleaning up contaminated soil and groundwater at the site, connecting some residents to public water, and operating systems to capture vapors that are entering into a manufacturing facility. As a precaution, Pechiney is continuing to monitor for vapor intrusion into homes at the site. Pechiney will perform current and future cleanup work estimated to cost \$62.5 million and will pay EPA's future oversight costs. In addition, EPA will receive approximately \$29.5 million for certain past costs.

As part of the settlement, Pechiney will pay a civil penalty of approximately \$282,000 to resolve allegations that Pechiney violated a previous EPA order by failing to make satisfactory progress on a portion of the cleanup at the site. Pechiney will also restore and preserve approximately 60 acres of land, valued at \$1.1 million, in Warren County, through a supplemental environmental project. The land will be converted to native grassland and will become part of the Morris Canal Greenway.

EPA added the Pohatcong site to the Superfund list in 1989 because of elevated levels of volatile organic contaminants, including TCE and PCE, in the groundwater. These contaminants were detected in public

supply wells, which are now treated to meet drinking water standards before the water is distributed. The site includes a contaminated groundwater plume that is approximately 10 miles long and approximately 1.5 miles wide, encompassing nearly 9,800 acres.

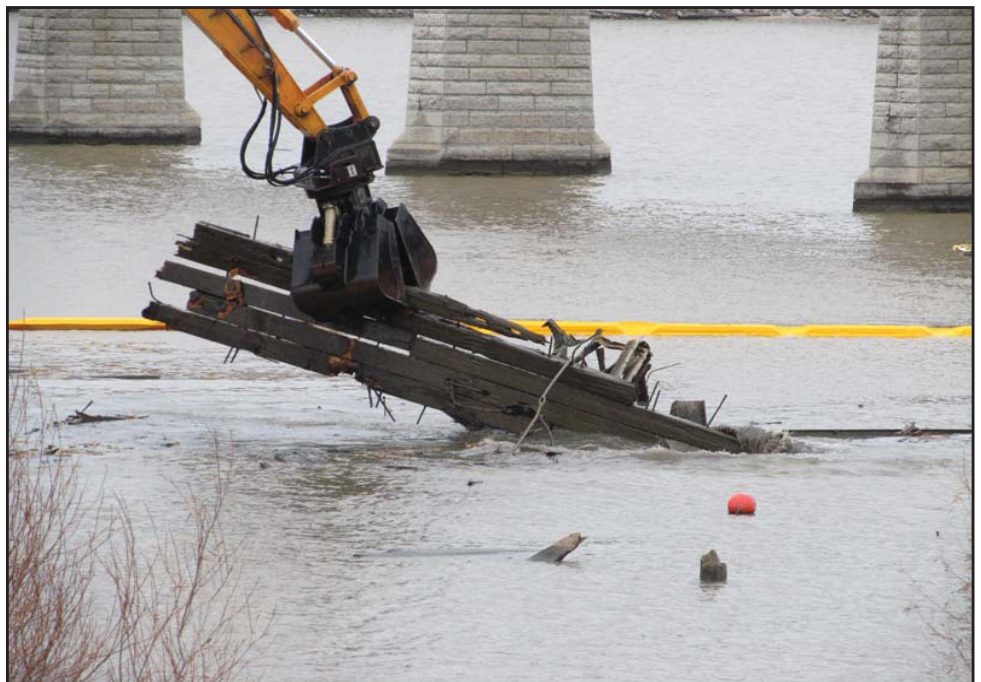
The Superfund program operates on the principle that polluters should pay for the cleanups, rather than passing the costs on to taxpayers. EPA searches for parties legally responsible for the contamination at sites, and it seeks to hold those parties accountable for the costs of investigations and cleanups. Under this settlement, the parties responsible for the site are paying for or performing the cleanup work.

Securing Natural Resource Damages

In addition to authorizing lawsuits to compel cleanup and recoup cleanup costs, CERCLA allows separate claims for money damages when natural resources have been injured by releases of hazardous substances. These actions can only be brought by the United States, states, and Native American Tribes, because claims for natural resource damages (NRD) seek compensation for public losses due to natural resource injuries. To ensure that the public benefits from any compensation that the government obtains, CERCLA specifies that litigation or settlement recoveries on NRD claims must be used to restore, replace, or acquire the equivalent of the resources that were injured by the hazardous substances.

In 2015, the Division's lawyers took a leading role in resolving NRD claims for the Lower Fox River and Green Bay Superfund Site through a set of settlements that brought the total value of the NRD recoveries to \$105 million.

The Lower Fox River and the bay of Green Bay in northeastern Wisconsin have been contaminated with chemicals—known as polychlorinated biphenyls (PCBs)—that were released to the river in the production and recycling of a particular type of “carbonless” copy paper from the 1950s until the 1970s. PCBs break down very slowly in the environment, and have accumulated in the sediments of the Fox River and Green Bay as well as in the tissue of fish, fish-eating birds, and other waterfowl in the area. As a result, public health agencies have issued formal advisories recommending severe limitations on the consumption of fish and waterfowl taken from the Fox River and Green Bay.



Lower Fox River and Green Bay Superfund Site,

EPA photo

In 2010, the United States and the State of Wisconsin filed suit against 14 parties that caused the PCB contamination at the Fox River Site, seeking cleanup actions, cleanup-cost reimbursement, and NRD in *United States and the State of Wisconsin v. NCR Corporation, et al.* (E.D. Wisc.). Under court orders obtained in that litigation, the defendants are now funding and performing a large-scale dredging effort to remove PCB contaminated sediments from the river. That will continue through at least 2017. Even after the dredging work is finished, it will take years

for the PCB levels in fish and waterfowl to subside, and the public will continue to suffer lost fishing and hunting opportunities. The governments' NRD claim in the lawsuit sought appropriate compensation for those public losses.

Three settlements providing nearly \$46 million for NRD were finalized and approved by the U.S. District Court for the Eastern District of Wisconsin in 2015. That recovery added to \$59 million in earlier settlement recoveries, bringing the total recovery on the NRD claim to \$105 million. The PCB contamination has harmed natural resources managed by United States government, the State of Wisconsin, the Oneida Tribe of Indians of Wisconsin, and the Menominee Indian Tribe of Wisconsin, so all of the settlements were jointly approved by the United States, the state, and the two tribes. Like the prior NRD recoveries for the Fox River Site, the \$46 million collected in 2015 will be used to fund natural resource restoration projects selected by the Fox River/Green Bay Natural Resource Trustee Council, which includes representatives from FWS, the Wisconsin Department of Natural Resources, the Oneida Tribe, and the Menominee Tribe. The Trustee Council's restoration efforts to date have focused on wetland and stream restoration, wildlife habitat protection and acquisition, and fishery enhancement projects in the Fox River-Green Bay watershed.

Enforcing Clean-up Obligations in Bankruptcy Cases

The Division takes actions in bankruptcy cases to protect environmental obligations owed to the United States when a responsible party goes into bankruptcy. During fiscal year 2015, the Division obtained three agreements in bankruptcy proceedings under which debtors or parties in interest in bankruptcy cases were obligated to pay over \$4.5 billion. In addition, debtors paid over \$9.9 million during fiscal year 2015 under bankruptcy agreements concluded by the Division in prior fiscal years. Altogether, debtors or parties in interest in bankruptcy cases reimbursed the Superfund for over \$2.0 billion, were obligated to pay over \$2.4 billion to clean up hazardous waste sites, and paid more than \$83 million in natural resource damages.

In fiscal year 2015, the historic settlement with Anadarko Petroleum Corp. and Kerr McGee went into effect, allowing funds to be disbursed for cleanups across the country. The settlement resolved fraudulent conveyance claims brought by the United States and the Anadarko Litigation Trust against Anadarko Petroleum Corporation and its affiliates in the bankruptcy of Tronox Inc. and its subsidiaries. Pursuant to the settlement agreement, on January 23, 2015, the defendants paid \$5.15 billion, plus interest, to the Anadarko Litigation Trust. The Trust paid more than \$4.4 billion to the United States, state governments, the Navajo nation, and four environmental response trusts created in the bankruptcy to fund environmental cleanups and pay environmental claims.

As noted by the U.S. District Court Judge who approved the settlement in November, 2014, this case arose from a "series of transactions by the Kerr-McGee Corp. that resulted in the spin-off of Tronox, which Kerr-McGee left saddled with the massive environmental and tort liabilities it had accumulated over the course of decades of operating in the chemical, mining, and oil and gas industries, but without sufficient assets with which to address these liabilities." For this reason, as the district court explained, both the United States and the Tronox estate, now represented by the trust, brought fraudulent conveyance claims against the defendants.

The United States announced this settlement on April 3, 2014, and on Nov. 10, 2014, the district court approved the settlement as "fair and reasonable." The settlement agreement went into effect on Jan. 21, 2015.

Protecting the Public Fisc from Excessive or Unwarranted Claims for Reimbursement of Cleanup Costs

- In 2015, ENRD finally received a favorable judgment in *TDY Holdings v. United States* (S.D. Cal.), following a 12-day bench trial in 2012 on a suit under CERCLA to recover from the United States for response costs incurred to remediate contamination at a former aircraft and aircraft parts manufacturing facility. On July 29, 2015, the district court issued a detailed decision that allocated 100 percent of the response costs to the plaintiff. The court concluded: “[A]lthough the Government was the past owner of [some of] the facilities at the site, it was not the responsible party for the introduction of the contaminants of concern into the Site’s soil, sediment and water that necessitated the remediation efforts. Considering the totality of the circumstances, the court allocates 100% of the past and future response costs for the remediation of chromium, chlorinated solvents and PCBs at the Site to TDY.”

- ENRD won a favorable ruling on summary judgment in *Chevron Mining Inc. v. United States* (D.N.M.), a CERCLA suit regarding cleanup costs at the Questa Mine Superfund Site in New Mexico. Plaintiff and its predecessors conducted mining and disposed of the associated waste at the Site for most of the last century, using land held by plaintiff via unpatented mining claims. Faced with cleanup costs ranging from approximately \$600 to \$900 million, the plaintiff alleged that the United States was liable under CERCLA as both an owner of the site and a party who arranged for disposal of hazardous substances there. On September 30, 2015, the district court entered summary judgment for the United States. The court concluded that the United States’ retention of “bare legal title” in lands subject to an unpatented mining claim does not render the United States an owner for purposes of CERCLA. As to plaintiff’s “arranger” claim, the court found that plaintiff had failed to establish that the United States took intentional steps to arrange for disposal of a hazardous waste. The court therefore found that the United States was entitled to judgment as a matter of law, and entered a final judgment finding the United States not liable.

- *Emhart Industries, Inc. v. Air Force* (D.R.I.), involves responsibility for the cleanup of a former chemical manufacturing and drum recycling facility in North Providence, Rhode Island, which is now the location of residential housing. After years of litigation between the former operators of the site, EPA brought claims to compel the performance of cleanup actions at the site. In turn, the private companies that contributed to the contamination countersued against the United States, arguing that the United States military disposed of Agent Orange and other tactical herbicides (and other hazardous substances) at the site, and therefore the Army and Air Force bore responsibility for the cleanup costs at the site. After months of intensive discovery, case development, and trial preparation, the case proceeded to a bench trial in May and June of 2015. The trial addressed Emhart’s liability on EPA’s affirmative enforcement claim, as well as the company’s defenses to liability, including arguments regarding divisibility of the harm, and arguments blaming the Air Force and the Navy for contamination at the site. On September 17, 2015, the court issued favorable findings of fact and conclusions of law. The court held that Emhart Industries and its successor Black & Decker are jointly and severally liable for the United States’ response costs



Emhart Industries, Inc. v. Air Force,

USAF logo

incurred in connection with the site. The court also held that Emhart/Black & Decker failed to show that the harm at the site is reasonably capable of apportionment. Finally, the court held that Emhart/Black & Decker failed to carry their burden of proving that the Department of Defense disposed of any hazardous substances at the site, much less tactical herbicides.

The Division settles claims under CERCLA seeking to impose liability for cleanup on federal agencies where a fair apportionment of costs can be reached. In fiscal year 2015, these included several multi-million-dollar settlements:

- On December 11, 2014, the court approved a settlement agreement as a good faith settlement in *City of San Diego v. U.S. Navy* (S.D. Cal.), concerning the remediation of contaminated shipyard sediment in San Diego Bay. Under the settlement agreement the United States, on behalf of the Navy, agreed to accept a 28% share of costs in the “North Yard” at the site and a 33% share of costs in the “South Yard.” Specifically, the United States agreed to pay a total settlement amount of \$21,189,454.33 for its fair share of the remedial costs.
- In *In re Former Explo Systems, Inc. site at Camp Minden, Louisiana*, the Louisiana Military Department (“LMD”) asserted potential contribution claims against the United States under CERCLA, relating to the removal of M6 propellant and clean burning igniter powder at the former Explo Systems, Inc. site at Camp Minden, Louisiana. In October 2014, ENRD completed negotiation of an Administrative Settlement Agreement and Order on Consent, under which the United States agreed to make an initial payment of \$19,312,648.13 and then periodic payments totaling 100% of future response costs that LMD incurs to complete the removal action. In exchange, LMD will pay for the oversight costs of the EPA.
- The court entered a consent decree on October 24, 2014 in *Minerals Technologies Inc. v. United States* (D. Conn.). Minerals Technologies had asserted claims under CERCLA against the General Services Administration (GSA) and Department of Energy regarding response actions in connection with PCB and mercury contamination at the Canaan Site located in Canaan, Connecticut. ENRD negotiated a consent decree under which the United States will pay \$2,300,000 to resolve the company’s claims against the federal agencies for past response costs.
- The court approved a consent decree on November 21, 2014, in *State of Maryland v. United States (In re Kurt Iron & Metals Site)* (D. Md.). The consent decree resolves claims against the United States under CERCLA for response costs incurred by the Maryland Port Administration at the former Kurt Iron & Metals site in Baltimore, Maryland. Under the consent decree, the United States will pay the Maryland Port Administration \$6.5 million.
- In *City of New Brighton v. United States* (D. Minn.), the City of New Brighton, Minnesota, brought a motion to enforce a 1988 settlement agreement under CERCLA, under which the Army was funding the operation of a treatment facility addressing groundwater allegedly contaminated by releases of hazardous substances at the Twin Cities Army Ammunition Plant in Ramsey County, Minnesota. To resolve that motion, the parties negotiated a supplemental settlement agreement, under which the United States will pay the City of New Brighton \$59,400,000 to resolve the City’s claim for the advance payment of water treatment costs. The supplemental settlement agreement was approved by the court on January 30, 2015.

PARTNERING WITH STATES

During 2015, ENRD partnered with many states to enforce our nation's pollution laws and prosecute traffickers in protected wildlife and illegally harvested timber, as well as to defend challenges to critical infrastructure projects.

For example, 14 states received a combined total of nearly \$8.4 million in civil penalties from joint environmental enforcement cases with the federal government. In addition, many of the communities surrounding the facilities responsible for violations will benefit from environmental mitigation or supplemental environmental projects funded by the defendants. In 2015, such projects directed \$1 million to the State of New York in a joint case. And joint enforcement of claims for natural resources damages resulted in an overall recovery to states of over \$45 million. ENRD also partnered with federal agencies and the five Gulf States in negotiations that resulted in the recent agreements with BP concerning the Deepwater Horizon disaster. Those two agreements provide more than \$20 billion in payments to the federal government and states, with as much as \$6 billion of those funds going directly to the states or their local governments.

The cases described represent but a few examples of cooperative federalism in environmental enforcement, which is a top priority for ENRD. ENRD's Assistant Attorney General also named a senior ENRD lawyer as his Counselor for State and Local Matters, a position designed to facilitate joint efforts by the division and its environmental partners in state and local governments. The partnerships we have forged with state and local governments in a variety of contexts are critical to achieving ENRD's mission on behalf of the American people.

Specifically, we partnered with the State of Colorado to address Clean Air Act violations by Noble Energy Inc. at its natural gas production operation in the Denver-Julesburg Basin north of Denver, an area that fails to attain the National Ambient Air Quality Standards for ground level ozone. At issue were emissions of vapors from hydrocarbon liquids, which contain volatile organic compounds, methane and hazardous air pollutants such as benzene. EPA and Colorado inspectors observed emissions from storage tanks using state-of-the-art optical imaging and thermal infrared cameras. Under the terms of the agreement, Noble will pay penalties,

conduct an engineering evaluation of vapor systems, undertake corrective actions as needed and verify the adequacy of the actions at over 3,400 tank batteries. Noble also will retain a third party to audit the performance of this work and install next-generation pressure monitoring on tank batteries. The total value of the civil penalty split between the United States and the State of Colorado, plus mitigation and Supplemental Environmental Projects, was nearly \$9 million.

On the defensive side, the division worked closely with state partners in defending numerous important infrastructure projects. Those efforts were successful in facilitating the replacement of the aging Bonner Bridge on the North Carolina coast, the upgrading and maintenance of the Virginia Avenue Tunnel for rail transportation in Washington, D.C., the expansion of U.S. Route 431 in Eufala, Alabama, and the Monroe Bypass near Charlotte, North Carolina.

The past year also marked continuing cooperation with states in the division's criminal prosecutions. This ranged from providing training to state partners to close coordination in wildlife and pollution investigations. Prosecutors from ENRD's Environmental Crimes Section (ECS) presented at several events where state investigators learned of opportunities and methods for developing wildlife and environmental crimes cases, either in concert with federal counterparts or independently.

Our state connections also were vital to achieving successful outcomes in several criminal prosecutions. For example, *United States v. Baravik* (W.D. Mo.), involved illegal trafficking in paddlefish eggs, a highly valuable caviar substitute poached on a large scale from Missouri waterways. Baravik was convicted at trial for his role in the illegal trade of \$30,000-\$50,000 worth of paddlefish eggs. His case was a joint effort of FWS and conservation officers from both the Missouri Department of Conservation and the Oklahoma Department of Conservation.

In addition to working directly with our state partners, the criminal penalties sought by ENRD prosecutors can directly mitigate damage when pollution or wildlife crimes lead to harm to state lands, resources or waterways. As in the civil context, such cases may include restitution or mitigation to states, in addition to other penalties.

For instance, the outcome of *United States v. Harbor House Seafood* (D.N.J.), a case involving the illegal harvest of oysters from the Delaware Bay, led to \$140,000 in restitution to the State of New Jersey for loss of that state's seafood resources. Likewise, in *United States v. Michael Hayden* (D. Md.), the court ordered a trafficker in illegally harvested striped bass to pay nearly \$500,000 in restitution to the State of Maryland for the damage he did to Maryland's seafood resources.

Finally, through a criminal plea agreement in *United States v. Duke Energy Business Services, LLC, et al.* (E.D.N.C., M.D.N.C., W.D.N.C.), the long-term damage caused by criminally negligent maintenance of coal ash basins was addressed through \$10 million paid to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts to the states where those basins are located.



Duke Energy Coal Ash Spill,

EPA photo

PROMOTING RESPONSIBLE STEWARDSHIP OF AMERICA'S WILDLIFE AND NATURAL RESOURCES

A critical part of the Division's mission is to protect and promote responsible stewardship of America's wildlife and natural resources. For example, the Division defends decisions by the U.S. Departments of Agriculture and the Interior with respect to water use and federal land management, actions by the National Oceanic and Atmospheric Administration and FWS to protect threatened and endangered species, and regulations and permits that provide essential oversight for energy and mineral extraction activities.



US Forest Service Logo

Defending Agency Management of Sensitive Resources

Successful Defense of the Forest Service Planning Rule and Important Forest Projects

In *Federal Forest Resource Coalition v. Vilsack* (D.D.C.), NRS defeated challenges to the 2012 National Forest Management Act Planning Rule, which governs the development of land use plans on National Forests and National Grasslands nationwide. Plaintiffs claimed the rule violated the Forest Service's statutory mandates under the Organic Act, the Multiple Use-Sustained Yield Act, and the National Forest Management Act, by promoting "ecological sustainability" over provision of timber and other multiple uses. ENRD succeeded in moving the court to dismiss the challenges for lack of standing.

Protection of Sensitive Resources in Alaska

In *Agdaagux Tribe of King Cove v. Jewell* (D. Alaska), ENRD successfully defended the Secretary of Interior's 2013 decision to reject a land exchange that would have permitted construction of a road across the Izembek National Wildlife Refuge. The court rejected plaintiff's claims that the Secretary's decision violated the Omnibus Public Land Management Act of 2009, the Administrative Procedure Act (APA), NEPA, the Alaska National Interest Lands Conservation Act (ANILCA), and the United States' trust responsibility to Alaska Natives. In *Alaska v. Jewell* (D. Alaska), ENRD successfully



Izembek National Wildlife Refuge

FWS photo



Stanislaus National Forest

USDA photo

derailed an attempt by the State of Alaska to require the Secretary of the Interior to review and approve the State's plan for exploration of oil and gas resources within the coastal plain of the Arctic National Wildlife Refuge. The Division defeated the State's claims that Interior had an ongoing duty under Section 1002 of ANILCA to evaluate and approve such plans by establishing that the statutory duty expired in 1987.

Successes in Federal Courts of Appeals

- On November 4, 2014, in *American Whitewater v. Tidwell* (4th Cir.), the Fourth Circuit upheld a decision by the U.S. Forest Service allowing limited rafting on the Chattooga River. Plaintiffs were recreational user groups who claimed that the Forest Service violated the Wild and Scenic Rivers Act (WSRA), the Forest Service Manual, and the APA when it amended the Forest Plans of three National Forests in 2012 to allow limited rafting on the Upper Chattooga. In 1974, the Forest Service designated the forests as "wild and scenic" under the WSRA and prohibited floating on the Upper Chattooga, but in 2012 modified the prohibition to allow floating during some months of the year. Plaintiffs challenged the remaining restrictions. The court rejected Plaintiffs' arguments, and held that the Forest Service's methodology for assessing potential user conflict was entitled to deference under the APA.
- On May 26, 2015, in *Center for Biological Diversity v. Higgins* (9th Cir.), the Ninth Circuit upheld the district court's denial of a preliminary injunction to halt the Forest Service's implementation of the Rim Fire Recovery Project in the Stanislaus National Forest in eastern California. The 2013 Rim Fire was the third largest wildfire in California history, burning over 250,000 acres of land in the Sierra Nevada Mountain Range. The Recovery Project was developed to reduce hazardous trees and fuel load in the drought areas, and reconstruct damaged roads. Although the Project was supported by many organizations, plaintiffs challenged it, arguing that the Forest Service's adoption of the project violated NEPA. The court of appeals held that the Forest Service had taken a "hard look" at the project's impact on the California spotted owl, and that it had not ignored or minimized scientific studies suggesting that the salvage harvest of timber harmed the spotted owl's foraging habitat.
- On August 31, 2015, in *Freedom from Religion Foundation v. Weber* (9th Cir.), the Ninth Circuit affirmed the district court's grant of summary judgment for the Forest Service. Plaintiffs challenged the Forest Service's decision to reissue a special use permit for the Knights of Columbus to maintain a statue of Jesus they had erected in 1954 on Forest Service lands that are part of a ski resort in northwestern Montana. The court's opinion applied the traditional analysis of *Lemon v. Kurtzman*, 403 U.S. 602 (1971) and held that the Forest Service's action had the secular purpose of preserving a local historical landmark, and that the permit reissuance did not constitute an endorsement of religion. A concurring opinion argued that the privately-owned statue is not government speech and should therefore be analyzed under "public forum" rather than Establishment Clause jurisprudence. He concluded that Forest Service lands are a public forum and that the Forest Service's rules and its conduct were both neutral with respect to religion, and thus permissible. A dissenting judge argued that a reasonable observer would perceive the statue as projecting a message of government endorsement of religion.

Facilitating Land Management Decisions Designed to Protect Federal Lands From and Respond to Catastrophic Fire and Insects

ENRD has continued to successfully defend the Forest Service's efforts to use active forest management to move forest lands toward a more resilient and healthy condition.

- For example, in *Conservation Congress v. U.S. Forest Serv.* (E.D. Cal.), the Division successfully defended the Porcupine Project on the Shasta-Trinity National Forest, which authorizes timber harvest and other

vegetation management treatments designed to reduce fire risk and facilitate the creation of additional habitat for the California spotted owl.

- In *Conservation Congress v. George* (N.D. Cal.), ENRD successfully defended the Kelsey Peak Timber Sale and Fuelbreak Project on the Six Rivers National Forest. The project was designed to improve habitat for the northern spotted owl, reduce fire hazards, and provide forest products to the local economy. The court upheld the Forest Service's compliance with NEPA, the ESA, and the National Forest Management Act, noting that the government met all of its environmental obligations by developing a project that protects and improves owl habitat.
- In *Center for Biological Diversity v. Hays* (E.D. Cal.), the Division successfully defended a NEPA challenge to the immediate implementation of the Bald Fire Restoration Project. The Bald Fire burned over 39,000 acres, mostly on the Lassen National Forest in northern California. ENRD succeeded in defending the preliminary injunction challenge to the Project, allowing salvage and restoration operations—which are key to public safety and the ability to recovery commercially valuable timber—to begin on schedule.



Northern Spotted Owls

FWS photo

Defending the Bureau of Land Management's and the Forest Service's Land Management Discretion

- Plaintiffs in three consolidated cases, *In re Big Thorne Project and 2008 Tongass Forest Plan* (D. Alaska), challenged green timber sales on the Tongass National Forest under NEPA and the National Forest Management Act, as well as challenging aspects of the 2008 Tongass Forest Plan. The sales were part of the U.S. Department of Agriculture's effort to provide a supply of bridge timber to allow the timber industry in Southeast Alaska to make the transition from the harvest of old

growth timber to the harvest of second growth timber. On summary judgment, the district court ruled in the government's favor on all issues. The decision allows the Agency to proceed with its efforts to facilitate this important shift in management while still providing a steady stream of timber.

- This year the Division also favorably resolved series of lawsuits challenging BLM's timber sale program in western Oregon. In *Swanson Group Mfg. v. Jewell* (D.C. Cir.), the D.C. Circuit held that the plaintiff timber industry associations and members had failed to demonstrate Article III standing to sue the Departments of Agriculture and the Interior for alleged violations of the California Railroad and Coos Bay Wagon Road Grant Lands Act of 1937 ("O&C Act"). Plaintiffs alleged that Interior violated the Act by failing to offer for sale each year a minimum quantity of timber from lands managed under that statute, and that both agencies violated the APA by failing to conduct notice and comment rulemaking before preparing and using a methodology for estimating the effects of federal actions on the northern spotted owl. The district court granted summary judgment to the plaintiffs on both counts and directed BLM to sell or offer for sale each year the declared allowable sale quantity of timber in two BLM districts in Oregon. The D.C. Circuit reversed and remanded for the district court to dismiss the complaint because the plaintiffs had not

demonstrated that they had standing. Specifically, the court of appeals held that it could not consider declarations submitted after the district court's judgment and that none of the remaining declarations were sufficiently specific to prove standing.

This favorable decision prompted the district court to dismiss for lack of standing three follow-on lawsuits brought by the same or similar plaintiffs. First, the district court dismissed plaintiffs' claim in *Swanson Group Mfg. v. BLM* (D.D.C.) that the BLM failed to fulfill its alleged mandatory duty to offer for sale a specific quantity of timber from all six of its western Oregon districts (encompassing approximately 2.5 million acres). Second, the district court dismissed plaintiffs' claim in *American Forest Resource Council v. Jewell* (D.D.C.) that BLM lacked the authority to set aside reserves where no sustained yield timber harvest is permitted on lands subject to the O&C Act. Third, in *Carpenters Industrial Council v. Jewell* (D.D.C.), the district court dismissed plaintiffs' challenge to FWS's decision to designate 9.3 million acres of critical habitat for the northern spotted owl.

- Separately, in *Jarita Mesa Livestock Grazing Association v. U.S. Forest Service* (D.N.M.), the Division secured dismissal of the majority of claims alleging that a Forest Service district ranger violated livestock grazing permittees' First Amendment and statutory rights by reducing grazing on the Jarita Mesa and Alamosa Allotments on the Carson National Forest. Plaintiffs, who are local livestock associations and Spanish-American/Hispanic permittees, accused the district ranger of reducing permitted livestock numbers on the allotments in retaliation for their speaking out against the ranger's management practices. Having dismissed plaintiffs' First Amendment claim last Fiscal Year, the district court dismissed most of plaintiffs' claims under NEPA and land management statutes, finding that plaintiffs' administrative appeals had failed to raise these claims. The court also found that many of these claims were not cognizable as presented by plaintiffs.

- In April 2015, the district court upheld the Forest Service's decision to allow the 17.4-acre, uranium-ore Canyon Mine to proceed. In *Grand Canyon Trust v. Williams* (D. Ariz.), plaintiffs sued to stop the mine because it was six miles south of the Grand Canyon—although the Forest Service had completed an environmental impact statement and tribal consultation in 1986. Earlier litigation resulted in a 1991 favorable decision in the Ninth Circuit, but operations were subsequently halted due to the low price of uranium.

Recently, the mining company stated its intent to restart operations. Plaintiffs alleged violations of NEPA, the National Historic Preservation Act, the National Forest Management Act and the Organic Act of 1897. The district court upheld the Forest Service's analysis and conclusions in all respects. This decision has allowed the Forest Service to advance its multiple-use mission while ensuring that the mining company complies with all legal requirements.



Grand Canyon National Park,

NPS photo

- In a separate case, a non-profit citizens group asserted NEPA and Federal Land Policy and Management Act (FLPMA) claims challenging BLM's issuance of a land-use authorization to Over the River Corporation, formed by the artist Christo, to construct an art project that would intermittently cover six miles of the Arkansas River with fabric panels. On January 2, 2015 the court affirmed BLM's decision in *Rags Over the Arkansas River v. BLM* (D. Colo.). With respect to NEPA, the court held that the record demonstrated the agency's hard look at potential impacts to bighorn sheep and traffic, and that removal of a visitor center and parking lot from the project's original design did not require supplementation of the NEPA analysis. With respect to FLPMA, the court determined that BLM had not acted arbitrarily in determining the project was in conformance with the resource management plan for the area. The court repeatedly stated that determining plan conformance was a decision within BLM's specific expertise and therefore entitled to deference. The court also deferred to BLM's interpretation of the phrase "clearly consistent" in the applicable regulations.

Protecting United States' Property Interests

- In *United States v. Board of Commissioners for Otero County & State of New Mexico* (D.N.M.), the Division obtained a favorable decision in an affirmative case to stop Otero County, New Mexico from removing trees on more than 65,000 acres of the Lincoln National Forest without approval from the Forest Service. Otero County had passed a resolution stating it had no obligation to comply with federal law, and could use the County's police powers to address an alleged fire hazard pursuant to a New Mexico statute purporting to give counties the authority to do so. The district court held that the Otero County resolution and New Mexico statute were in "direct conflict" with federal law governing management of National Forest System lands, and therefore declared the resolution and statute unconstitutional and invalid under the Property Clause and Supremacy Clause of the Constitution.

ENRD also achieved a significant settlement in litigation over claims to highway rights-of-way on federal land under a repealed federal statute known as "R.S. 2477."

- For example, in *Hallauer v. United States* (E.D. Wash.), plaintiffs who were seeking to quiet title to several roads over BLM land in Okanogan County, Washington agreed to voluntarily dismiss their claims with prejudice and instead submit administrative applications for rights-of-way – which BLM subsequently granted.
- In *City of Tombstone v. United States* (D. Ariz.), ENRD defeated attempts by the City of Tombstone, Arizona to claim control over an easement for a water pipeline in the Coronado National Forest. The court dismissed the City's Quiet Title Act claims after finding that the City was not the proper party to assert claims under R.S. 2477 and that the City's claims for rights-of-way under R.S. 2339 and R.S. 2340 were barred by the 12-year statute of limitations. The court also rejected the City's claims under the APA and the Tenth Amendment to the U.S. Constitution.
- On December 2, 2014, the Tenth Circuit issued a largely favorable decision for the *Kane County v. United States* (10th Cir.), a suit by Kane County, Utah, seeking to quiet title in itself to several purported R.S. 2477 rights-of-way ("ROWS") that traverse land managed by BLM. R.S. 2477 is an 1866 federal statute that grants rights-of-way for the construction of highways across unreserved public lands. The Tenth Circuit held that in order to establish jurisdiction under the Quiet Title Act, ("QTA"), "a plaintiff must show that the United States has either expressly disputed title or taken action that implicitly disputes it." Actions that might merely present a "cloud on title," as the district court had required, are not sufficient. The appellate court found that the Quiet Title Act's requirement of a "disputed title

to real property in which the United States claims an interest,” 28 U.S.C. § 2409a, was part of the waiver of sovereign immunity and the district court’s formulation was incompatible with the rule that conditions on waivers of sovereign immunity must be specifically observed. The appellate court then held that the plaintiffs had not carried their burden to establish jurisdiction over several of the roads (as to some roads, plaintiffs had pointed to Management Plan maps that were merely ambiguous as to the status of some roads; as to other roads, they pointed only to ROWs granted under the FLPMA to a private party but that did not conflict with potential ROWs under R.S. 2477).

- *County of Shoshone, Idaho v. United States* (9th Cir.). On October 31, 2014, the Ninth Circuit affirmed a district court judgment that Eagle Creek Road, located within the Idaho Panhandle National Forest, is not an R.S. 2477 public right-of-way. The road was established in the early 1880s to serve a small mining community (Eagle Creek), but that community faded away within two years and the road received only sporadic use thereafter. In 1997, the Forest Service closed four miles of the road due to damage caused by flooding. Shoshone County sued the United States under the Quiet Title Act, claiming that it held a right-of-way under R.S. 2477. In its decision, the Ninth Circuit held that the county had sued within the applicable statute of limitations period, but that it had not met the standards established under Idaho law for creation of a highway right-of-way, specifically “regular public use” for a period of five years. After the Eagle Creek mining camp was essentially abandoned, the “road” reverted to nothing more than a trail and its use, rather than being usual was more appropriately characterized as “casual or desultory.”



Gallatin National Park,

NPS photo

Successful Implementation of the Endangered Species Act

Congress enacted the ESA “to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species.” Congress authorized the Departments of the Interior and Commerce, acting through FWS and NMFS respectively, to achieve this objective by listing imperiled species, designating critical habitat for such species, and then applying the protections of the ESA. Such decisions are often challenged.

In FY 2015, ENRD attorneys achieved favorable results in several such cases, thereby allowing full and effective implementation of the ESA and its protections.

- For example, in *Friends of Animals v. FWS* (D. Or.), Division attorneys successfully turned back a challenge to actions being undertaken in Oregon national forests to implement an ESA recovery plan intended to conserve endangered Northern spotted owls. Accordingly, this important recovery plan action was able to move forward.

- On February 27, 2015, in *American Forest Resource Council v. Ashe* (D.C. Cir.), the D.C. Circuit upheld FWS’s “12-month finding” that denied a petition by a timber harvesters’ trade association to remove from the list of endangered and threatened species the “distinct population segment” (DPS) of the marbled murrelet that exists in California, Oregon and Washington. This tri-state population of the murrelet (a seabird that nests in coastal, old growth forest in the U.S and Canada) was listed as threatened in 1992 under the DPS provision of the ESA. In the 12-month finding, FWS determined that the tri-state population met the criteria for a DPS—namely that the population be both “discrete” and “significant” to the taxon as a whole. The court concluded that FWS’s interpretation of those criteria was reasonable and that the agency had a sufficient factual basis to conclude that the tri-state population was both significant and discrete.

- On May 26, 2015, in *National Association of Home Builders v. United States Fish & Wildlife Service* (D.C. Cir.), the D.C. Circuit affirmed the district court’s judgment in favor of FWS. Home Builders sought to overturn two settlement agreements that were designed to allow FWS to evaluate in an orderly fashion whether a backlog of 251 species should be listed under the ESA. The D.C. Circuit held that Home Builders lacked standing to assert their claims. Home Builders identified no “plausible statutory basis” for the procedural harms they asserted, nor did they show that the alleged procedures were “designed to protect” their interest in delaying listing decisions. The court of appeals noted that the designed-to-protect prong of the procedural injury analysis applied even though Home Builders had sued under the ESA’s citizen suit provision, which negates the zone-of-interests test. The court of appeals further held that because Home Builders’ expenditures to conserve several species were not “dictated” by FWS, those expenditures were voluntary and therefore did not support standing.

- *Bear Valley Mutual Water Co. v. Jewell* (9th Cir.). On June 25, 2015, the Ninth Circuit rejected a challenge to FWS’s final rule designating critical habitat for the Santa Ana Sucker, a species listed as threatened under the ESA. A number of California water districts and municipalities sued FWS alleging that the final rule violated the ESA and NEPA. The district court entered judgment in favor of the federal defendants concluding that the final rule complied with the ESA. The court held that the decision not to exclude certain lands from the critical habitat designation was not subject to judicial review and that the inclusion of other lands was not arbitrary and capricious. The appellate court also held that FWS did not need to comply with NEPA, as the Ninth Circuit had previously held in *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), that NEPA did not apply to the critical habitat designation process.

Defending National Marine Fisheries Service’s Management of Ocean Fisheries

The Magnuson Stevens Fishery Conservation and Management Act (MSA) and other related statutes charge the National Marine Fisheries Service (NMFS) with the difficult task of managing ocean commercial fishing to provide for conservation and sustainable fishing while, at the same time, optimizing fishing yield. In FY 2015, ENRD successfully defended various fishery management actions necessary to meet these objectives.



Bering Sea,

USGS photo

This year, attorneys in the Wildlife and Marine Resources Section obtained favorable decisions upholding regulations implementing South Atlantic Snapper-Grouper Fishery Management Plan in *NRDC v. NMFS* (D.D.C.), the Pacific whiting Fishery Management Plan in *Glacier Fish Co. v. Pritzker* (W.D. Wash.), and the plan for groundfish fisheries (including pollock, Pacific cod, Atka mackerel) in the Bering Sea and Aleutian Islands in *Oceana, Inc. v. Pritzker* (D. Alaska). In so doing, Section attorneys ensured that the balance developed by NMFS between providing necessary protections for the fishery without causing undue economic hardship was implemented.

Fair enforcement of fishery regulations is also critical to NMFS' fishery program.

- In *Black v. Pritzker* (D.D.C.), ENRD attorneys successfully defended a NMFS-penalty assessment of \$1.5 million for 19 violations of regulations intended to protect bigeye and yellowfin tuna stocks consistent with international agreements and for five violations of the Marine Mammal Protection Act (MMPA) for knowingly setting purse seine fishing gear on whales in an effort to harvest tuna. In upholding NMFS' enforcement decision, ENRD ensured that all participants in the fishery operate on a level playing field and that the fishery remains sustainable into the future.

Protecting Marine Mammals

Under the MMPA, any entity wishing to import marine mammals caught in the wild for public display purposes must obtain a permit from NMFS. The permit applicant must meet the stringent standards of the MMPA, which include requirements, among others, that the proposed import by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock and that the proposed import would not likely result in the taking of marine mammals by driving up overall demand for species.

- In *Georgia Aquarium, Inc. v. Pritzker* (N.D. Ga.), the Division defended a suit filed by the Georgia Aquarium challenging a permit denial. The Georgia Aquarium had filed a permit application seeking authority to import for display purposes 18 beluga whales from Russia. These whales were captured in the wild between 2006 and 2011 in the Sea of Okhotsk. After a lengthy administrative process, NMFS denied the permit application, finding that the Aquarium had not made the requisite showings.

After extensive summary judgment proceedings, on September 28, 2015, the court upheld NMFS' decision in its entirety in a 99-page opinion. The court agreed with NMFS that the Aquarium bore the burden under the MMPA of showing that the proposed imports met the statutory and regulatory requirements and were consistent with the protective purposes of the MMPA. The court agreed that the Aquarium failed to meet that burden.



Beluga Whale,

Wikipedia photo

Successful Implementation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”)

The United States is a signatory to CITES, a multilateral treaty that aims to protect vulnerable wildlife by regulating trade in species that are threatened with extinction as well as species that are not necessarily threatened with extinction at present but may become so unless trade in such

species is subject to strict regulation. CITES ensures that trade in these species is regulated and sustainable through the use of standardized import and export permits and other mechanisms.

- Of note this past year was *Safari Club International v. Jewell* (D.D.C.), in which the Division defended FWS's decision, under the ESA and CITES, to suspend the importation of sport-hunted elephant trophies from Tanzania and other locations. Due to worsening circumstances related to the protection and conservation of elephants in Tanzania, FWS announced a prohibition on further importation of elephant trophies from the region until further review could be undertaken. Hunting interest groups challenged the moratorium. After briefing by ENRD attorneys, the court granted the United States' motion to dismiss plaintiffs' claims related to Tanzania, thereby allowing the prohibition to remain in effect and providing needed protections to Tanzanian elephants.



African Elephant,

FWS photo

Co-Chairing the Presidential Task Force on Wildlife Trafficking

Illegal trafficking in wildlife, plants and timber, and marine creatures has reached epidemic proportions. It is both a critical conservation concern—threatening the survival of many species throughout the world—and a growing threat to regional stability and global security that requires increased attention. United States efforts to tackle this crisis are coordinated through the Presidential Task Force to Combat Wildlife Trafficking, established by President Obama through Executive Order on July 1, 2013. The Division represents the Department of Justice on this Task Force, which is co-chaired by the Attorney General and the Secretaries of State and the Interior or their designees. The Task Force also includes senior-level representatives from 14 additional federal departments and agencies, including the Departments of Commerce, Defense, Treasury, Agriculture, and Homeland Security, as well as the United States Agency for International Development (USAID) and the Office of the Director of National Intelligence.

The Task Force developed the first-ever National Strategy for Combating Wildlife Trafficking, which was issued by the President on February 12, 2014. The Strategy reflects a “whole-of-government” approach that will both strengthen anti-trafficking efforts already underway in ENRD and other federal agencies and elevate illegal wildlife trafficking as a priority for additional agencies whose missions include law enforcement, trade regulation, national security, international relations, and global development. The Strategy identified three strategic priorities that the Task Force deemed critical to combating wildlife trafficking: strengthening domestic and global enforcement, reducing demand for illegally traded wildlife, and building international cooperation and public-private partnerships.

In fiscal year 2015, ENRD worked in close coordination with the other Task Force agencies to draft an implementation plan for the Strategy, which the Task Force issued in February 2015. The Implemen-

tation Plan recognized that achieving the Strategy's goals would require a significant and sustained commitment over the long term and identified both short- and long-term next steps toward each of the objectives set out in the Strategy. The Division continues to work in concert with the other Task Force agencies to carry out its responsibilities under the Strategy and Implementation Plan.

The Division's primary role in stopping wildlife trafficking is direct enforcement of the wildlife trafficking laws. We work closely with investigative agencies throughout the government to prosecute high-level traffickers in an effort to take the profit out of wildlife trafficking. ENRD also works closely with other Task Force agencies to increase capacity to combat wildlife trafficking, both at home and abroad. For example, to increase domestic prosecutorial capacity, ENRD spearheaded DOJ's devotion of two of the six issues of the U.S. Attorneys' Bulletin published in 2015 to a wide range of issues involving wildlife trafficking and related crime. The articles in these issues reflected the contributions of multiple Task Force agencies and provide critical guidance and encouragement for investigators and prosecutors on increasing their participation in the fight against wildlife trafficking. The Division also began work in fiscal year 2015 on a new capacity building initiative in Africa.

With funding from the Department of State and assistance from USAID, ENRD is implementing a series of regional capacity building workshops on wildlife trafficking for judges and prosecutors in Africa. The first of the series was conducted in Livingstone, Zambia, in October 2015 for 32 judges and prosecutors from six southern African nations (Angola, Botswana, Malawi, Mozambique, Namibia, and Zambia). The training, assisted by subject matter experts from the U.N. Office on Drugs and Crime and anti-trafficking NGOs, included sessions on evidentiary and prosecutorial issues unique to wildlife trafficking cases, as well as sessions on money laundering, asset tracing, and corruption issues. Additional sessions are planned for 2016 and will extend to certain central and west African states.

The high priority given by the Division to combating wildlife trafficking is also reflected in our efforts, often taken in conjunction with other Task Force agencies, to build international commitment and cooperation in this area.

- Assistant Attorney General John C. Cruden led the U.S. delegation to the Kasane, Botswana Conference on Combatting Illegal Wildlife Trade in March, 2015. The United States joined participating countries from throughout Africa, the European Union, and various Asia countries, including China and Viet Nam, in committing to increased international cooperation to stop the illegal slaughter of elephants for their ivory. AAG Cruden also attended the second African Elephant Summit during this trip to Botswana in March 2015.
- The Division also joined the State Department and other agencies from the President's Wildlife Trafficking Task Force in discussing strategies for combating wildlife trafficking at the U.S.-China Strategic & Economic Dialogue held in Washington, D.C. in June 2015.

MAKING PROGRESS TOWARD ACHIEVING THE GOAL OF ENVIRONMENTAL JUSTICE

All Americans deserve to live, work, play, and learn in places that have clean air, water, and land. Environmental justice means that all Americans are afforded fair treatment and full protection under the nation's laws, including environmental, civil rights, and health and safety laws. In addition, every American should have the opportunity to participate meaningfully in the decision-making processes that affect their environment. However, the burdens of pollution often still fall disproportionately on low-income and minority communities who do not have that meaningful opportunity to be heard. ENRD remains deeply committed to ensuring that the goals and principles of environmental justice are part of our mission and appropriately integrated into our work. In 2015, ENRD continued to achieve meaningful environmental justice results and to work on many fronts to help make environmental justice a reality.



EPA photo

"Because we all deserve the chance to live, learn, and work in healthy communities, my Administration is fighting to restore environments in our country's hardest-hit places. . . . While the past two decades have seen great progress, much work remains. In the years to come, we will continue to work with States, tribes, and local leaders to identify, aid, and empower areas most strained by pollution. By effectively implementing environmental laws, we can improve quality of life and expand economic opportunity in overburdened communities."

—President Barack Obama, February 10, 2014 Presidential Proclamation: 20th Anniversary of Executive Order 12898 on Environmental Justice

As one of the 17 federal agencies and White House offices that signed a Memorandum of Understanding on Environmental Justice (MOU) in August 2011, the Department of Justice helps lead the federal government's efforts to make environmental justice a reality for all Americans. Building upon Executive Order 12898—the federal government's first statement of an environ-



Google Maps Photo



Google Maps Photo

mental justice policy—the MOU represents the federal government’s renewed commitment to environmental justice. The MOU promotes interagency collaboration and public access to information about agency work on environmental justice, and specifically required each agency to publish an environmental justice strategy, provide an opportunity for public input on those strategies, and produce annual implementation progress reports. In 2015, the Division achieved significant results for the American people as it continued to implement its Environmental Justice Strategy, Executive Order 12898, and the MOU.



The Department’s environmental justice public website (www.justice.gov/ej), launched in September 2011, provides information about DOJ policies, case resolutions, and contact information as well as access to view and comment on the Department’s Environmental Justice Strategy and Guidance. The Department has also made its Annual Implementation Progress Reports available on the website.

Collaborative Work with Other Federal Agencies and Department Components in Fiscal Year 2015

Interagency Working Group on Environmental Justice (EJ IWG)

The EJ IWG, established by Executive Order 12898, is chaired by the EPA and the White House Council on Environmental Quality (CEQ). The formation of the EJ IWG highlights the importance of federal agencies working collaboratively to address environmental justice concerns. The EJ IWG works to facilitate the active involvement of all federal agencies in implementing Executive Order 12898 by minimizing and mitigating disproportionate negative impacts on overburdened communities and fostering environmental, public health, and economic benefits for all Americans. The EJ IWG provides a forum for federal agencies collectively to advance environmental justice principles. It works as a federal family to assist communities in building capacity to promote and implement innovative and comprehensive solutions to address environmental justice concerns.

Through its work with the EJ IWG, the Department has assumed a leadership role in ensuring a coordinated federal response to environmental justice issues. Representatives from ENRD and the Civil Rights Division (CRT) regularly participate in EJ IWG senior staff-level meetings and identify ways the Department can support and further the EJ IWG’s work. On May 27, 2015, EPA Administrator Gina McCarthy and former EPA Chief of Staff Gwendolyn Keyes Fleming hosted a Cabinet-level meeting of the EJ IWG. The Department’s Deputy Attorney General Sally Yates and senior leadership from ENRD and CRT attended the meeting.

Implementing the Interagency Memorandum on Environmental Justice

The Department played an important leadership role in the conception and development of the MOU and continues to play an important role in its implementation. The MOU identifies four focus areas for the EJ IWG as agencies implement their environmental justice strategies: (1) implementation of NEPA; (2) implementation of Title VI of the Civil Rights Act of 1964, as amended (Title VI); (3) addressing impacts from climate change; and (4) addressing impacts from commercial transportation and supporting infrastructure (often referred to as “goods movement”). The Charter to the MOU was updated in 2015 and now includes a governance structure and a requirement for agency senior

leadership to meet twice a year to discuss agency collaboration efforts and commitments that will help further efforts to achieve environmental justice.

The EJ IWG governance structure identifies the following permanent EJ IWG committees:

- Public Participation,
- Regional Interagency Working Groups,
- Strategy and Implementation Progress Reports, and
- Title VI of the Civil Rights Act of 1964.

Consistent with the Presidential Memorandum issued with Executive Order 12898, and based on public recommendations, every three years the EJ IWG also determines if there are additional focus areas for federal agencies to consider and address. During fiscal years 2016–2018, the EJ IWG will maintain the following additional committees to address five focus areas:

- Native Americans/Indigenous Peoples,
- Rural Communities,
- Impacts from Climate Change,
- Impacts from Commercial Transportation (Goods Movement), and
- NEPA.

ENRD was instrumental in establishing the newly formed Native Americans/Indigenous Peoples Committee in 2015, which it co-chairs.

EJ IWG NEPA Committee

During 2015, the Division, through its Natural Resources Section (NRS), continued its active participation on the NEPA Committee of the EJ IWG, which is dedicated to cross-agency education and coordination to foster the incorporation of environmental justice principles into decision-making through the NEPA process. NEPA is designed for federal agencies to carry out their programs to ensure that all communities and people across this nation are afforded an opportunity to live in a safe and healthy environment. NEPA requires federal agencies, before they act, to assess the environmental consequences of their proposed actions for the dual goals of informed agency decision-making and informed public participation. Additionally, NEPA gives communities the opportunity to access public information on and participate in the agency decision-making process for federal actions. The Presidential Memorandum accompanying Executive Order 12898 underscores the importance of procedures under NEPA to “focus federal attention on the environmental and human health conditions in minority communities and low-income communities with the goal of achieving environmental justice.”

NRS has been particularly involved in the two NEPA Subcommittees: the Education and Community of Practice (COP) Subcommittees. The NEPA COP Subcommittee has completed the Draft Report on “Promising Practices on EJ Methodologies in NEPA Reviews.” It provides a framework for meaningful engagement, developing and selecting alternatives, and identifying minority and low-income populations. The NEPA Committee has also completed a training module as a companion to the Promising Practices document.

Increasing Communication and Awareness across Federal Agencies

The Division continues to collaborate directly with other federal agencies to increase the dialogue on and awareness of environmental justice issues. In October 2015, ENRD Assistant Attorney General Cruden held a briefing for federal agency General Counsels to increase awareness of the breadth of the Division's work, including its environmental justice efforts. In addition, the cross-agency group of career attorneys that ENRD, along with EPA's Office of General Counsel, organized in fiscal year 2011 to discuss legal issues regarding environmental justice, remained an important vehicle for increasing communication and awareness. During fiscal year 2015, the group (known as "Law Leaders on Environmental Justice") continued to serve as an important forum for open dialogue, continuing education, and informal counseling among the federal agencies on issues such as environmental justice legal training. The group met at the Department of Justice in July 2015 to discuss NEPA and the draft "Promising Practices for EJ Methodologies in NEPA Reviews" document developed by the NEPA Committee of the EJ IWG. NRS and others from the NEPA Committee briefed the group on the draft document. Assistant Attorney General Cruden and several Division attorneys attended the meeting.

NRS also provided training to the Chief Counsel's Office of the Federal Highway Administration regarding environmental justice issues in NEPA litigation. ENRD's Environmental Defense Section discussed the Division's environmental justice efforts at a Department of Homeland Security's Environmental Law Practice Meeting in November 2015.

In 2015, ECS provided training on environmental justice issues to criminal environmental investigators. At training programs sponsored by the Southern Environmental Enforcement Network, environmental justice principles were taught to state and local environmental investigators and regulators from throughout the country. The training included identifying cases that raise environmental justice issues and appropriate steps during case investigation, prosecution, and resolution. ECS also continued to coordinate with EPA's Office of Criminal Enforcement, Forensics and Training, working on priorities, case assessment, and interaction with EPA Regional EJ coordinators. The ECS EJ Coordinator held regular meetings with EPA personnel assigned to handle EJ matters.

The Department's Environmental Crimes Policy Committee—a group of senior attorneys from ECS, experienced Assistant United States Attorneys and representatives of federal investigative agencies—included environmental justice issues at its annual meeting in September 2015. Members of the Attorney General Advisory Committee's Environmental Issues Working Group also attended this meeting.

Participating in Community and Other Outreach

The Division has continued to help the EJ IWG fulfill one of its critical responsibilities under EO 12898—holding public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Division helped plan and participate in webinars the EJ IWG held to seek public comment on the draft EJ IWG Framework for Collaboration for FY 2016-2018. The Division also now co-chairs the EJ IWG Public Participation Committee along with EPA. ENRD will continue to work with the EJ IWG to conduct outreach to communities and facilitate public engagement with the EJ IWG.

In addition to the community outreach conducted with the EJ IWG and in the context of specific cases, the Department utilizes other forums to hear from stakeholder communities. For example, an ENRD representative attended the September 2015 EPA National Environmental Justice Advisory

Council public meeting held in Arlington, Virginia. These meetings afford communities the opportunity to comment on environmental justice issues of concern to them.

Conducting Outreach on Environmental Justice Issues

The Department of Justice, including ENRD, the Office of Tribal Justice (OTJ), and U.S. Attorneys' Offices, continues to engage in community outreach to ensure that the Department understands and is responding to community concerns. This has taken many forms, including community meetings and visits by senior Department officials, participation in EJ IWG community meetings and calls, participation in environmental justice conferences, and outreach in conjunction with cases. The Department has worked with other federal agency partners and community representatives to organize direct outreach.

In addition to community outreach, Attorney General Lynch and other Department senior staff took the opportunity to highlight the importance of environmental justice to audiences inside and outside the Department.

Training and Increasing Awareness

During 2015, ENRD remained committed to increasing awareness and understanding of environmental justice issues among its attorneys and staff. For example, in September, ENRD included environmental justice in its training for new attorneys entering the Division. The Division also held brown-bag sessions for interns during the year to discuss the Department's environmental justice efforts.

ENRD also continued to help foster greater understanding of environmental justice principles within the Department of Justice. In June 2015, the Division's Environmental Crimes and Environmental Enforcement Sections gave a presentation to the new chairs of the Environmental Issues Working Group of the U.S. Attorney General's Advisory Committee. The presentation focused on the scope of and factors in assessing environmental justice implications, the role of the Department of Justice in achieving environmental justice, outreach and remedies in civil enforcement cases, and the intersection of environmental justice and the Crime Victims' Rights Act.

Integrating Environmental Justice Principles into ENRD Litigation and Outcomes

The Division's work at the local level reflects the Department's commitment to environmental justice and enforcing environmental laws. Through the fair and even-handed enforcement of the nation's environmental and natural resources laws, ENRD's Environmental Enforcement and Environmental Crimes Sections and the U.S. Attorneys' Offices seek to protect all communities from environmental harms. And we work to resolve our cases in the interest of affected communities by finding ways to make sure they have a voice in remedies that affect the places in which they live, work, play, and worship.

The following cases concluded by ENRD and the U.S. Attorneys' Offices, in coordination with our agency partners, provide a few examples of how the Department's efforts furthered environmental justice in 2015:

- On August 17, 2015, the court approved a settlement in *United States, et al. v. Arizona Public Service Co., et al.* (D.N.M.) that will reduce damaging pollution from the Four Corners Power Plant located on the Navajo Nation near Shiprock, New Mexico. This Clean Air Act settlement requires

the Arizona and New Mexico-based utility companies to install pollution control technology to reduce harmful air pollution from the Four Corners Power Plant. The required upgrades to the plant's sulfur dioxide (SO₂) and nitrogen oxide (NO_x) pollution controls are estimated to cost \$160 million.

EPA expects that the actions required by the settlement will reduce harmful emissions by approximately 5,540 tons per year. SO₂ and NO_x, two predominant pollutants emitted from power plants, have numerous adverse effects on human health and are significant contributors to acid rain, smog, and haze. These pollutants form particulates that can cause severe respiratory and cardiovascular impacts and premature death.

The settlement also requires defendants to spend \$6.7 million on three types of health and environmental mitigation projects to benefit tribal members:

- (1) \$3.2 million to replace or retrofit local residents' inefficient, higher-polluting wood-burning or coal-burning appliances with cleaner-burning, more energy-efficient heating systems;
- (2) \$1.5 million for residential weatherization projects that will decrease energy use, such as the installation of floor, wall and attic insulation, sealing of windows and doors, duct sealing, passive solar retrofits, and testing and repair of combustion appliances; and
- (3) \$2 million to establish a Health Care Project trust fund to pay for certain medical expenses for tribal residents living near the Four Corners Power Plant suffering from respiratory issues; the funds may be used to pay for complete medical examinations, tests, review of current medications, prescriptions, oxygen tanks and other medical equipment, and to pay for transportation to and from the hospital or doctors' offices.

Importantly, citizen groups, including Diné Citizens Against Ruining Our Environment, To' Nizhoni Ani and National Parks Conservation Association, are co-plaintiffs. The Arizona Public Service Company is the operator and primary owner of the Four Corners Plant. El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District and Tucson Electric Power Company are current co-owners of the plant and Southern California Edison Company is a former co-owner of the plant. The settlement resolves claims that the companies violated the New Source Review provisions of the Clean Air Act by unlawfully modifying the Four Corners Power Plant without obtaining required permits or installing and operating the best available air pollution control technology. This settlement is part of EPA's national enforcement initiative to control harmful emissions from large sources of pollution, which includes coal-fired power plants, under the Clean Air Act's Prevention of Significant Deterioration requirements.

- Harmful air pollution emissions at facilities in three states will be reduced as a result of the settlement reached in *United States v. Marathon Petroleum Corporation, et al.* (N.D. Ohio). The settlement, approved by the court on July 2, 2015, resolves various alleged Clean Air Act violations at ten Marathon facilities. The United States alleged that Marathon failed to comply with certain Clean Air Act fuel quality emissions standards and recordkeeping, sampling and testing requirements. These violations may have resulted in excess emissions of air pollutants from motor vehicles, which can pose threats to public health and the environment. Marathon self-reported many of these issues to EPA.

The settlement requires Marathon to spend over \$2.8 million on pollution controls to reduce emissions of volatile organic compounds on 14 fuel storage tanks at its distribution terminals that are primarily located in areas in Indiana, Kentucky and Ohio with environmental justice concerns. Marathon will install geodesic domes, fixed roofs, or secondary rim seals and deck fittings on the 14 fuel storage tanks. Marathon is also required to use innovative pollutant detection technology during the implementation of the environmental mitigation projects. Marathon will use an infrared

gas-imaging camera to inspect the fuel storage tanks in order to identify potential defects that may cause excessive emissions. If defects are found, Marathon will conduct up-close inspections and perform repairs where necessary.

Marathon will also pay a \$2.9 million civil penalty and retire 5.5 billion sulfur credits, which have a current market value of \$200,000. Sulfur credits are generated when a refiner produces gasoline that contains less sulfur than the federal sulfur standard. These credits can be sold to other refiners that may be unable to meet the standard.

- On August 21, 2015, the court approved a settlement in *United States and Michigan Department of Environmental Quality v. AK Steel Corporation* (E.D. Mich.), a Clean Air Act case addressing primarily particulate emissions from this large integrated steel mill. The case team met with a local community group, represented by experienced environmental counsel, and solicited their input prior to finalizing the settlement. The result was a settlement that required AK Steel to fund the installation of air filtration systems at nearby public elementary and middle schools as part of a supplemental environmental project (SEP), pay a civil penalty of \$1,353,126 to the United States and the Michigan Department of Environmental Quality (MDEQ), and implement three procedures to insure improved compliance: (i) develop an Environmental Management System (EMS) for the facility, including a third-party audit every six months; (ii) take various measures to improve the performance of the Electrostatic Precipitator at the facility's Basic Oxygen Furnace and to insure that it does not deteriorate again; and (iii) implement a fugitive dust control policy to prevent large particulate emissions into the adjacent neighborhoods.

The United States conducted additional community outreach by hosting a community meeting at the public school across the street from the steel mill to explain the terms of the settlement and ways local residents could submit comments. In advance of the meeting, the United States prepared a one page summary description of the settlement and had it translated into Spanish and Arabic. A large percentage of the members of the community are Arab-Americans.

- In *United States and Alabama Department of Environmental Management v. McWane, Inc.* (N.D. Ala.), the United States lodged a settlement with the court on September 1, 2015 requiring McWane to spend an estimated \$2.5 million to implement an environmentally-beneficial project to reduce harmful air pollution in an overburdened community near Birmingham, Alabama. As part of the settlement, McWane, a national pipe manufacturer, will complete a paint conversion supplemental environmental project that will convert a solvent-based pipe coating system into a powder coatings system at a facility in Trussville, Alabama, which is located near an elementary and a secondary school. The wet spray system will be replaced with a powder coating system that will virtually eliminate emissions of volatile organic compounds and significantly reduce paint waste in the production process. The Trussville plant emitted approximately 9 tons of volatile organic compounds from its wet paint operations from 2011 through 2013.

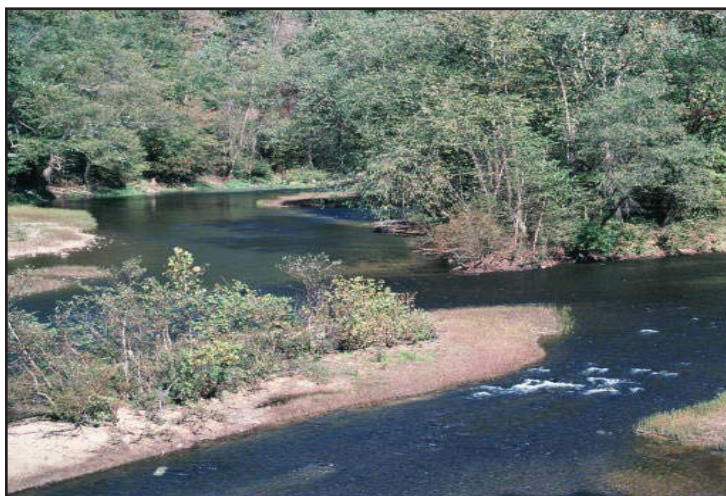
The settlement resolved alleged historical violations under the Clean Air Act, CWA, and other environmental laws. McWane paid a civil penalty of \$471,031, which was split between the United States and the State of Alabama. The settlement did not require prospective corrective actions, because McWane has already remedied the violations alleged in the complaint, and the Birmingham facility at issue in the case has since permanently shut down.

- The environmental projects required by the settlement reached in *United States v. Bayer CropScience* (W.D. Va.) will benefit a community with environmental justice concerns in the community of Institute, West Virginia. The small community is located just outside the fence line of the Bayer CropScience facility. The United States' complaint resolved by the settlement lodged with the court on September 21,

2015, alleged violations of Section 112(r) of the Clean Air Act in connection with a 2008 explosion that killed two workers at the facility and caused thousands of people to shelter in place for several hours.

The settlement requires Bayer CropScience to perform the following supplemental environmental projects, which will benefit the fence line community, as well as other surrounding communities:

- develop a system to distribute emergency alerts to mobile phones, which is expected to be particularly useful for homeowners who do not have a landline;
- provide emergency response equipment to eight fire departments and two police departments to be used in response to emergencies such as chemical releases; all but two of these fire departments responded to the 2008 explosion, and so are expected to respond to any other major incident potentially impacting the community;
- fund chemical cleanouts at local high schools and ensure that they have appropriate protective equipment;
- provide shelter-in-place training for local public schools; and
- build a \$3 million sump expansion to prevent spills of industrial wastewater to the river adjacent to the facility (and the community).



Elk River in WV,

FWS photo

• ENRD's Environmental Enforcement Section and the US Attorney's Office for the District of New Jersey supported EPA in reaching administrative settlements in the *Port Newark/Port Elizabeth Diesel-Truck Idling* matter, as announced by EPA on July 23, 2015. This matter involved diesel-truck idling at three marine terminals located at Port Newark/Port Elizabeth in Newark and Elizabeth, New Jersey. Newark, New Jersey is the home of the Ironbound community, a large working-class multi-ethnic neighborhood. Alleged diesel-truck idling at the port, in excess of federally-approved state regulatory limits, resulted in excess emissions of harmful air pollutants from diesel exhaust, particularly smog forming pollutants such as NO_x and volatile organic compounds.

EPA reached administrative agreements with four parties, the Port Authority of New York and New Jersey (Port Authority), APM Terminals of North America (APM Terminal), Maher Terminals, and Port Newark Container Terminals (PNCT). Under its agreement, the Port Authority will provide funding for truck owner-operators to replace their old trucks serving the port with newer, less-polluting trucks, and placing anti-idling signs on port roadways. The Port Authority will also provide funding up to \$1.5 million (if approved by its Board of Commissioners) for terminal operators who connect their cargo handling equipment to alternative sources of power such as electricity. In addition, the Port Authority will assist the truck operators to create a system to manage truck traffic to further reduce air pollution.

Under their agreements, APM Terminal, Maher Terminals, and PNCT will provide anti-idling instructions at gate entrances, install anti-idling signs, and undertake a variety of additional driver education efforts to reduce idling. The terminal operators also will provide a total of \$600,000 to the City of Newark, to be used to pay for green infrastructure projects in areas that are most impacted by air pollution from port operations. These projects may include vegetative barriers, plantings, and landscaping. The Newark metropolitan area has unhealthy air that does not meet air quality standards

for smog. Smog and diesel exhaust particles pose serious health risks, including aggravating the symptoms of asthma and other respiratory problems.

- The agreement reached in *In the Matter of: Reichhold, LLC (San Gabriel Valley Area 2 Superfund Site)* (C.D. Cal.) will benefit minority and low-income residents of Azusa, California. On March 26, 2015, the Department of Justice approved a Prospective Purchaser Agreement with Reichhold, LLC for the purchase of a chemical manufacturing business on 8.8 acres in Azusa, California. The property is part of the San Gabriel Valley Area 2 Superfund Site, Baldwin Park, California, Operable Unit and is located in a community with environmental justice concerns—where approximately 79 percent of the population is Latino, and 35 percent of the population lives two times below the federal poverty level. The property was part of the bankrupt estate of Reichhold Inc. The purchaser, Reichhold, LLC, is paying \$800,000 to the EPA Site special account to fund future response actions. Additionally, the sale will retain 22 jobs, prevent blight in an industrial area and prevent the abandonment of a facility containing substantial amounts of hazardous substances, which could fall into disrepair.
- Under the settlement lodged with the court on September 15, 2015 in *United States v. Puerto Rico Aqueduct and Sewer Authority* (“PRASA”) (D.P.R.), PRASA has agreed to make major upgrades, improve inspections and cleaning of existing facilities within the Puerto Nuevo Regional Wastewater Treatment Plant Sewer System and continue improvements to its systems island-wide. These upgrades are necessary to reduce the public’s exposure to serious health risks posed by untreated sewage.

The Puerto Nuevo sewer system serves the municipalities of San Juan, Trujillo Alto, and portions of Bayamón, Guaynabo and Carolina. PRASA’s violations include releases of untreated sewage and other pollutants into waterways in the San Juan area, including the San Juan Bay, Condado Lagoon, Martín Peña Canal and the Atlantic Ocean. These releases have been in violation of PRASA’s National Pollutant Discharge Elimination System (NPDES) permits and the CWA. PRASA also violated its NPDES permit by failing to report discharges in the Puerto Nuevo sewer system and by failing to meet effluent limitations and operations and maintenance obligations at numerous facilities island-wide.

Under the agreement, PRASA will spend approximately \$1.5 billion to make necessary improvements. PRASA will undertake a comprehensive operation and maintenance program in the Puerto Nuevo sewer system, including conducting a comprehensive analysis of the system to determine whether subsequent investments must be made to ensure the system is brought into legal compliance and to conduct immediate repairs at specific areas of concern.

In order to minimize the occurrence of combined sewer overflows and work toward the elimination of sanitary sewer overflows and unauthorized releases, EPA has identified specific areas of concern within the Puerto Nuevo sewer system that require interim measures to be taken while the sewer system is being assessed and repaired. Four of the areas are areas with environmental justice concerns: PR-47 (José De Diego Street), Barrio Obrero Rexach Avenue, Hipódromo Residential Development, and Villa Kennedy Housing Development.

PRASA has also agreed to invest \$120 million to construct sanitary sewers that will serve communities



Martín Peña Canal,

EPA photo

surrounding the Martín Peña Canal, a project that will benefit approximately 20,000 people. For decades, the Martín Peña communities have struggled with poverty and environmental degradation. This project, which will begin after other infrastructure improvements near the canal are completed, will greatly reduce the amount of untreated sewage and other contaminants entering the canal.

The settlement also requires PRASA to convene community meetings in areas affected by discharges that occur in two consecutive weeks, or “continuous overflows,” within two weeks of PRASA’s knowledge of the continuous overflows. At these community meetings, PRASA will inform the affected residents of conditions that are causing continuous overflows, actions PRASA is taking to address those overflows, and the expected date to eliminate the overflows.

This settlement will update, replace and supersede three existing consent decrees between the United States and PRASA. In recognition of the financial conditions in Puerto Rico, the U.S. government waived the payment of civil penalties associated with violations alleged in the complaint filed. In recognition of PRASA’s financial challenges, many of the provisions of the agreement have been tailored to focus on the most critical problems first, giving more time to address the less critical problems over time.

- The CWA combined sewer overflows (CSOs) settlement in *United States, et al. v. Delaware County Regional Water Quality Control Authority (DELCORA)* (E.D. Pa.), once fully implemented, will help reduce the direct exposure of low-income and minority populations in the Philadelphia service area to raw sewage and other contaminants. DELCORA’s wastewater facilities serve approximately 500,000 people in the greater Philadelphia area, including many low-income communities. The violations involved DELCORA’s failure to develop a Long Term Control Plan to manage its CSOs. The citizens of Chester, Pennsylvania have historically borne a disproportionate share of the negative environmental consequences from DELCORA’s combined sewer overflows.

The settlement, approved by the court on November 13, 2015, addresses longstanding problems with DELCORA’s combined sewer system, which when inundated with stormwater discharges raw sewage, industrial waste, nitrogen, phosphorus and polluted stormwater into Chester Creek, Ridley Creek, and the Delaware River. According to DELCORA, the volume of combined sewage that overflows from the system is approximately 739 million gallons annually.

Exposure to raw sewage can cause illnesses ranging in severity from mild gastroenteritis, causing stomach cramps and diarrhea, to life-threatening ailments such as cholera, dysentery, infectious hepatitis and severe gastroenteritis. Exposure to untreated sewage, therefore, presents a serious health risk to those who may come into contact with it. Groups facing greater risks include children, the elderly, immune-compromised groups and pregnant women.

The settlement requires DELCORA to develop and implement a Long Term Control Plan to control combined sewer overflows. To address the environmental justice concerns, DELCORA is required to submit to EPA a Public Participation Plan that describes how the Long Term Control Plan process will: (i) address the impact of DELCORA’s combined sewer overflows and Long Term Control Plan on populations with environmental justice concerns, (ii) seek input from communities that may have historically borne a disproportionate share of the negative environmental consequences resulting from DELCORA’s combined sewer overflows, and (iii) ensure that the Long Term Control Plan and selected combined sewer overflow control measures will not impose a disproportionate share of negative environmental consequences on such communities in the future. Therefore, an opportunity to address historical environmental justice issues is built into the Long Term Control Plan process. The Long Term Control Plan is subject to EPA oversight and approval.

Based on information submitted by DELCORA, EPA estimates that DELCORA could spend as much as \$200 million to implement an overflow control plan that complies with the terms of the CWA. Once the specific pollution control measures are selected and approved, the settlement requires DELCORA to implement the plan as quickly as possible, with a 20-year deadline from when the settlement is filed in court to complete the necessary controls. DELCORA is also required to pay a \$1.375 million penalty for prior violations, to be split between the United States and the Commonwealth of Pennsylvania, a co-plaintiff in this case.

The settlement also requires DELCORA to notify the public of CSO discharges using a visual notification system, including warning lights and flags at CSO outfalls, where a sewer empties into local waterways.

- On June 30, 2015, the court approved a CWA settlement in *United States and the State of Mississippi v. Cal-Maine Foods, Inc.* (S.D. Miss.) to bring Cal-Maine Foods, Inc. into compliance with state and federal laws and cut nutrient pollution discharges into area waterways. The United States, in coordination with our state partner Mississippi, negotiated the settlement, which resolves CWA violations at Cal-Maine's Edwards, Mississippi concentrated animal feeding operation. That facility houses more than two million chickens. The company discharged pollutants into a creek without permit authorization and also illegally applied nitrogen-laden wastewater in violation of its permit. The facility is located in a community disproportionately affected by pollution. Nearly half of the households have an annual income of less than \$25,000.



Chicken House,

Wikipedia photo

Under the settlement, the facility will comply with its discharge permit, significantly reducing nutrient pollution from nitrogen and phosphorus, and improve environmental data collection and reporting practices. Once the pollution controls required by the settlement are implemented, EPA estimates Cal-Maine will cut discharges of nitrogen by 89,000 pounds and phosphorous by 20,000 pounds per year. EPA estimates it will cost Cal-Maine approximately \$418,000 to implement the settlement requirements and bring the Edwards, Mississippi, facility into compliance with state and federal clean water laws.

Under the settlement, Cal-Maine is already developing and implementing procedures for its egg production and land application areas to achieve compliance with its permit, an employee training policy and improved recordkeeping and reporting practices. The procedures were submitted to and reviewed and approved by EPA and Mississippi officials over the course of settlement negotiations. Cal-Maine has begun implementing these procedures and must comply with all the terms of the settlement by April 30, 2016. Cal-Maine was also required to pay a \$475,000 penalty to be divided evenly between the United States and Mississippi.

Incorporating Environmental Justice in the Defense of Agency Action

More than half of ENRD's work consists of defending the environmental or natural resources actions of federal agencies. The Division has worked to incorporate the principles of environmental justice into our handling of these cases as well. ENRD works closely with agencies to identify defensive cases that present environmental justice concerns, even where the complaint may not clearly assert a specific claim that the agency failed to address environmental justice issues adequately. More broadly, in the



Navajo Nation,

Wikipedia photo

context of litigation, the Division actively evaluates the depth of the agency's analysis and handling of environmental justice issues as well as the completeness of the decision-making effort in addressing environmental justice concerns. Indeed, rather than merely defending agency analysis of environmental justice issues and decision-making, ENRD implements the environmental justice Executive Order by proactively looking for ways to address concerns of environmental justice communities outside of the traditional litigation context.

- On May 1, 2015, the Department of Justice announced that the United States will pay \$13.2 million for cleanup evaluations of 16 abandoned uranium mines across Navajo Nation lands. Abandoned uranium mines on

Navajo lands is one of the most severe environmental justice problems in Indian Country. Land near Navajo homes, roads, grazing lands and cultural areas has been contaminated by abandoned mines.

The Navajo Nation encompasses more than 27,000 square miles within Utah, New Mexico and Arizona in the Four Corners area. The unique geology of the region makes the Navajo Nation rich in uranium, a radioactive ore in high demand after the development of atomic power and weapons at the close of World War II. Approximately four million tons of uranium ore were extracted during mining operations within the Navajo Nation from 1944 to 1986. The federal government, through the Atomic Energy Commission, was the sole purchaser of uranium until 1966, when commercial sales of uranium began. The Atomic Energy Commission continued to purchase ore until 1970. The last uranium mine on the Navajo Nation shut down in 1986. Many Navajo people worked in and near the mines, often living and raising families in close proximity to the mines and mills. In November 2013, the Attorney General of the Navajo Nation sent a letter to the Assistant Attorney General of ENRD articulating alleged claims under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against the United States pertaining to hundreds of abandoned uranium mines on the Navajo Nation.

Since 2008, a number of federal agencies have been collaborating to address uranium contamination on the Navajo Nation, investing more than \$100 million to address such abandoned mines. As part of the Justice Department's increased focus on environmental and health concerns in Indian country, a highly collaborative team of attorneys from the Environmental Defense Section and Environmental Environment Section, in partnership with the EPA, Interior, and the Department of Energy, worked diligently with their Navajo counterparts to reach the settlement announced on May 1. This settlement resolves the claims of the Navajo Nation pertaining to costs of evaluations at 16 priority mines for which no viable responsible private party has been identified. Priority mines are those that pose the most significant hazards. As such, the settlement agreement puts these mines, many near Navajo communities, on the path to cleanup.

Furthermore, ENRD continues to work in collaboration with its sister federal agencies to address the legacy of uranium mining on Navajo lands.

ENFORCING THE NATION'S CRIMINAL POLLUTION AND WILDLIFE LAWS

ECS, in partnership with U.S. Attorneys' Offices and a host of federal investigative agencies, is responsible for prosecuting criminal violations that arise under a wide variety of environmental statutes. As described below, ECS's work this year included several successful multi-district, as well as trans-national, prosecutions. ECS's work can be broken into two broad categories: enforcement of the laws designed to protect the environment, public, and workers from unlawful pollution; and enforcement of laws designed to protect wild animals and plants from unlawful poaching, harvesting, profiteering, and other harms. In addition, ECS's prosecutions may include general criminal violations such as conspiracy, false statements, obstruction of justice, smuggling, and wire fraud.



Oiled Kemp's Ridley Turtle,

NOAA photo

Protecting the Environment, Public Health, and Worker Safety

- On January 21, 2015, in the case of *United States v. Mark Sawyer, et al.* (E.D. Tenn.), five defendants, Mark Sawyer, Newell Lynn Smith, Eric Gruenberg, and Armida and Milto Di Santi, pleaded guilty to conspiracy to violate the Clean Air Act. Defendants were owners and managers of A&E Salvage, a company that had purchased the Liberty Fibers Plant in Hamblen County, Tennessee, in order to salvage metals which remained in the plant after it closed. The Liberty Fibers buildings contained extensive amounts of asbestos-containing materials in the form of pipe wrap and insulation. Between October 2006 and July 2008, the defendants, who owned the building and supervised the salvage and demolition work, conspired to violate the



A river in North Carolina,

FWS photo



L.V. Sutton Steam Station,

Google Maps photo

“work practice standards” mandated by the Clean Air Act for the safe removal, containment, and disposal of asbestos. The violations included failing to provide the workers hired to remove materials from the building with adequate personal protective equipment.

At sentencing, the court concluded that evidence presented by the government proved that the exposures of the A&E workers to asbestos resulted in a substantial likelihood they would suffer death or serious bodily injury. Sawyer will serve five years’ imprisonment; Smith, 37 months’ imprisonment; Gruenberg, 28 months’ imprisonment; and the Di Santis, six months’ imprisonment, followed by six months’ home confinement and 150 hours of community service. All defendants are jointly and severally responsible for \$10.3 million in restitution to EPA for costs associated with cleaning up the asbestos.

- In *United States v. Jones* (E.D. Wisc.), ECS obtained a guilty plea for violations of the Pipeline Safety Act and submitting a false statement. Defendant Randy Jones was a corrosion coordinator for a pipeline owned and operated by the Shell Pipeline Co., which delivered aviation jet fuel to Mitchell Airport in Milwaukee. From January through December 2011, Jones failed to conduct required bi-monthly and annual safety testing to ensure that the pipeline had adequate protection against corrosion. When advised of an upcoming audit by the PHMSA, Jones entered false data into a database used to submit compliance reports to PHMSA.

In January 2012, the pipeline developed a leak. Jet fuel was found in a nearby creek and eventually reached the surface of airport property, melting asphalt and filling underground drainage pipes and culverts. On April 30, 2015, Jones pleaded guilty to violating the Pipeline Safety Act and submitting a false statement. Jones was sentenced to five years’ probation and ordered to pay \$19,337,785 in restitution to Shell Pipeline Co. for emergency response and remediation costs.

- In *United States v. Spatig* (D. Idaho), ECS obtained a conviction for violations of the storage and disposal provisions of the Resource Conservation and Recovery Act. Defendant Max Spatig operated a concrete finishing business known as M&S Enterprises. In June 2010, officials discovered approximately 3,400 containers of hazardous paint waste at his residence, some in heavily corroded and leaking containers. Investigators also found containers of corrosive wastes, including hydrochloric acid. The ensuing EPA cleanup cost nearly \$500,000, and was the second cleanup Spatig had caused. The State of Idaho Department of Environmental Quality conducted a prior cleanup in 2005 at a different property owned by Spatig, in southeast Idaho. Spatig was held in custody for nearly nine months prior to trial due to repeated violations of his conditions of release.

PROSECUTING ENVIRONMENTAL CRIMES

In 2015, ENRD continued in the criminal context to ensure that all communities enjoy the benefit of a fair and even-handed application of the law and that affected communities have a meaningful opportunity for input in the consideration of appropriate remedies.

For example, *United States v. Duke Energy Business Services, LLC, et al.* (E.D.N.C., M.D.N.C., W.D.N.C.) was a multi-district prosecution of three subsidiaries of North Carolina-based Duke Energy Corporation, the largest utility in the United States, for violations of the CWA. On May 14, 2015, the three responsible subsidiaries pleaded guilty to nine violations of the CWA at five North Carolina facilities and were sentenced to pay \$68 million in criminal fines, spend \$34 million on environmental projects, and serve a

five-year term of probation. Duke Energy Corporation, as the holding company, has guaranteed both the payment of the monetary penalties and the performance of the nationwide and statewide environmental compliance plans.

The investigation stemmed from a massive coal ash spill from Duke's Dan River Steam Station, a coal-fired power plant, into the Dan River near Eden, North Carolina, in February 2014. Additional violations were discovered as the scope of the investigation broadened to encompass the companies' other facilities. These included unlawfully failing to maintain equipment at the Dan River and Cape Fear facilities and unlawfully discharging coal ash and/or coal ash wastewater from coal ash impoundments at the Dan River, Asheville, H.F. Lee, and Riverbend facilities. On May 14, 2015, the three responsible subsidiaries pleaded guilty to nine violations of the CWA at five North Carolina facilities and were sentenced to pay \$68 million in criminal fines, spend \$34 million on environmental projects, and serve a five-year term of probation. Duke Energy Corporation, as the holding company, has guaranteed both the payment of the monetary penalties and the performance of the nationwide and statewide environmental compliance plans.

Under the plea agreements, the three subsidiaries—Duke Energy Business Services, LLC, Duke Energy Carolinas, LLC, and Duke Energy Progress, Inc.—must certify that they have reserved sufficient assets to meet legal obligations with respect to their coal ash impoundments in North Carolina, estimated to be approximately \$3.4 billion. The subsidiaries will make a combined \$24 million community service payment to the National Fish and Wildlife Foundation to benefit the riparian environment and ecosystems of North Carolina and Virginia. They also will provide \$10 million to an authorized wetlands mitigation bank for the purchase of wetlands or riparian lands to offset the long-term environmental impacts of the coal ash basins in North Carolina. In addition, they each will pay restitution to federal, state, and local governments that responded to the Dan River spill and are subject to a compensation claims process for local governments whose drinking water treatment systems may have been affected by bromide discharges from certain defendant-owned facilities. Approximately 108 million tons of coal ash are currently held in coal ash impoundments owned and operated by the defendants in North Carolina. The plea agreements require the defendants to excavate and close coal ash impoundments at the subsidiaries' Asheville, Dan River, Riverbend and Sutton facilities, in compliance with state and federal law.

All of Duke's subsidiaries, which operate 18 facilities in five states, including 14 in North Carolina, are required to develop and implement environmental compliance programs to be monitored by an independent court-appointed monitor. These facilities will be regularly and independently audited to ensure compliance with environmental laws and programs, the results of which will be made available to the public.

Key provisions of the plea agreement address the environmental justice effects of the violation. For example, one of Duke Energy's North Carolina facilities, the L.V. Sutton Steam Station owned and operated by Duke Energy Progress, Inc., is located near the community of Flemington, just outside Wilmington, North Carolina. Flemington, a small low-income neighborhood, has had a history of water-quality problems with its drinking water supply, dating back to contamination from a landfill in 1978. New supply wells constructed after 1978 are located down-gradient from the Sutton facility's coal ash impoundments. In 2013, the local public utility determined that contaminants, including boron, from the coal ash impoundments at Sutton were entering the drinking water supply. Duke Energy Progress had previously entered into an agreement with the public utility to share costs for extending a municipal water line to the Flemington community. While not included as one of the charges in the criminal information, as part of the plea agreement, Duke Energy Progress agreed to pay the public utility "for all costs, whenever incurred, associated with the extension of the Flemington water line, which was necessary to ensure that the community had clean drinking water."

The plea agreements also contain provisions designed to address the impacts of the Defendants' conduct on communities throughout North Carolina. Those provisions include:

- A Claims Process, administered by the court-appointed monitor, for communities whose drinking water has been adversely affected by increased discharges of bromide from "scrubber" technologies installed at Duke Energy facilities, and
- Community Service Payments, administered by the National Fish and Wildlife Foundation, for efforts to benefit, preserve, restore, and improve water resources in affected areas of North Carolina and Virginia through projects involving monitoring, study, restoration, and preservation of fish, wildlife, and plant resources; monitoring, study, clean-up, remediation, sampling, and analysis of pollution and other threats to the riparian environment and ecosystem; research, study, planning, repair, maintenance, education, and public outreach relating to the riparian environment and ecosystem; environmental education and training relating to the protection and preservation of riparian resources; and the protection and support of public drinking water systems.

On June 8, 2015, a jury found Spatig guilty of a Resource Conservation and Recovery Act storage and disposal violation. On December 31, 2015, Spatig was sentenced to 46 months' imprisonment and three years' supervised release and ordered to pay \$498,652 in restitution.

Renewable Fuel Fraud

Through the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007, Congress obligated fuel producers and importers to produce specific annual volumes of renewable fuel. Accordingly, EPA created Renewable Fuel Standards, and established Renewable Identification Numbers (RINs) to track these volumes of fuel. EPA also developed an EPA-moderated transaction system (EMTS) to facilitate RIN trading. By buying and retiring RINs, petroleum producers and importers can meet their renewable fuel obligations. They usually purchase the RINs from other, specialized, renewable fuel businesses, often through brokers. There is a financial market for RINs and a single RIN is often worth a dollar or more. Typically, petroleum producers and importers buy batches of several thousand RINs at a time, for thousands of dollars per batch.



Renewable Fuel,

Nebraska.gov photo

Biodiesel is one of the most important renewable fuels covered by the RFS. Congress also established tax credits for people who blend biodiesel with petroleum diesel. The credit is designed to incentivize biodiesel production: blending (which can involve less than one percent petroleum diesel) is the event that triggers payment of the subsidy.

Criminals recognized that it was possible to generate RINs without producing the volume of renewable fuel that a RIN represents. They also recognized that it was possible to obtain IRS's blender's tax credit for biodiesel that had already been blended and used to obtain the credit. ECS, in partnership with U.S. Attorneys' Offices and criminal investigators from EPA, the Secret Service, IRS, DOT and FBI successfully prosecuted several individuals and corporations involved in such fraud in 2015.

- In August of 2015, in *United States v. William Bradley* (S.D. Ohio), ECS obtained guilty pleas for conspiracy to commit wire fraud, fraud, and a violation of the Clean Air Act that resulted in prison sentences and a judgment for restitution in the amount of \$23,347,561. Defendants Dean and Brenda Daniels, William Bradley and Ricky Smith were all employees and officers of New Energy Fuels, a business in Waller, Texas, that claimed to process animal fats and vegetable oils into biodiesel. The defendants subsequently relocated to Chieftain Biofuels LLC in Logan, Ohio. The defendants would purchase low-grade feedstock and perform minimal processing to produce a low-grade fuel. Defendants then falsely represented to the EPA that they had produced biodiesel, generated fraudulent biodiesel RINs, and sold them to various third parties. The defendants also made false claims to the IRS in order to obtain the biodiesel tax credit that they were not eligible to receive. In total, the defendants sold over \$15 million worth of fraudulent RINs and falsely claimed over \$7 million in tax credits.

On August 27, 2015, each of the defendants pleaded guilty to conspiracy to commit wire fraud and to defraud the United States. Dean Daniels also pleaded guilty to transporting hazardous material without the required placards in violation of the Clean Air Act. Dean Daniels was sentenced to 63 months' incarceration; William Bradley to 51 months' incarceration; Richard Smith to 41 months' incarceration; and Brenda Daniels to 366 days' incarceration. Each defendant was also sentenced to three years' supervised release and held jointly and severally liable for \$23,347,561 in restitution.

- In *United States v. James Jariv* (D. Nev.), ECS also obtained guilty pleas three defendants for charges related to fraudulent RIN trading that resulted in an order for restitution in the amount of \$6,345,831. From 2009 until 2013, defendants James Jariv and Nathan Stoliar operated and controlled City Farm Biofuel, located in Vancouver, British Columbia, Canada. The company claimed to produce biodiesel made from feedstocks such as animal fat and vegetable oils. Jariv and Stoliar also formed a company called Canada Feedstock Supply that was supposed to supply City Farm with feedstocks for manufacturing biodiesel. Jariv also operated and controlled Global E Marketing (GEM), based in Las Vegas, Nevada. Alex Jariv, son of James, worked for and on behalf of these companies. The three defendants claimed to produce biodiesel at the City Farm facility and to import and sell biodiesel to GEM. In reality, no biodiesel produced at City Farm was ever imported and sold to GEM. Instead, Jariv and Stoliar used GEM to claim to blend the biodiesel with petroleum diesel, allowing them to fraudulently generate and sell RINs separately from any actual biodiesel. Using this scheme, defendants falsely claimed to import, purchase, and blend more than 4.2 million gallons of biodiesel. They then sold the RINs, fraudulently generating more than \$7 million.

Defendants also exported to Canada significant amounts of biodiesel bought in the United States, without acquiring and providing the RINs required for exporting the fuel. As a result, they failed to make mandatory payments worth \$34 million to the RINs program, keeping

the money for themselves. The defendants conspired to launder the proceeds of their crimes, utilizing banks in Canada, Nevada, and Australia, and complex financial transactions.

Stoliar pleaded guilty to conspiracy to defraud the government and to launder money, and wire fraud, and was sentenced on April 9, 2015, to two years' imprisonment, three years' supervised release, and ordered to pay more than \$1.4 million in restitution and to forfeit \$4 million in cash. James Jariv pleaded guilty to conspiracy to defraud the government and to launder money, and to making false statements. On August 5, 2015, he was sentenced to ten years' imprisonment, three years' supervised release, and was required to forfeit \$4 million in cash and other assets. Alex Jariv pleaded guilty to conspiracy to defraud the government, and making false statements. He was sentenced on September 25, 2015, to 30 months' imprisonment, three years' supervised release and was ordered to forfeit \$491,061 in previously seized cash, an SUV, real estate and the contents of several bank accounts in the United States and abroad that were some of his proceeds of the conspiracy. The court held all three defendants jointly and severally liable for \$6,345,831 in restitution.

Fighting Pollution from Ocean-Going Vessels

Since the late 1990's, the Division has worked to stem the tide of intentional discharges of pollutants from ocean-going vessels. At the end of fiscal year 2015, criminal penalties imposed in these cases totaled more than \$359 million in fines and more than 30 years of confinement.

- During 2012, the drill ship Noble Discoverer and the drilling unit Kulluk each made several U.S. port calls in Washington and Alaska. The Kulluk ran aground off the coast of Unalaska, Alaska, when it broke free from its tow in bad weather.

The Discoverer was dead-ship towed from Dutch Harbor to Seward due to

failures of its main engine and other equipment. In addition, bilge and wastewater accumulated in the engine room spaces of the Discoverer. To remove the wastewater, Noble devised a makeshift barrel and pump system to discharge accumulated wastewater directly overboard. To conceal this from the Coast Guard, Noble knowingly made false entries and failed to record its collection, transfer, storage, and disposal of waste oil and machinery space bilge water in the vessel's oil record books in violation of the Act to Prevent Pollution from Ships. Noble also made modifications to the vessel's new oily waste separator system after the system passed inspection by the Classification Society and the Coast Guard. The company did not inform authorities of



Trident Navigator,

DOJ photo

the modifications and did not receive an International Oil Pollution Prevention certificate that documented the unapproved modifications.

Noble pumped oily skimmer tank fluids and deck water with a sheen into several ballast tanks on the Discoverer. The company then discharged those ballast tanks directly overboard. By design, water ballast tanks should only contain uncontaminated seawater. The Nonindigenous Aquatic Nuisance, Prevention and Control Act (NANPCA) requires vessels to maintain accurate records reflecting the source of ballast water in the ballast water tanks, discharges from the tanks, and the total volume of ballast water onboard. Noble failed to record the transfers to the ballast tanks and the subsequent discharges in the ballast log, in violation of NANPCA.

During 2012, the Discoverer experienced numerous problems with its main propulsion system, including its main engine and its propeller shaft, resulting in engine shut-downs, equipment failures, and unsafe conditions. At times, problems with the ship's main engine created high levels of exhaust in the engine room, multiple sources of fuel and oil leaks, and backfires, none of which were reported to authorities. Noble failed to notify the Coast Guard of these hazardous conditions in violation of the Ports and Waterways Safety Act (PWSA).

On December 19, 2014, in *United States v. Noble Drilling* (D. Ak.), upon pleading guilty to five APPS violations, one violation of the NANPCA, and one violation of the PWSA, Noble was sentenced to pay \$12.2 million in fines and community service payments. The community service payments included \$2.5 million to the International Arctic Research Center, \$1 million to the National Fish and Wildlife Foundation Alaskan Arctic Fund, and \$500,000 to the Arctic Research Consortium of the United States.



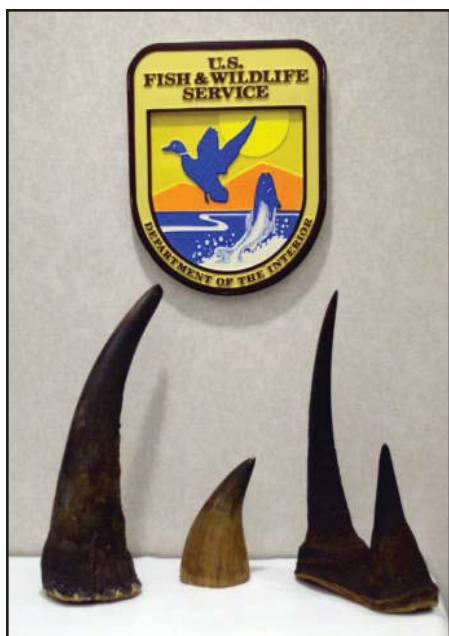
Noble Drilling Unit,

EPA photo

Noble was also placed on probation for four years, during which time it must implement an environmental compliance plan. In addition, Noble's parent company, Noble Corporation LLC, headquartered in London, England, agreed to implement an environmental management system for all mobile offshore drilling units it owns or operates worldwide.

Protecting Wildlife through Enforcement

Federal criminal enforcement of wildlife protection statutes is a critical factor in deterring the illegal killing and commercialization of wildlife, fish, and plants, and augments the wildlife protection efforts of states, tribes, and foreign governments. Criminal prosecutions for these violations focus on both individual and corporate perpetrators, and result in fines, imprisonment, community service, and restitution to help mitigate the harm caused by the violations, as well as forfeiture of the illicit profits and instrumentalities used to commit the crimes.



Rhino Horns,

FWS photo

Operation Crash

“Operation Crash” is an ongoing nationwide effort led by FWS and ENRD in conjunction with U.S. Attorneys’ Offices to investigate and prosecute those involved in the black market trade of rhinoceros horns and other protected species. (A “crash” is a herd of rhinoceroses.) All rhinoceros species are protected under United States and international law, and the black rhinoceros is listed as endangered under the ESA. Several major dealers in the illegal rhino horn trade were successfully prosecuted in 2015.

- Between January 2011 and March 2013, a U.S. auction house, Elite Decorative Arts, and its proprietor, Christopher Hayes, participated in a far-reaching conspiracy in which they helped smugglers traffic in endangered and protected species in interstate and foreign commerce, and falsified records and shipping documents related to the wildlife purchases. Hayes and Elite Decorative Arts sold items made

from rhinoceros horn, elephant ivory, and coral to an antiques dealer in Canada, who they then directed to a local shipper that agreed to mail the items in Canada without required permits. They also marketed raw rhinoceros horns, which they believed were from a black rhinoceros, to a person in Texas. Hayes and Elite Decorative Arts pleaded guilty to conspiracy to violate the Lacey Act and illegal wildlife trafficking. On May 20, 2015, in *United States v. Elite Estate Buyers Inc.* (S.D. Fla.), Hayes was sentenced to 36 months’ imprisonment, followed by two years’ supervised release. Elite Decorative Arts was ordered to pay a \$1.5 million fine to the Lacey Act reward fund. The court also banned the corporation from engaging in wildlife trading during a five-year term of probation.

- Of the six black rhino horns sold by Hayes and Elite Decorative Arts, two were sold for \$80,500 to Ning Qiu, a Texas resident involved in smuggling the horns to China. In *United States v. Ning Qiu* (E.D. Tex.), Qiu pleaded guilty to being part of a broader conspiracy to smuggle rhinoceros horns and items made therefrom to Zhifei Li, the owner of an antique business in China and the ringleader of a criminal enterprise that smuggled \$4.5 million in rhinoceros horns and objects made from horn from the United States to China. On May 19, 2015, Qiu was sentenced to serve 25 months’ imprisonment and to pay a \$150,000 fine.
- Xiao Ju Guan (also known as Tony Guan) is a Canadian citizen and the owner of Bao Antiques, a company based in Canada and Hong Kong. In *United States v. Xiao Ju Guan* (S.D.N.Y.), Guan and his co-conspirators smuggled into Canada more than \$500,000 worth of black rhinoceros horns and sculptures made from elephant ivory and coral from various U.S. auction houses. The items were transported by driving them across the border or by having packages mailed directly to Canada with false paperwork and without the required declaration or permits. Guan was arrested in May 2014 after purchasing two black rhinoceros horns from undercover FWS agents for \$45,000. During the search of Guan’s business, Canadian law enforcement also discovered illegal narcotics, including approximately 50,000 ecstasy pills.

Guan pleaded guilty to smuggling endangered black rhinoceros horns from the United States to Canada. He was sentenced on March 25, 2015, to 30 months' imprisonment and forfeiture of wildlife items made from elephant ivory and coral seized during a search of his business.

Protecting Fisheries

- In *United States v. Michael Hayden, et al.* (D. Md.), Defendants Michael Hayden, William Lednum, Kent Sadler, and Lawrence “Daniel” Murphy poached hundreds of thousands of pounds of striped bass from the Chesapeake Bay, in violation of the Lacey Act. From 2007 to 2011, the defendants engaged in a scheme during which they falsified paperwork related to their harvests and submitted the falsified documents to the State of Maryland. The State, in turn, unwittingly provided false information to numerous federal and interstate agencies responsible for setting harvest levels along the Eastern Seaboard.



Striped Bass, Chesapeake Bay,

FWS photo

Sadler, Hayden, and Lednum pleaded guilty to conspiring to violate the Lacey Act and to defraud the United States through the illegal harvesting and interstate sale of striped bass. Hayden was sentenced to 18 months' imprisonment, followed by six months' home confinement, three years' supervised release, and a \$40,000 fine. Lednum was sentenced to serve 12 months and one day imprisonment, followed by six months' home confinement, and a \$40,000 fine. Sadler was sentenced to 30 days' confinement in a county detention center, three years' supervised release, \$5,000 fine, and \$20,000 restitution. The court held Hayden jointly and severally liable with Lednum for payment of \$498,293 in restitution. Murphy pleaded guilty to attempted Lacey Act trafficking and was sentenced to three years' probation, a \$1,000 fine, and \$30,000 restitution.

- In 2012, in *United States v. Harbor House Seafood Inc., et al.* (D.N.J.), a jury found Thomas Reeves, Todd Reeves, Shellrock LLC, Mark Bryan, and Harbor House Seafood, Inc., guilty of Lacey Act, obstruction, and conspiracy violations. From 2006 until 2010, Todd and Thomas Reeves overharvested oysters from the Delaware Bay and created false dealer reports and harvest records to hide their activity from conservation officers. The Reeves also created false state and Food Drug Administration health records so that regulators would not detect their overharvest. The Reeves then sold their illegal oysters through their company, Shellrock LLC, to Mark Bryan of Harbor House Seafood, Inc., a wholesale and retail seafood operator in Delaware. Kenneth Bailey engaged in similar conduct in 2006 and 2007, overharvesting oysters from public oyster beds in the Bay. Bailey then created false dealer reports, harvest reports, and bills of lading to conceal his overharvesting from authorities. Bailey and defendant Renee Reeves, an employee of Shellrock, pleaded guilty to Lacey Act violations prior to trial.

In January and February 2015, the five defendants convicted at trial were sentenced. Bryan was sentenced to 26 months' imprisonment, three years' supervised release, and a \$62,500 fine. Todd Reeves was sentenced to 26 months' imprisonment, three years' supervised release,

a \$7000 fine, and forfeiture of \$34,000 as substitute assets for vessels he used to overharvest the oysters. Thomas Reeves was sentenced to 16 months' imprisonment, three years' supervised release, a \$7,000 fine, and forfeiture of \$110,000 in substitute assets. Shellrock LLC, was sentenced to five years' probation and a \$70,000 fine. Harbor House Seafood, Inc. was sentenced to five years' probation and a \$250,000 fine. The court held the five defendants jointly and severally liable for \$140,000 in restitution to be paid to the State of New Jersey for the restoration of oyster beds in the Delaware Bay. Renee Reeves was sentenced to five years' probation and a \$2,500 fine. These six defendants were ordered to pay \$140,000 in restitution to the State of New Jersey (jointly and severally). Bailey was sentenced to six months' imprisonment, followed by six months' home confinement, three years' supervised release, a \$10,000 fine, forfeiture of \$54,500 in substitute assets for the vessels that he used to overharvest the oysters, and \$54,400 in restitution to the State of New Jersey.

- In *United States v. Alan Dresner, et al.* (E.D.N.Y.), defendant Alan Dresner was a federal fish dealer, and held a NMFS permit to purchase fish directly from commercial fishing vessels. By July 2009, Dresner was making regular purchases of fluke (also known as "summer flounder") from Anthony Joseph, who owned and operated a federally-licensed trawler. Dresner learned that Joseph was consistently overharvesting fluke by abusing the Federal Research Set-Aside Program administered by NOAA, which sets aside a portion of the designated commercial catch quota for certain fish to benefit scientific research related to fisheries.

In an effort to conceal his overfishing, Joseph submitted logs and reports containing inaccurate data. Dresner coordinated with Joseph to submit false dealer reports that matched the false data on Joseph's reports. NMFS relies on these documents to set quotas and implement other management measures designed to ensure sustainable fisheries. Between July 2009 and December 2011, the defendants falsified fisheries dealer reports with respect to 246,376 pounds of overharvested and underreported fluke valued at approximately \$625,000.

Dresner pleaded guilty to wire fraud and on October 22, 2014, was sentenced to four months' imprisonment, three years' supervised release, a \$6,000 fine, and a \$15,000 community service payment for the enhancement of fluke habitat in the waters of Long Island. He was also ordered to pay \$510,000 in restitution to the New York State Conservation Fund. Dresner will surrender his federal dealer license and is banned from accessing the NMFS SAFIS computer system. Joseph pleaded guilty to mail fraud, wire fraud, and falsification of fishing logs and dealer reports required to be submitted to NMFS and on November 13, 2015, was sentenced to five months' imprisonment, three years' supervised release, and \$603,000 in restitution.

PROTECTING VITAL FEDERAL PROGRAMS AND INTERESTS

The Division defends client agencies' regulations, rules, and decisions to allow these agencies to fulfill their missions under the nation's environmental and natural resources laws, thereby preserving vital federal programs and interests and protecting the public fisc. The Division also responds to congressional and public inquiries, supports capacity building and engagement with law enforcement partners domestically and internationally to protect our interests, and participates in litigation as *amicus curiae* where the government has a stake in the outcome.

Protecting and Promoting the Development of Transportation Infrastructure

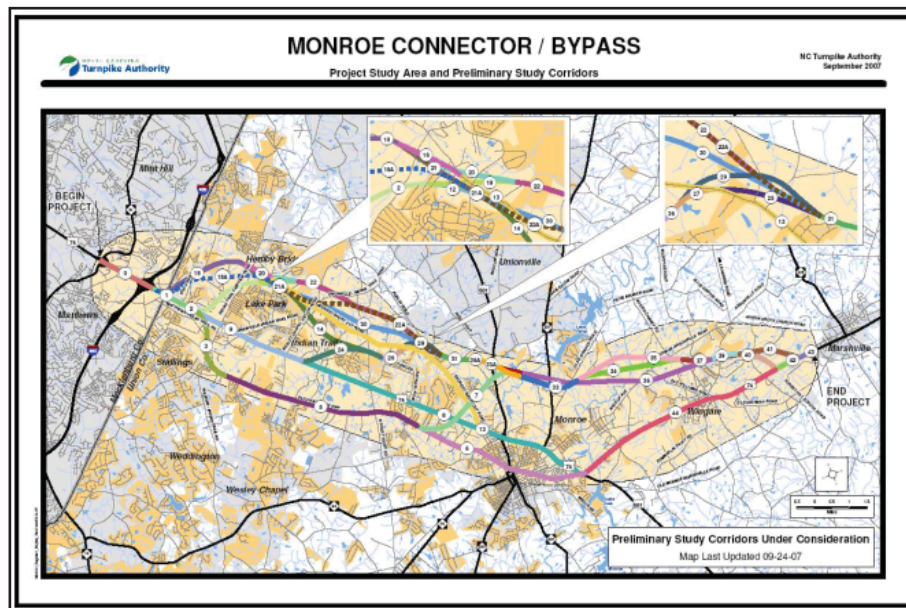
The Division successfully defended the Federal Highway Administration's ("FHWA") final environmental impact statement and record of decision to allow short term closure of ramps on I-695 in southeast Washington, D.C. relating to rehabilitation and modifications to the Virginia Avenue Tunnel—a major commercial freight corridor owned and operated by CSX Transportation, Inc. In *Committee of 100 on the Federal City v. Foxx* (D.D.C.), the plaintiff alleged claims under NEPA and the D.C. Environmental Policy Act statute and moved for a preliminary injunction to halt the project. The court denied the motion, finding that plaintiff had failed to demonstrate any likelihood of success on its claims, that the balance of harms did not weigh in the plaintiff's favor and that the public interest favored allowing the project to move forward. The plaintiff appealed and the D.C. Circuit also rejected the appeal. In response to its failure to persuade either court as to the merits of its claims, the plaintiff voluntarily dismissed its lawsuit. The Division worked closely on the litigation with the District of Columbia. Project construction is well underway, and when completed, will eliminate a major choke point on CSX Transportation's freight corridor on the east coast.

In *Clean Air Carolina v. North Carolina Department of Transportation* (E.D.N.C.), the Division successfully defended the FHWA's decision authorizing the North Carolina Department of Transportation to begin constructing the approximately twenty-mile-long Monroe Bypass/Connector southeast of Charlotte, North Carolina. The North Carolina legislature has designated this project as a priority for the State of North Carolina. An earlier challenge to the project led to a remand of the project to the agencies for further analysis of the Bypass's impacts on future land use and population distribution. Plaintiffs raised a new challenge to the additional analysis. The district court granted summary judgment in the agencies' favor. The Bypass will



I-695 in southeast Washington, D.C.,

Google Maps photo



Monroe Bypass/Connector southeast of Charlotte, North Carolina,

NCDOT photo

mitigate current congestion and facilitate mobility southeast of Charlotte into the future. The Division worked closely with the State of North Carolina in defending this project.

In September 2015, the Division successfully obtained dismissal of all but one of the plaintiffs' claims in the long-running dispute, *Detroit International Bridge Co. v. United States Coast Guard* (D.D.C.). Plaintiffs own the existing international bridge crossing between Detroit and Windsor, Ontario, a key border crossing carrying nearly 25% of all commerce between Canada and the United States. Canada and the State of Michigan are seeking to build the New International Trade Crossing ("NITC"), a second international bridge, to increase border security and improve trade in the region. Plaintiffs are seeking to build a new span of their existing bridge and oppose the future competition from the NITC. The dismissed claims include constitutional claims and the challenge to the State Department's issuance of a presidential permit for the new crossing. The Division is continuing to vigorously defend the remaining challenge to the State Department's approval of the Crossing Agreement for the NITC.

In the long-running litigation in *Black Warrior Riverkeeper v. Alabama Department of Transportation* (N.D. Ala.), Plaintiffs challenged the initial two mile segment of a decades-long plan to construct the Northern Beltline, a 52-mile interstate highway bypassing Birmingham, Alabama. We worked closely with the State of Alabama to defend the project, which the State has determined to be critical to area. In ruling for the federal agencies on all issues, the court cleared the way for this critical infrastructure project to continue, and validated the Agencies' determination that a full re-analysis of the entire proposed project was not required before authorizing construction of each segment.

In addition to its efforts to defend projects involving direct federal funding, the Division also was involved in a case of first impression challenging certain authority granted to the Secretary of the Department of Transportation to facilitate privately funded projects. In *Indian River County v. Rogoff / Martin County, Florida v. U.S. Department of Transportation* (D.D.C.), we successfully defeated motions for preliminary injunction in these related cases challenging the Under Secretary of Transportation's December 2014 decision to approve an application for the allocation of \$1.75 billion in private activity bonds to finance the All Aboard Florida Project, an intercity passenger rail service between Orlando and Miami. The Florida Development Finance Corporation issued the bonds, which are being marketed to private investors. Plaintiffs allege that DOT was required to prepare a NEPA analysis for the bond allocation and analysis under Section 4(f) of the Department of Transportation Act, and engage in the National Historic Act Preservation consultation process prior to its decision. Plaintiffs also allege that the allocation of the private activity bonds for the project violated Section 142 of the Department of Transportation Act because the project is not a qualified transportation project under the statute. The Division is continuing to vigorously defend the case.

Acquiring Property for Public Purposes

To ensure justice under the Fifth Amendment, ENRD works to ensure that all landowners receive just compensation and taxpayers pay no more than market value when federal agencies acquire private property for public use. Whenever possible, ENRD works closely with federal agencies to resolve matters without having to resort to condemnation. The Division's prior litigation success at trial and on appeal encourages landowners to avoid litigation expenses altogether by entering into direct land sales and leases with the client agency once they are informed a case will be sent to ENRD.

This year, the Division worked closely with the GSA in its efforts to acquire the site of a duty-free store directly adjacent to the Land Port of Entry at San Ysidro, California—the busiest land border crossing in the Western Hemisphere—where I-5 enters Mexico at Tijuana. Since 2004, GSA has been working to complete a \$735 million dollar project to re-configure and expand this border crossing to alleviate significant

congestion and delays for goods and people.

To complete the reconfiguration and expansion project, GSA needed to acquire the site of a duty-free store. In this case, the corporate landowner initially claimed the value of the San Ysidro duty-free store to be well in excess of \$70,000,000 including claims that the property could be redeveloped for a facility worth hundreds of millions of dollars. However, after ENRD worked closely with GSA on appraisal, title and valuation issues and after the landowner learned of ENRD's involvement, GSA acquired the property for \$42,000,000.



Waco Mammoth National Park,

NPS photo

Further, with Land Acquisition Section's guidance, four potential complex, expensive office space cases were resolved by the client agency with valuations in dispute that were conservatively measured at \$38 million for GSA's Leasehold Portfolio alone. These cases included the negotiation of leasehold extensions for the Millennium Challenge Corporation; the Institute of Museum and Library Services, and others across the country.

The Division also resolved multiple condemnations on behalf of the Department of Energy, Bonneville Power Administration, for construction of the Big Eddy-Knight Transmission Line in rural Klickitat County, Washington. ENRD settled eight condemnation cases in fiscal year 2014, and settled the remaining cases in the 2015 fiscal year. These settlements provided closure to the affected landowners while saving hundreds of thousands of dollars for the public fisc.

Additionally, ENRD exercises the Attorney General's responsibility to oversee review of title for every voluntary acquisition of property by the federal government before public money is spent. The Division resolved 65 title matters this year, ensuring the federal government acquired good and marketable title from the rightful owners.

Notably, in a complex matter for the United States Holocaust Museum, the Division reviewed title for land the Museum sought to acquire for the construction of a Collections and Conservation Center in Prince George's County, Maryland. The Division also reviewed title for the acquisition of land near Waco Texas obtained by the National Park Service to establish Waco Mammoth National Monument. The Monument was created to preserve the nation's first and only recorded discovery of a nursery herd of Pleistocene mammoths.

Work with U.S. Attorney's Offices

Working jointly with the U.S. Attorney's Office in San Francisco, ENRD successfully resolved *United States v. 1.41 Acres and Two Easements Situated in the City of Alameda, et. al.* (N.D. Cal.) a condemnation case involving the disposition of an unused portion of the Alameda Federal Center along the San

Francisco Bay. As part of the settlement, the GSA sold the unused portion of land to the East Bay Regional Park District for over \$2 million, allowing the Park District to expand Crown Memorial State Beach. This settlement provided GSA the funds necessary to recover the costs it incurred when consolidating operations at the Alameda Federal Center and ensured that GSA retained the rights it required in the adjoining road serving the remaining federal land. Throughout this case, the Division worked closely and collaboratively with the U.S. Attorney's office, forging a relationship that will serve ENRD well in future cases in the Northern District of California.

The Fair Administration of Justice

On June 29, 2015, the Ninth Circuit provided the United States with favorable guidance in ruling on two petition for writs of mandamus *United States v. Walker River Irrigation District* (9th Cir.) and *United States v. Malikowski* (9th Cir.) (one filed by the Environment Division; the other by the Tax Division) to correct the district court's refusal to grant the government the ability to appear in these two cases through its counsel of choice (here, Justice Department attorneys from Washington, D.C.) except upon a showing that the U.S. Attorney's Office is "incapable" of handling the cases. After the Ninth Circuit called for a response to the mandamus petitions, the district judge issued several orders granting motions he had either previously denied or delayed acting upon, including the motion by the government to permit its counsel of choice to practice before the district court. The government argued that a writ of mandamus was still appropriate because the district judge's persistent practice of excluding out-of-state government attorneys from his courtroom was capable of repetition, yet evading review. The panel majority found it unnecessary to grant mandamus relief because Judge Jones had admitted the attorneys in these cases after the petitions had been filed. However, the majority stated that but for those admissions, mandamus would have been granted, and in a 28-page decision provided guidance for Judge Jones to follow, to avoid repetition of the same practice.

Protecting the Public Fisc

On April 2, 2015, in *Hopi Tribe v. United States* (Fed. Cir.), the Federal Circuit affirmed the Court of Federal Claims' dismissal of the Hopi Tribe's breach of trust claim against the United States. The Tribe had claimed it is owed money damages for the United States' alleged breach of a fiduciary duty to build water system infrastructure or to deliver drinking water of certain quality to specific locations within the Hopi Reservation. The Tribe asserted that this fiduciary duty arose from the Executive Order of 1882 establishing the Reservation and a 1958 Act, which states that reservation lands are held in trust. The Federal Circuit rejected the Tribe's claim. The court explained that to establish jurisdiction under the Indian Tucker Act, the Tribe must first identify a substantive source of law that established specific fiduciary duties, but that the bare trust language of the 1958 Act is insufficient because it does not establish any particular fiduciary duty to manage water resources. The court rejected the Tribe's argument that fiduciary duties regarding water quality on the reservation can be inferred from the combination of the 1958 Act, the *Winters* doctrine, and the United States' holding reserved water rights in trust, as the *Winters* doctrine does not make the United States responsible for the quality of water within the reservation, independent of any third-party diversion or contamination. Accordingly, even when read in light of the *Winters* doctrine, the Executive Order and the 1958 Act do not create a fiduciary duty to construct water system infrastructure to treat water or to build a new system to deliver water from an alternative source that meets regulatory drinking water standards.

Maintaining Operation of Vital Federal Facilities

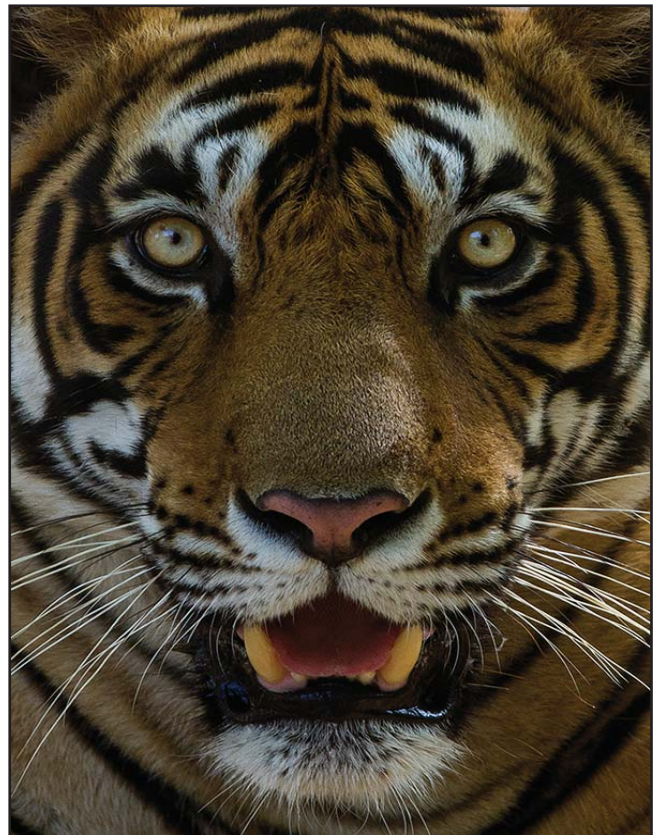
In *Tennessee Clean Water Network v. Department of Defense and BAE Systems* (E.D. Tenn.), ENRD successfully settled a CWA citizen suit alleging that the United States Army has violated a NPDES permit

by, among other things, discharging Research Department Explosive in excess of the permit limit at the Holston Army Ammunition Plant in Kingsport, Tennessee. The plant is owned by the Army and operated by BAE Systems, a private contractor. Consistent with an administrative compliance agreement that Army and BAE entered into with the Tennessee Department of Environment and Conservation to address the same alleged Research Department Explosive exceedances, the consent decree obligates the Army and its contractor to comply with the NPDES permit limit for Research Department Explosive by July 2020. Successful resolution of the case avoids an outcome that might otherwise have interfered continuing operation of the Defense Department's sole source of Research Department Explosive.

Enforcing Environmental Law through International Capacity Building and Other Activities

The Division actively implements a diverse program of international activities, frequently in collaboration with partners from other federal agencies. The Division's international activities advance the goal of protecting and promoting effective environmental enforcement domestically and in other countries and support important Administration and Department objectives:

- We successfully prosecute transnational environmental and natural resources crimes that involve foreign evidence or foreign assistance, or that rely on the violation of underlying foreign statutes.
- We provide critical training for law enforcement partners in other countries to ensure that they may work effectively with us in investigating and prosecuting transnational environmental crimes.
- We participate in the development and implementation of trade and investment agreements, treaties, international environmental agreements, and domestic implementing legislation to ensure that they protect and promote effective environmental enforcement.
- We also help to develop and facilitate international partnerships and networks that promote effective prosecution of transnational environmental crimes.



Bengal Tiger,

Wikipedia photo

In carrying out these objectives in fiscal year 2014, ENRD attorneys implemented capacity building workshops and spoke at conferences and meetings in Austria, Bangladesh, Botswana, Brazil, El Salvador, France, Germany, Guatemala, Honduras, Hungary, Indonesia, Italy, Japan, Peru, Philippines, Singapore, Spain, Thailand, Ukraine, Vietnam, and Zambia. ENRD also participated in trade negotiations, conferences, and meetings in Washington, D.C., with officials representing governments and non-governmental organizations from several other countries.

Division attorneys spoke at and participated in a number of conferences and meetings to promote the Administration's effort to combat wildlife trafficking. Assistant Attorney General John Cruden led the U.S. delegation to the Kasane Conference on the Illegal Wildlife Trade in Botswana, attended by representatives from more than 30 nations. Participants in the Kasane Conference pledged to establish and strengthen partnerships among source, transit, and destination countries to combat the illegal wildlife trade. An

ENRD attorney served as a technical expert to a meeting of the Roma-Lyon G7 Group in Germany focused on internet wildlife trafficking. ENRD attorneys also addressed meetings of several international bodies such as the Association of South East Asian Nations Wildlife Enforcement Network in Singapore and the Central American Wildlife Enforcement Network in Guatemala. A Division attorney participated in a review of Vietnam's laws on wildlife trafficking sponsored by the Asian Development Bank, and another spoke at a tiger poaching workshop for law enforcement personnel in Bangladesh.

Division attorneys also implemented workshops for law enforcement personnel in Brazil, Peru, and Honduras on prosecuting illegal logging cases. One of the illegal logging workshops held in Peru included enforcement officials from both Peru and Brazil and focused on cross-border movements of illegal timber along the Amazon. Division attorneys participated in joint meetings with European Union counterparts to discuss efforts to enforce the Lacey Act and European Union laws to prohibit trade in illegally harvested timber and wood products. ENRD also participated in meetings of experts convened by the United Nations Office on Drugs and Crimes to develop forensic standards to combat illegal logging. An ENRD attorney led the U.S. delegation to two meetings of the Asia Pacific Economic Cooperation forum Experts Group on Illegal Logging and Associated Trade, and spoke at a workshop in the Japanese Diet to explain the U.S. Lacey Act's provisions prohibiting trade in illegally-harvested timber.

Division attorneys also participated as speakers at environmental enforcement training programs at International Law Enforcement Academies in Hungary and El Salvador on prosecuting environmental crimes, including pollution cases. And an ENRD attorney spoke at two law enforcement workshops in Indonesia on illegal, unreported, and unregulated fishing.

ENRD participated in negotiations, led by the Office of the U.S. Trade Representative, of the environment chapter of the Trans-Pacific Partnership Trade Agreement with 11 countries in Asia and the Americas, and the Transatlantic Trade and Investment Partnership Agreement with the European Union. The United States has sought to incorporate conservation provisions into these trade agreements to deter trafficking in illegally taken flora and fauna. They also participated in meetings relating to implementation of existing U.S. trade agreements, such as implementation talks related to the U.S.-Singapore Trade Agreement and meetings of the Environmental Affairs Council and Environmental Cooperation Commission under the U.S.-Peru Trade Promotion Agreement.

Division attorneys were also actively involved with the environmental enforcement efforts of INTERPOL. In FY 2016 Deborah Harris, ECS Section Chief, was elected to the Advisory Board of INTERPOL's Environmental Security Sub-Directorate. Additionally, the Pollution Crimes Working Group is now chaired by ECS's Deputy Chief, Joe Poux.

Defending Agency Discretion

On December 1, 2014, in *WildEarth Guardians v. Jackson* (9th Cir.) the Ninth Circuit affirmed the district court's dismissal of plaintiffs' Clean Air Act citizen-suit claim against EPA. The plaintiffs in this case asserted that when EPA revised the National Ambient Air Quality Standard (NAAQS) for ozone, EPA triggered a mandatory duty under Clean Air Act Section 166(a) to promulgate regulations preventing the significant deterioration of air quality from ozone. The Division argued that Section 166(a) imposes a mandatory duty to promulgate a Prevention of Significant Deterioration regulation only when EPA promulgates a NAAQS for a new pollutant, not when EPA revises a standard. The court of appeals held that the statutory language in Section 166(a) is ambiguous as to when a mandatory duty arises. This in itself was sufficient, the court concluded, to take the claim against the Administrator of the EPA outside the scope of the citizen-suit provision. Thus, the district court lacked jurisdiction over plaintiff's claim and the suit was dismissed.



Klamath River,

FWS photo

On August 21, 2015, in *ONRC Action v. Bureau of Reclamation* (9th Cir.), the Ninth Circuit affirmed the district court's grant of summary judgment to the Bureau of Reclamation. The court of appeals rejected ONRC's claim that the CWA required the Bureau to obtain an NPDES permit for operation of the Klamath Straits Drain, an 8.5-mile-long engineered channel that connects Lower Klamath Lake with the Klamath River and carries pollutants derived from a number of upstream sources. Because the Drain had simply restored the historic hydrological connection

between Lower Klamath Lake and the Klamath River, and carried water the majority of which was diverted for agricultural use from the Klamath River itself, the court concluded that the waters flowing from the Drain are not "meaningfully distinct" from the River itself. The panel found that the Supreme Court's decision in *L.A. County Flood District v. Natural Resources Defense Council*, 133 S. Ct. 710, 713 (2013), clarified that this situation did not involve the "addition" of pollutants to waters of the United States, and hence did not involve a "discharge" of pollutants requiring a permit under the terms of the CWA.

Defending Challenges to EPA Oversight of Water Quality Planning

In *Center for Biological Diversity v. EPA*, plaintiff challenged EPA's 2012 approvals of CWA lists of impaired waters submitted by Oregon and Washington. Plaintiff claimed that EPA's decisions were arbitrary and capricious because the states' lists did not include coastal and estuarine waters impaired by low pH (acidification). On February 19, 2015, the court issued a decision granting our motion for summary judgment. In its decision, the court accepted that ocean acidification is "a threat to the broad marine environment," but the court ruled that, at the time EPA made its decisions, the Agency was reasonable in concluding that there was insufficient record evidence of impairment as to the waters at issue. In reaching its findings, the court relied heavily upon the Agency's decision documents, and granted a high degree of deference to EPA's technical and scientific expertise.

Defending the CWA Regulatory Program

In our active CWA defensive practice, ENRD has committed substantial resources to the defense of EPA's Clean Water Rule, defining "waters of the United States" for purposes of federal regulatory jurisdiction under the statute. Due to disputes relating to the Act's jurisdictional provision, we have been defending challenges in both the courts of appeals and numerous district courts around the country. As of the end of FY 2015, fifteen petitions for review of the rule had been filed and consolidated in the 6th Circuit. We are defending fourteen district court complaints; one district court had enjoined application of the rule in the thirteen states that had joined as plaintiffs in that case; two district courts had denied preliminary injunction motions for lack of jurisdiction; and most others had stayed litigation pending a ruling from the Sixth Circuit.

Responding to Congressional Proposals for Environmental and Natural Resources Legislation and Related Matters

The Division responds to a variety of legislative proposals and congressional requests, prepares Division witnesses to testify before congressional committees, and drafts legislative proposals, including proposals implementing settlements of litigation handled by the Division. In fiscal year 2015, we continued our work in these areas.



Leopard Poaching,

DOI photo

On May 19, 2015, Assistant Attorney General John C. Cruden appeared with other Department officials at an oversight hearing before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law of the House Committee on the Judiciary to discuss the work of ENRD and the other Departmental components.

On April 22, 2015, Assistant Attorney General Cruden appeared before the Subcommittee on Terrorism, Nonproliferation, and Trade of the House Committee on Foreign Affairs, to discuss the important topic of “Wildlife Poaching and Terrorism: A National Security Challenge,” along with Acting Assistant Secretary of State Judith G. Garber and Associate Director of FWS, Robert Dreher.

The Division asserts water rights claims for the benefit of federally-recognized Indian tribes and their members. Settlements are often preferred as the best way to resolve these complex matters, and ENRD is actively involved in the settlement of such matters, as well as in the development of federal legislation authorizing such settlements once negotiated. One example of federal legislation enacted in fiscal year 2015 with the assistance of ENRD is H.R. 4924 (enacted into law as Pub. L. No. 113-223), the Bill Williams River Water Rights Settlement Act of 2014.

Responding to Freedom of Information Act Requests

ENRD continues to be one of the Department’s highest-performing components in its Freedom of Information Act (FOIA) work. In fiscal year 2015, the Division completed the processing of over one hundred requests, and ended the year with only five backlogged requests and zero backlogged consultations. We increased the number of requests processed by 15% this fiscal year, and were also able to close all 6 of our oldest pending requests from 2014.

The Division continues to explore the use of new technology to expedite processing, increase proactive disclosures, and reach out to requesters to ensure efficient processing of their requests. ENRD has also worked to expand FOIA training opportunities for ENRD, providing guidance about both legal and practical FOIA issues during new attorney orientation and section meetings. Our FOIA staff continues to engage with the wider FOIA community as well, serving on a Department-wide FOIA working group to develop interagency coordination guidelines and attending FOIA public forums to better understand how to serve the requester community.

Protecting the Interests of the United States in Litigation Involving Third Parties

Filing Amicus Briefs

The Division participates as *amicus curiae* in cases in which the United States is not a party. Our amicus briefs primarily serve to provide information and viewpoints that may be helpful to the judges tasked with resolving cases, including by explaining how the resolution of particular legal questions could impact important federal programs. By providing such information and viewpoints, the amicus briefs also serve to protect the interests of the United States.

The Division participated as *amicus curiae* in *French v. Starr* (9th Cir.), a case that concerns the jurisdiction of the Colorado River Indian Tribal Court over a holdover tenant on tribal land. The tenant argued that there is a dispute as to whether the property he leased from the Tribe is within the reservation, which was established by an 1865 Act of Congress and subsequently expanded by Executive Order. The tenant obtained a permit to occupy from the land from the Bureau of Indian Affairs in 1983, and a decade later decided to stop paying rent and challenge tribal jurisdiction over the land. The tenant brought a lawsuit in federal district court in Arizona challenging the tribal court's authority to evict him. The Division filed an amicus brief in support of the Tribe and the important principle that the trust status of tribal lands may not be collaterally attacked in this sort of proceeding. The district court ruled in favor of the Tribe, and the tenant appealed to the Ninth Circuit. This year, the Division filed an amicus brief in support of the Tribe in the Ninth Circuit.

The Division also participated as *amicus curiae* in *Rose Acre Farms, Inc. v. North Carolina Dep't of Env't. and Natural Res.* (E.D. N.C.). In this case, Rose Acre Farms challenged the State of North Carolina's authority under the CWA to require a NPDES permit for pollutants from concentrated animal feeding operations in the form of manure and manure-laden dust that are carried by precipitation to waters of the United States. At issue was whether Rose Acre Farms, which had already commenced a case challenging North Carolina's authority in state court, could launch a collateral attack in federal district court. The State filed a motion to dismiss, and we filed a brief as *amicus curiae* in support of the State to emphasize the framework of cooperative federalism embodied in the CWA. Our brief argued that based on the language and structure of the CWA, permitting decisions made by states authorized to administer the NPDES program, which includes North Carolina, may only be challenged in state court. In July 2015, the District Court granted the State's motion to dismiss, relying in large part on the cooperative federalism argument made in the U.S. brief.

Reviewing Citizen Suit Complaints and Settlements

The Division also conducts the Department's review of citizen suit complaints and consent judgments under the Clean Air Act, the CWA, and the Resource Conservation and Recovery Act. These statutes authorize citizens to file suits to enforce many of the statutes' key provisions, and require that citizen suit complaints and consent judgments be served on the Department and EPA. When served with complaints, ENRD offers assistance to counsel for the parties. The Division also reviews consent judgments to ensure that they comply with the requirements of the relevant statute and are consistent with the statute's purposes.

Southern Appalachian Mountain Stewards v. A & G Coal Corp. (4th Cir.), is a CWA citizen suit in which the Fourth Circuit requested an amicus brief from the United States in an appeal of a district court order finding that the defendant could not invoke the permit shield defense. The district court reached this conclusion because the defendant's discharges of selenium were not within the scope of its individual CWA permit (issued by Virginia) and had not been disclosed to the permitting authority. ENRD filed

a brief arguing that the permit shield defense did not apply. In July 2014, the Fourth Circuit agreed that the applicable permitting procedures required the applicant to test for selenium in its discharges and provide data on selenium discharges to Virginia, and that A&G Coal had not done so. Applying its previous *Piney Run* decision, the Fourth Circuit concluded that, as the permit shield defense only encompassed those pollutants disclosed to the regulator and A&G Coal disclosed no selenium-related information, the defense was inapplicable. The case returned to the trial court and, in December 2015, the district court approved the entry of a consent decree that provided that A&G Coal would: (1) apply for a permit modification that imposes effluent limits on selenium; (2) pay a civil penalty of \$28,000; and (3) fund three supplemental environmental projects, for a total of \$252,000, to help reduce pollution and/or provide public health benefits at sites of historic or recent coal mining within the Powell River watershed. Per our request, the recipient of funds for the supplemental environmental project agreed to report to us, the court, and the parties regarding how funds are spent.

PROMOTING NATIONAL SECURITY AND MILITARY PREPAREDNESS

Supporting the Strategic Border Initiative and Securing the Nation's Borders

ENRD continued to litigate land acquisition cases to secure the nation's borders on behalf of the Department of Homeland Security (DHS), and U.S. Customs and Border Protection, as part of the expansive southwest Border Fence project. The Division continued to support Assistant United States Attorneys in Texas, New Mexico, Arizona, and California on intricate legal and valuation issues.

Notably, the Division assisted the Department of Homeland Security in acquiring land near Oñate's Crossing in El Paso, Texas for construction of a portion of the Border Fence. The landowner initially claimed the land was worth over \$10,000,000, but after extensive negotiations, DHS settled the case for \$205,400—saving the federal fisc millions of dollars.

ENRD also filed several cases to acquire the land required by the Department of Homeland Security to install and maintain surveillance towers, access roads, and associated structures along the Arizona/Mexico border. Five of these cases were resolved this year.

Promoting National Security and Military Readiness

ENRD also engaged in litigation to expand and modernize the military's presence throughout the country. Notably, on behalf of the Navy, ENRD condemned land in San Diego to facilitate the redevelopment of the Navy Broadway Complex and land to support flight operations at the Navy's Outlying Landing Field in Evergreen, Alabama. The Division resolved the case in Evergreen, Alabama for \$475,000—an amount significantly below the landowner's estimate of \$3,025,000.



Mexico Border Medallion,

DOJ photo



Arizona Surveillance Tower,

DOJ photo



Tinker Air Force plane landing,

DOJ photo

Also, on behalf of the Air Force, the Division assisted with several projects across the United States. In Nevada, ENRD condemned land within the existing boundaries of the Nevada Test and Training Range. The Division also provided guidance, including title review assistance, to the Air Force regarding the potential exercise of eminent domain near Oklahoma City to acquire over 150 acres of land adjacent to Tinker Air Force Base. The Air Force intended to use that land for the construction of a \$400 million maintenance depot facility for aerial tanker aircraft. ENRD also efficiently resolved several cases to acquire land north and south of a runway at Whiteman Air Force Base in Western Missouri to increase airplane safety, saving the taxpayers hundreds of thousands of dollars.

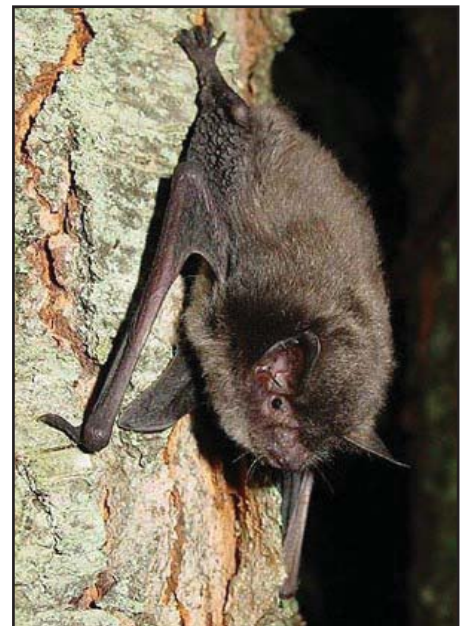
In *Okinawa Dugong v. Rumsfeld* (N.D. Cal.), American and Japanese conservation groups filed suit alleging that the Navy and Marine Corps failed to comply with the National Historic Preservation Act by properly analyzing impacts on a marine mammal population, the endangered Okinawa Dugong, from construction of facilities on the island of Okinawa in Japan, as part of the proposed relocation of the Futenma Marine Air Station to a coastal area on the island. On February 13, 2015, the court granted the government's motion to dismiss. Plaintiffs' request for injunctive relief was dismissed under the political question doctrine; plaintiffs' request for declaratory relief was dismissed on grounds of standing/redressability.

Citizens of the Ebey's Reserve v. U.S. Dep't of the Navy (W.D. Wash.). Plaintiff challenges, under NEPA, the Navy's operation of its Growler Aircraft at Outlying Field Coupeville at Naval Air Station Whidbey Island, requesting preparation of a new EIS. The case has been stayed for almost two years while the Navy prepares a new EIS for ongoing and expanded operations. On August 11, 2015, the court issued an order denying plaintiff's motion for a preliminary injunction on the basis that plaintiff had failed to meet its burden of showing that a preliminary injunction was warranted under any of the four prongs. First, the court found that plaintiff had failed to show a likelihood of success on the merits of its claim that "new" information about operations, noise levels, and health impacts required preparation of a new EIS. Second, the court found that plaintiff had failed to show irreparable harm because many of the declarants' harms were self-inflicted, and plaintiff's sixteen-month delay in seeking a preliminary injunction indicated a lack of irreparable harm. Third, the court found that the balance of the equities tipped in the Navy's favor because of the Navy's interest in realistic training. Fourth, the court found that the public interest favored denial because of the public's interest in military preparedness and because an injunction would effectively move the flights to a more densely populated area.

Defending the United States' Energy Agenda

The Division obtained several key victories in cases involving the intersection of energy security issues and natural resources issues.

- In *Defenders of Wildlife v. Jewell* (C.D. Cal.), the Division defended against a challenge to BLM's right-of-way grants to First Solar for the construction of two utility-scale solar projects located 40 miles south of Las Vegas along the California-Nevada border. After a summary judgment briefing and argument by Division attorneys, the court upheld the Project in all respects.
- In *Union Neighbors United v. Jewell* (D.D.C.), the Division obtained a favorable outcome to ESA and NEPA challenges to FWS's issuance of an Incidental Take Permit for a 100-turbine wind project in west-central Ohio for the incidental take of



Indiana Bat,

FWS photo

endangered Indiana bats. The applicant's habitat conservation plan proposed an operational scheme that tailored turbine-blade speeds to various protective levels tied to the seasonal density of bats in the area as well as acquiring mitigation habitat for the protection of bats. After extensive summary judgment briefing by Division attorneys, the District Court granted summary judgment in favor of the United States on all claims.

- Similarly, in *Protect Our Lakes et al. v. U.S. Army Corps of Eng'rs* (D. Me.), the Division secured an outcome allowing for clean energy project development. Plaintiffs challenged the U.S. Army Corps of Engineers' issuance of a CWA Section 404 permit to Evergreen Wind II, LLC in connection with Evergreen's Oakfield Wind Project Expansion in Aroostook County, Maine. Plaintiffs alleged that, in issuing the permit, the Corps violated the ESA and Bald & Golden Eagle Protection Act ("BGEPA") because construction and operation of the project may cause take of ESA-listed Atlantic salmon and eagles. After briefing and argument by Division attorneys on cross-motions for summary judgment, the court granted United States' motion in its entirety, thereby allowing the project to proceed.
- In *Vermonters for a Clean Environment v. Madrid* (D. Vt.), ENRD successfully defended the Deerfield Wind Energy Project authorized on the Green Mountain National Forest. This is the first such project on National Forest System lands and is a part of the nation's renewable energy strategy for federal lands. The plaintiffs raised claims under NEPA and the Wilderness Act. In December 2014, the court granted judgment to the Forest Service as to all claims, allowing this first of its kind project to proceed into the next stages of development.
- In *Colorado River Indian Tribes v. U.S. Department of Interior* (C.D. Cal.), a Plaintiff Indian tribe brought claims under NEPA, the National Historic Preservation Act, and the FLPMA, challenging the BLM's approval of a right-of-way for the Modified Blythe Solar Project in the California Desert Conservation Area in Southeastern California. The challenged project is one of several flagship renewable energy projects in the California desert. The district court denied plaintiff's motion for preliminary injunction, and on summary judgment ruled in the government's favor on all claims. Plaintiff elected not to appeal.
- *Chesapeake Climate Action Network v. Export-Import Bank* (D.D.C.). Plaintiffs, a coalition of environmental advocacy groups, challenged the Export-Import Bank's ("the Bank") approval of a \$90



Powder River Basin,

DOI photo

million line-of-credit guarantee in support of a commercial loan between Xcoal Energy Resources ("Xcoal") and PNC Bank, which is being used to fund Xcoal's mining, transportation, and export of coal from mines in Appalachia to foreign end users in Pacific Rim nations. In granting summary judgment in favor of the Bank, the court concluding that plaintiffs lacked standing to challenge the guarantee.

- *WildEarth Guardians v. Forest Service*; *WildEarth Guardians v. BLM*; *Powder River Basin Resource Council v. BLM (Wright Leasing Challenge)* (D. WY.). In these three consolidated cases, petitioners challenge

BLM's decision approving the competitive sale of four coal leases in Wyoming's Powder River Basin ("PRB"), as well as the Forest Service's decision consenting to the sale with respect to surface lands

falling under its jurisdiction. The impacts of leasing were analyzed in the Wright Area Final EIS. Petitioners claim the Final EIS was deficient for failing to take a hard look at impacts on local air quality resulting from mining operations and impacts on the global climate resulting from the eventual combustion of mined coal. The court concluded that the agency's climate change analysis and its consideration of local air quality impacts were sufficient, and rejected the mitigation and alternatives claims.

Ivanpah Solar Electric Generating System

The Ivanpah Solar Power Project, the world's third largest solar power project, is located in the Mojave Desert in Southern California. The project, which went online in 2014, has been the subject of ongoing federal lawsuits challenging BLM's grant of rights-of-way across federal lands for construction and operation of the project.

- On May 5, 2015, in *Western Watersheds Project v. Salazar* (9th Cir.), the Ninth Circuit affirmed a federal district court's grant of summary judgment in favor of the federal defendants, upholding BLM's Environmental Impact Statement against claims that BLM had allegedly not taken a "hard look" at the project's impacts on desert tortoise living in the nearby area nor adequately considered the impacts of other projects in the nearby area. The court reaffirmed that agencies need not "concentrate" their analysis of impacts "in a single subsection of the EIS," when the discussion "allow[s] for informed decisionmaking and public participation." The court also affirmed that agencies are not required to "do the impractical" by gathering additional information or analyzing impacts of projects when information is not available.



Ivanpah Solar Power Project,

DOE photo

- On May 19, 2015, in *La Cuna De Aztlan Sacred Sites Protection Circle Advisory Committee v. United States Department of the Interior* (9th Cir.), the Ninth Circuit affirmed the district court's grant of summary judgment rejecting plaintiffs' claim that construction of the Ivanpah Solar Power Project on federal land violated their rights under the Religious Freedom Restoration Act (RFRA). The plaintiffs, individuals of Native American ancestry, claimed that the Ivanpah Projects' construction denied them access to sacred areas and trails, called "Salt Song Trails." Plaintiffs argued that the threat of criminal prosecution for trespass-should they seek to enter the plant to use the Trails-constituted coercion not to exercise their religious beliefs. The court of appeals disagreed. It noted that the declarations submitted by the plaintiffs were conclusory and did not actually assert that any sacred sites were located within the Ivanpah Project, so plaintiffs had not demonstrated a substantial burden on the exercise of their religious beliefs.

Oil and Gas Development

- On March 6, 2015, in *Center for Sustainable Economy v. Jewell* (D.C. Cir.), the D.C. Circuit, in a split decision, denied the petition for review in this case. Petitioner, a nonprofit organization interested in achieving a sustainable economy, challenged Interior's most recent Outer Continental



Chukchi Sea,

USGS photo

Shelf Five-Year Lease Plan for 2012-2017, in which it set out a schedule for leasing areas on the Outer Continental Shelf for oil and gas exploration and development. Petitioner alleged that Interior's economic analysis failed to properly consider environmental and market effects that it says are required to be addressed at the planning stage, and that Interior's decision was arbitrary because it failed to quantify many of the Lease Program's costs and benefits. Petitioner also asserted that Interior's Final Environmental Impact Statement (EIS) improperly used a biased analytic methodology and that Interior had provided inadequate opportunities for public comment at the Draft

EIS stage. The panel majority concluded that petitioner had associational standing to petition for review, that petitioner's environmental review claims were not ripe for review; that two of its Program challenges were forfeited, and that its remaining challenges to Interior's adoption of the Lease Plan failed on their merits. The dissenting judge disagreed with the majority's standing analysis and would have dismissed the petition on that ground without reaching any of the merits issues.

- On June 11, 2015, in *Alaska Wilderness League v. Jewell* (9th Cir.), the Ninth Circuit upheld the Interior Department's approval of Oil Spill Response Plans (OSRPs) prepared by Shell Oil Company subsidiaries for oil and gas exploration activities in the Beaufort and Chukchi Seas, off the coast of Alaska. The panel unanimously rejected the plaintiffs' argument that Interior violated the CWA because, in approving the response plans, it allegedly relied on Shell's unrealistic assumption that it could recover 95% of any spilled oil. The panel found that the OSRP had not, in fact, predicted a 95% recovery rate, but simply made certain assumptions about how much oil would reach shore so that it could determine the appropriate scale of on-shore cleanup assets. The majority also rejected the plaintiffs' assertion that Interior was required to consult under Section 7 of the ESA to determine whether it should add conditions to the OSRPs that would benefit ESA-listed species. The majority held that Interior had reasonably concluded the CWA provided it with no discretion to add such conditions, thus consultation was not required. Finally, the majority found that NEPA did not apply because Interior had reasonably concluded that it must approve any OSRP that met the statutory requirements.

- In *Tengasco, Inc. v. Jewell* (E.D. La.), plaintiff sought judicial review of an Interior Board of Land Appeals ("IBLA") affirmation of a Bureau of Safety and Environment Enforcement ("BSEE") civil penalty order of \$386,000, imposed on the grounds that oil equipment testing records were unavailable for review. In upholding the civil penalty the court ruled favorably that: (1) the challenged testing violations constituted a threat of harm and were not merely recordkeeping in nature, allowing immediate penalty imposition; (2) multiplying penalty application on a per-device, per-period basis was appropriate; (3) the burden is entirely on the operator to confirm compliance with testing regulations; (4) the agency has discretion as to the weight of evidence submitted in an agency adjudication; and (5) post hoc testing records and affidavits do not compensate for failure to have the contemporaneous records required by regulation.

- In *Noble Energy, Inc. v. Jewell* (D.D.C.), on remand from the United States Court of Appeals for the District of Columbia, the Bureau of Safety and Environmental Enforcement (BSEE) determined it had regulatory authority to order plaintiff to plug and abandon a well located off the California

coast and re-issued its order to plaintiff. Plaintiff challenges that order under the APA because it believes BSEE has no authority to compel it to permanently plug and abandon the well in light of the United States Court of Appeals for the Federal Circuit's prior determination that the United States materially breached plaintiff's oil and gas lease. On June 8, 2015, the court denied plaintiff's motion for summary judgment and granted our cross-motion for summary judgment. The court held that BSEE's interpretation of its decommissioning regulations—to apply independently of any contractual obligations and to not include a common-law discharge defense—was reasonable and entitled to deference.

- In *White Earth Nation v. Kerry* (D. Minn.), plaintiff tribes and environmental groups filed suit against the State Department alleging that it permitted Enbridge to re-construct a pipeline across the international border with Canada in violation of NEPA. They also alleged that the State Department approved interconnections with a separate pipeline that allow Enbridge to transport more oil across the border than is allowed by their existing Presidential permit and that doing so violated NEPA. On December 9, 2015, the court issued an order granting summary judgment in favor of the State Department. The court found that the State Department's actions were Presidential in nature and therefore were not reviewable under the APA. The court reasoned that, in responding to inquiries from Enbridge regarding its existing Presidential permits, the State Department was carrying out the directives of the President in Executive Order 13337, and therefore its actions were Presidential actions.

PROTECTING TRIBAL RIGHTS AND RESOURCES AND ADDRESSING TRIBAL CLAIMS

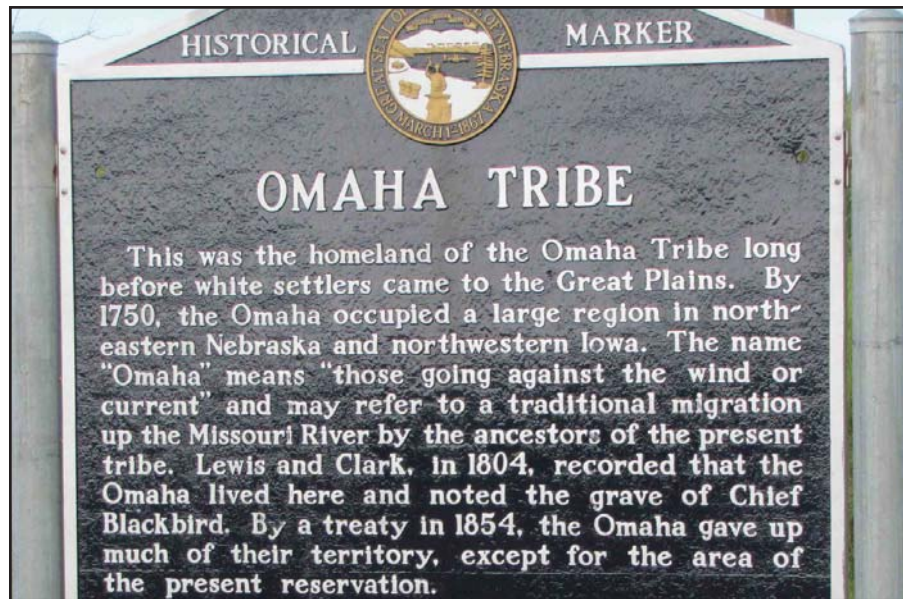
Supporting Tribal Authority Over Tribal Lands and Resources

- The Eighth Circuit upheld a district court opinion in *Smith v. Parker* (D. Neb.), holding that the Omaha Reservation remained intact and had not been diminished by legislation authorizing the sale of land on the western edge of the reservation to non-Indian settlers. The Division had filed an amicus brief supporting the Tribe in the tribal court, and then intervened in the federal district court proceeding on behalf of the Tribe.
- The Division intervened in litigation brought by the Tulalip Tribes, *Tulalip Tribes v. State of Washington* (W.D. Wash.), to protect the Tribes' right to collect tribal tax revenues within a tribally chartered municipality built, regulated and managed by the Tribes and the United States on land within the Tulalip Reservation that the United States holds in trust for the Tribes, and to restrain state and local officials from taxing those activities in a manner inconsistent with federal law. With financial support and other assistance from the federal government, Tulalip constructed the infrastructure necessary to support a major entertainment, commercial, and tourism destination, including a hotel, resort, gaming facilities, amphitheater, retail stores, restaurants, and cultural center on its trust lands at Quil Ceda Village. The governmental services at the Village are provided primarily, if not exclusively, by the Tribes and the federal government. But the State and County, to the exclusion of the Tribes and the Village, collect around \$40 million annually in taxes.
- In 2002, the Seneca Nation of Indians and the State of New York entered into a tribal-state compact pursuant to the Indian Gaming Regulatory Act (IGRA) providing that the Seneca would be permitted to purchase land in Buffalo, New York, for the purposes of conducting Class III gaming (casino gaming) under IGRA. Between 2006 and 2009, various organizations and individuals filed



Tulalip Tribes map,

Tulaliptribes-nsn.gov photo



Omaha Tribe Sign

Omaha-nsn.gov photo



Flag of the Tulalip Tribes,

Wikimedia photo

three successive lawsuits against the National Indian Gaming Commission (NIGC) and Interior seeking to stop the Nation's proposed casino operation. On September 15, 2015, in *Citizens Against Casino Gambling in Erie County v. Hogen* (2d Cir.), the Second Circuit entered a decision in consolidated appeals from all three cases upholding the right of the Seneca Nation to game on land in Buffalo that it had purchased for that purpose. The appellate court held that the Interior and NIGC decisions that the Buffalo parcel qualified for Class III gaming under IGRA and was neither arbitrary and capricious nor contrary to law. Congress intended that lands acquired under the Seneca National Settlement Act would be considered to be "Indian country." It further held that IGRA's prohibition against gaming on trust lands acquired after 1988 did not apply to lands that were held in restricted fee, as opposed to trust, status.

Defending Tribal and Federal Interests in Water Adjudications

A significant portion of the Indian Resources Section's work is to secure tribes' federal water rights, often one of the most valuable and increasingly scarce natural resources in the western United States. This responsibility includes complex, multi-party negotiations, working with other parts of DOJ and the executive branch, and with Congress to achieve legislative approval of water rights settlements. Following congressional ratification, the Section litigates against challenges to entry of the settlement in court.



San Luis Rey River ,

NPS photo

As in past years, the Division reached water rights settlements for various tribes that if approved by Congress would solve substantial natural resources problems and end lengthy litigation. For example, we assisted DOI in the negotiations with the Confederated Salish and Kootenai Tribes and Montana regarding the thousands of claims brought by the U.S. and Tribes for both on- and off-reservation water rights. The State legislature approved the agreement. The settlement is now awaiting congressional approval.

And, with DOI, we participated in intensive negotiations on the water rights of five Southern California Bands in the San Luis Rey River and to resolve related claims. After years of failed efforts, these talks led to an agreement signed by Secretary Jewell in late 2014 and AAG Cruden in early 2015. This agreement requires Congress to amend the 1988 San Luis Rey Indian Water Rights Settlement Act. After months of work with DOI, OMB, and the House Committee on Natural Resources, DOJ and DOI sent a joint letter to the Committee in support of amending the 1988 Act.

Most water rights settlements require federal legislation in order to alter tribal rights and provide critical funding for infrastructure projects that solve water-related problems (*e.g.*, safe drinking water unavailability or ESA). The Indian Resources and Law and Policy Sections work closely with DOI on testimony related to bills to ratify tribal water rights settlements. For example, at the end of the last Congress, we worked to oppose a waiver of federal sovereign immunity in a bill addressing water and land issues between Freeport McMoRan, the U.S., and the Hualapai Tribe. We succeeded in revising that provision in a manner that should establish a favorable precedent for future tribal water settlement legislation.

Much of the Indian Resources Section's water rights litigation in the past year focused on judicial proceedings regarding hundreds of objections by non-parties to several settlements enacted by Congress in 2009 and 2010. In two settlements, for the White Mountain Apache Tribe and the Shoshone Paiute Tribe of the Duck Valley Reservation, the court entered the decree after completing final proceedings. In Montana, regarding the Crow Tribe's water settlement, we prevailed in the Montana Supreme Court over one set of objections and prevailed in the trial court on the objections of another group. Based on the United States-led briefing, the New Mexico federal court rejected objections to the water rights settlement for the Taos Pueblo. Also in New Mexico federal court, we filed the final set of briefs to eliminate many hundreds of objections lodged against the remaining congressionally-approved settlement for the Nambé, Pojoaque, San Ildefonso, and Tesuque Pueblos.

ENRD has also actively sought to develop the foundational law related to tribal water rights to groundwater on or adjacent to a reservation. In *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District* (C.D. Cal.), the district court granted summary judgment in favor of the United States and the Tribe on the issue of whether the Tribe's federal reserved water right includes groundwater. ENRD intervened in this important litigation seeking to confirm a federal reserved right to groundwater on behalf of the Agua Caliente Band of Cahuilla Indians, to quantify the Tribe's water rights, and to enjoin local water authorities from continuing to overdraft an aquifer or interfere in any other way with those rights. The Division's summary judgment briefing demonstrated that congressional acts and executive orders, the establishment of the reservation, the Tribe's historical use of groundwater, and federal and state case law all supported the Tribe's right to groundwater, a right that was also recognized by state groundwater legislation. The Division also prevailed against the water agency's argument that the reservation had been disestablished.

Upholding Agency Authority to Acquire Land in Trust for Tribes and Trust Land Status

- The Division continued to have considerable success in defending decisions by Interior to take land into trust for the benefit of tribes under the Indian Reorganization Act (IRA). In *Confederated Tribes of the Grand Ronde Community and Clark County, Wash. v. Jewell* (D.D.C.), plaintiffs challenged Interior's first application of a two-part framework for determining whether a tribe was "under federal jurisdiction" in 1934, as required by the IRA. The federal district court rejected the plaintiffs' challenge to Interior's decision to take land into trust for the Cowlitz Tribe. The district court determined that the statutory terms "recognized" and "under federal jurisdiction" are ambiguous and that Interior's interpretation and application of those terms warranted deference.
- Likewise, in *County of Amador, California v. U.S. Department of Interior* (E.D. Cal.), the Indian Resources Section successfully defended a challenge by Amador County to Interior's decision to accept a fee-to-trust application for gaming by the Ione Band. The County alleged that the Band did not qualify for the Indian Gaming Regulatory Act's restored land exception to the prohibition on gaming lands acquired post-1988. The County also brought NEPA and Indian Reorganization Act challenges, including a claim that the Band was not under federal jurisdiction in 1934 and therefore was not eligible to have land taken into trust. The Division obtained a favorable decision from the district court on all claims.
- In another challenge to the Ione Band trust acquisition, *No Casino in Plymouth et al. v. Salazar et al.* (E.D. Cal.), the Division prevailed in a citizen group's challenge to Interior's decision to approve the Ione Band's fee-to-trust application for gaming purposes.
- In *Preservation of Los Olivos and Preservation of Santa Ynez v. Interior* (C.D. Cal.), the Division successfully opposed plaintiffs' attempt to reopen a decision to acquire land. And the Division also

prevailed against challenges to trust acquisitions in *Citizens for a Better Way v. Interior* (E.D. Cal.), *Central N.Y. Fair Business Association v. Jewell* (N.D.N.Y.), and *Town of Verona v. Jewell* (N.D.N.Y.).

- When Congress specifically affirms an Interior decision to acquire land in trust, the Division defends challenges to the legislation. During fiscal year 2015, the Division successfully defended the constitutionality of the Gun Lake Trust Land Reaffirmation Act in *Patchak v. Jewell* (D.D.C.).
- In opinions issued on June 4 and July 8, 2015 in *Big Lagoon Rancheria v. California* (9th Cir.), the Ninth Circuit, sitting en banc, affirmed the district court's judgment that the State of California had failed to negotiate in good faith with Big Lagoon Rancheria over its request under the IGRA to enter into



The National Indian Gaming Commission,

nigc.gov photo

a compact to conduct Class III gaming operations on land that the Interior Department had taken into trust for the Rancheria in 1994. Earlier, the Ninth Circuit held in a panel decision that California could raise as a defense to the bad faith claim that the land in question was not “Indian lands” under IGRA (and thus was not eligible for gaming). The panel also concluded that, under *Carciari v. Salazar*, 555 U.S. 379 (2009), Interior had

improperly taken the land into trust because the Rancheria was not a federally recognized tribe in 1934. The Rancheria then sought rehearing en banc, and the United States filed an amicus brief supporting the petition. In the en banc decision, the court held that California’s argument amounted to an improper collateral attack on Interior’s 1994 decision to take the land into trust. It also concluded that even if the State had brought an APA claim, it would be barred by the statute of limitations because the State was on notice of the trust acquisition since 1997 and had not challenged it. Finally, the en banc court refused to consider California’s claim that Interior had improperly recognized the Rancheria as a tribe since this argument had not been brought as an APA claim, and even if it had, it too would have been barred by the statute of limitations.

- In *Cachil Dehe Band of Wintun Indians of the Colusa Indian Community v. Salazar* (E.D. Cal.) (consolidated with suits brought by Citizens for a Better Way and the United Auburn Indian Community of the Auburn Rancheria), plaintiffs allege violations of the APA, NEPA, the IGRA, the IRA, and the CAA. Plaintiffs challenge the Federal/State two-part determination to take land into trust, for gaming purposes, for the benefit of the Estom Yumeka Maidu Tribe of the Enterprise Rancheria (“Enterprise”), in the Marysville-Yuba City area. The court previously denied three separate TRO motions (and one motion for mandamus) and granted defendants’ motion to strike extra-record documents and expert reports submitted by plaintiffs. On September 24, the court granted summary judgment in our favor, finding that defendants complied with each of the statutory provisions (or that any noncompliance was harmless). With respect to NEPA, the court found that that BIA’s statement of purpose and need was not overly narrow; that BIA fulfilled its obligation to “rigorously explore and objectively evaluate all reasonable alternatives, and that BIA took a sufficiently hard look at the environmental, aesthetic, historic, and socio-economic impacts of the proposal.

Defending the Federal Recognition Process

Plaintiff in *Mackinac Tribe v. Jewell* (D.D.C.) sought a declaratory judgment identifying it as a federally-recognized Indian tribe and an order requiring Interior to hold a Secretarial election for Plaintiff.

Plaintiff did not complete the federal acknowledgment process set forth in the Interior's Part 83 regulations, instead basing its claim on its purported recognition in an 1855 treaty. On March 31, the court converted our motion to dismiss into one for summary judgment and granted it. The court found that the Indian Reorganization Act did not waive the government's sovereign immunity. However, the court found that the APA, which Plaintiff did not plead, provided the necessary waiver. Nonetheless, the court held that plaintiff failed to exhaust the administrative remedies and could not obtain a secretarial election until successfully obtaining recognition.

Continued Progress in Resolving Tribal Trust Litigation

In these highly contentious and resource-intensive cases, various tribes claim that the Departments of the Interior and Treasury have mismanaged tribal trust funds and natural resources for decades and seek relief in the form of accountings and monetary damages. Since October 1, 2010, ENRD has settled the claims of 86 tribes, resulting in the settlement of 57 lawsuits. Settlement of valid tribal trust claims is as important to our Division as our responsibility to protect the United States from meritless claims that the United States has breached its trust responsibilities to individual Indians or tribes.

- This year, ENRD resolved the “breach of trust” claims of the Chickasaw Nation and the Choctaw Nation, which spanned over 100 years, and included tribal allegations that the United States had unlawfully or unconstitutionally sold over a million acres of the tribes’ former trust lands, and featured tribal demands for the return of the lands and restitution or “restoration of the trust.” Under the settlement agreement, the United States paid \$186 million to settle all of the Nations’ claims regarding the accounting and management of their trust funds and natural resources. The agreement also paves the way for more cooperation and improved relations between the United States and the Nations in the future.
- Also, ENRD resolved the long-standing claims of the Gros Ventre Tribe and the Assiniboine Tribe of the Fort Belknap Reservation, without the need for protracted litigation. As part of the settlement agreement, the United States paid the tribes \$12.5 million, and in return the Tribes dismissed their “breach of trust” claims with prejudice, accepted certain trust account statements as the accountings required by law, and agreed to improved communications and informal dispute resolution with the United States regarding any future trust account disputes.



Fort Belknap Reservation,

American Indian Relief Council photo

Litigation Over Tribal Treaties

In *Jones v. United States* (Fed. Cir.), plaintiffs brought claims under the 1868 Treaty, which includes a “bad men” clause under which the United States indemnifies the tribe against “bad men,” between the Ute Tribe and the United States and a breach of trust claim related to the death of Mr. Murray, a member of the Ute Tribe. Mr. Murray died from a single gunshot wound following a high-speed chase with state law enforcement. The plaintiffs alleged that the BIA and the FBI failed to conduct a proper investigation into Mr. Murray’s death and failed to “protect the territorial integrity of the Tribe’s reservation.” The court determined, however, that plaintiffs had failed to state a cognizable

claim for most of the alleged wrongs under the 1868 Treaty because their allegations were of inaction or omissions, which were not recognized harms under the 1868 Treaty. The court also found that it lacked subject matter jurisdiction over a breach of trust claim because plaintiffs did not identify a specific statutory obligation that the United States failed to fulfill as part of its trust duties under the 1868 Treaty.

Indian Child Welfare Act

The Division vigorously defended, in *National Council for Adoption v. Jewell* (E.D. Va.), Interior's issuance of non-binding guidelines interpreting the Indian Child Welfare Act. The statute was enacted "to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by establishing minimum federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes or institutions which will reflect the unique values of Indian culture. . . ." The Division successfully argued that the plaintiffs lacked standing to sue and that the guidelines could not be challenged because they were not a final agency action.

SUPPORTING THE DIVISION'S STAFF

Promoting Diversity at Work

ENRD's Diversity Committee continued to support and promote the Department's Diversity and Inclusion Dialogue Program (DIDP). The purpose of the DIDP is to facilitate a deeper understanding of diversity and inclusion issues among DOJ employees. The program focuses on enhancing personal growth and effectiveness through communicating, listening, introspection, and building acceptance for differing perspectives. DIDP provides a safe, open, structured, and confidential environment where employees can freely discuss and explore the full spectrum of diversity and inclusion topics and how these aspects of diversity affect our ability to work together. In 2015, ENRD sponsored 19 participants in the DIDP program.

The Division continued its robust and technology-centered program and process for interviewing and evaluating law clerk candidates. The program, which reaches out to over 200 accredited U.S. law schools and solicits applications over the internet, creates opportunities for broadening the applicant pool and promoting diversity. This past year, the following improvements were made to the program: a web-based law clerk calendar was created and is accessible by all law clerk committee representatives; a "minutes" system to keep records of law clerk committee meetings was developed and implemented; hiring fairs were integrated into the Division law clerk hiring program (currently we participate in six fairs yearly, in different regions of the country, including one focused exclusively on minority candidates); and a new repository of cross-cutting demographic information about law clerks was created. The law clerk hiring process was further standardized this past year, so as to allow for a faster turnaround time between the close of a hiring period and the beginning of application review.

Recognition of Division Staff

- The LAS trial team was recognized by the Bonneville Power Administration (BPA) for their use of ADR in negotiating the resolution of multiple cases to acquire easements on behalf of the BPA to construct a 500-kilovolt transmission line in rural Washington State. Settling these cases saved the federal government and taxpayers over \$1.6 million. In recognition of this outstanding performance on the part of the trial team, BPA officials visited the Division's office, individually recognized each member of the trial team, and gave ENRD a plaque commemorating the



ENRD Award Ceremony,

DOJ photo



Jeffrey G Bank 2015
2015 Lands Open,

Jeff Bank photo

collaborative partnership of the Department and BPA in the resolution of these difficult land acquisition cases in a fair and just manner.

- LAS was also recognized by the Air Force for their work on the Nevada Testing and Training Range condemnation.
- NRS Senior Attorney Andrew Smith was honored with the “USDA 2015 General Counsel’s Award for Excellence, Outstanding DOJ Attorney.”
- Vallie Byrdsong, a member of the Office of Litigation Support technical team, received an award from ENRD’s Assistant Attorney General in recognition of his superior work on the *Emhart Industries, Inc. v. Air Force* (D.R.I.) case.
- IRS attorney John Turner received the EPA’s Silver Medal for Superior Service for exemplary work in EPA’s approval of the Clean Air Act Treatment as State (TAS) application for the Wind River Reservation.
- EES attorneys Katherine Kane, Erica H. Pencak, Marcello Mollo, and Alan Tenenbaum received the EPA’s Gold Medal for Exceptional Service for their work on the Anadarko Fraud Recovery Team.
- Jason Barbeau in EES was awarded an EPA Silver Medal for Exceptional Service for the Hyundai/Kia Clean Air Act matter (*United States and California Air Resources Board v. Hyundai Motor Co., et al.*), pursuant to which the automakers paid a \$100 million civil penalty and will spend approximately \$50 million on measures to prevent future violations.
- EES attorneys Steven Ellis, Richard Knodt, Sumona Majumdar, and Cathy Rojko earned an EPA Silver Medal for Superior Service for their work on the Clean Water Act case against the Metro Water Reclamation District of Greater Chicago, which secured approximately \$400 million in injunctive relief.
- ECS attorney Kenneth Nelson received the EPA’s Bronze Medal for Commendable Service for his work on the Noble Drilling Team.
- EES attorney Jason Dunn received the EPA’s Bronze Medal for Commendable Service for his contributions to the settlement of three major cases that were part of the New Source Review National Enforcement Initiative for Coal-Fired Utilities: *United States v. Consumers Energy*, *United States v. Arizona Public Service Co.* (the Four Corners power plant), and *United States v. Interstate Power and Light Co.* The settlements in these three matters are expected to reduce emissions from the power plants by approximately 88,000 tons per year and the expenditure of approximately \$1.78 billion on pollution-reducing measures.
- EPA conferred on Mark Gallagher in EES a Bronze Medal for Commendable Service for his work on the Financial Assurance Guidance Work Group, which developed the EPA Office of Site Remediation Enforcement’s Guidance on Financial Assurance in Superfund Settlement Agreements and Unilateral Administrative Orders (April 6, 2015), the first such comprehensive guidance document on the subject.

- Leslie Allen in EES earned an EPA Bronze Medal for Commendable Service for her work on the Ability to Pay Workgroup, which developed guidance for case teams in evaluating a violator's ability to pay a civil penalty.
- Joe Davis in EES and Saundra Doyle in the EO received the EPA's Bronze Medal for Commendable Service for their work on the Superfund Accounts Receivable Evaluation Team, which conducted a nationwide review of the timeliness and completeness of payments owed to the Superfund.
- Elliot Rockler and Katherine Vanderhook-Gomez in EES received Bronze Medals from EPA for their efforts to ensure the integrity of the Renewable Fuel program through their work on *United States v. Washakie Renewable Energy, LLC*. EPA's Renewable Fuel Standard (implementing the Energy Independence and Security Act of 2007) encourages the blending of renewable fuels into the motor vehicle fuel in the United States. Washakie generated more than 7.2 million renewable identification numbers (RINs) based upon its purported production of biodiesel at its Plymouth, Utah, facility. There was no evidence, however, that Washakie produced any biodiesel during the period covered by the complaint. To resolve an allegation that it generated 7.2 million invalid RINs, Washakie agreed to pay a civil penalty of \$3 million. Before the settlement Washakie retired more than 7.2 million RINs by purchasing RINs from other parties.
- EPA conferred Bronze Medals on Jason Dunn and Elias Quinn in EES for their work on *United States et al. v. Continental Carbon Co.*, which significantly cut emissions of harmful air pollutants at carbon-black manufacturing facilities in Alabama, Oklahoma, and Texas.
- Jack Lipshultz and Norman Rave of EDS were awarded EPA's Gold Medal for Exceptional Service for their work in *EPA v. EME Homer City Generation*, for their role in persuading the Supreme Court to uphold the Cross-State Air Pollution Rule and enabling EPA to protect citizens from neighboring states' air pollution.
- Amanda Shafer Berman, Jack Lipshultz, and Perry Rosen of EDS were awarded the Gold Medal for Exceptional Service by EPA as members of the Greenhouse Gas Supreme Court Litigation Team, for persuading the Supreme Court in *Utility Air Regulatory Group v. EPA* that the Clean Air Act requires major sources to address greenhouse gases in preconstruction permits.
- Eric Hostetler of EDS won a Bronze Medal award from EPA's Office of General Counsel for his exceptional legal work defending the Agency's Mercury Air Toxics Standards in the Supreme Court in *Michigan v. EPA*.

Adhering to Government Ethics and Professional Responsibility Standards

The Law and Policy Section serves as the Division's government ethics and professional responsibility officer and counselor. In addition to its regular day-to-day counseling on those issues, the section provided in-depth advice on several significant matters in fiscal year 2015. The section also provided live training on government ethics to every ENRD attorney.

Strengthening Public Access to Information on ENRD's Litigation Priorities

Once a settlement was reached with BP in the Deepwater Horizon matter, ENRD's Office of Information Management (OIM) published a webpage to solicit public comments on the proposed settlement agreement. The public comment period provides an opportunity for the widest array of interested parties to provide input on the historic settlement. The webpage, its contents, and the timing of its publication was the result of extraordinary coordination between ENRD's Environmental Enforcement Section, the National Park Service, and the National Oceanic and Atmospheric Administration.

In support of a joint February 11, 2015 announcement by the Departments of Justice, State and Interior on the "Implementation Plan for the National Strategy on Combatting Wildlife Trafficking", ENRD updated the Division's Wildlife Trafficking Website. The updates included the addition of key documents regarding federal efforts to address wildlife trafficking, as well as information on litigation developments.

Enhancing the Division's In-House Training Capacity

The Office of Human Resources continued to provide Division-wide training based on the needs of each of ENRD's sections. There was increased focus on communication and management skills in 2015, which included an effort to ensure that all professional administrative support staff were afforded an opportunity to participate in those areas of training. Courses included Legal Writing, Business Writing, Email Etiquette, Manager Tools, Leadership, Teambuilding, and Coaching. Several retirement courses were offered for personnel, and more classes are planned in FY 2016 so that field office personnel may participate. The honor grad training program was offered for CLE credit this year, in addition to offering the participants two hours of DOJ-specific professionalism training. Also, legal writing was included as part of the program for a second year. Regular quarterly reports are now being provided to management in order to assess training needs and trends. ENRD also streamlined its electronic approval and reporting systems for training.

Continuing to Meet Fiduciary Responsibilities under the Superfund Agreement

Attorneys and managers continue to rely on ENRD's internal time reporting system to view data concerning the amount of employee time billed to Superfund during a given week and during the year to date. This system facilitates ENRD's monitoring of resource allocations, which is required under an interagency agreement with EPA.

Being a Good Steward of Taxpayer Dollars

In fiscal year 2015, the Division effectively managed approximately \$233 million in budgetary resources from a variety of sources. In light of continued fiscal challenges, the Division had to manage its funding prudently in order to cover inflationary cost increases (such as higher rent costs, employee grade/step increases) and an increasingly challenging workload. Approximately 75% of ENRD's operating budget in fiscal year 2015 was dedicated to personnel expenses. ENRD will continue to pursue cost-saving opportunities and efficiencies to ensure long-term fiscal solvency in the face of future anticipated government-wide fiscal uncertainty and likely constraints.

Supporting the Division's Litigation Needs with Expert Services

In 2015, the Division executed a near-record number of expert witness contract actions with a total value of more than \$70 million. The 451 procurement actions carried out by Office of the Comptroller staff engaged a wide variety of experts, including many used during the Deepwater Horizon case and in other high profile litigation.

Providing Essential Litigation Support to the Division's Largest and Highest Profile Cases and Matters

ENRD, through its Office of Litigation Support (OLS), continued to fund and provide the staffing, management, tools and technical infrastructure needed to support the final Penalty Phase of the Deepwater Horizon oil spill litigation. ENRD's document management software, Relativity, played an integral role in centralizing both pretrial and trial-related activities for this complex case.

Though contractor staff continued to provide

legal support to the ENRD attorney team litigating this phase of the case, OLS took the lead in the technical support needed for both trial preparation and trial support. OLS technical staff processed and loaded over 17,000 trial and demonstrative exhibits to a Relativity database that was ultimately used for both exporting for trial presentations, as well as tracking for admissibility during court proceedings.

OLS also assisted with processing documents for the administrative record related to the case under an extremely tight deadline. OLS staff assisted both NOAA and Interior in processing and loading approximately 7,600 documents that were made available to the public on the same day that the consent decree for this case was lodged with the court.

ENRD's Office of Litigation Support also continued to provide valuable technical assistance and guidance at other trials in the Division during this calendar year. For example, OLS case managers and technical staff were an integral part of the successful *Emhart Industries, Inc. v. Air Force* (D.R.I.) trial in the Environmental Enforcement Section – an eight-week Superfund trial in Providence, Rhode Island. During 2015, OLS provided both pretrial and trial support, including on-site assistance, at over five other trials in the Division, at locations outside of the Washington, DC area.



Electronic Courtroom,

USCOURTS.gov photo

OLS Project User System (OPUS)

During 2015, the Office of Litigation Support continued the successful implementation of its OLS Project User System (OPUS), a software solution specifically designed by OLS management and technical staff to both streamline and effectively manage responses to requests for the full range of automated litigation support services available to the Division. These services include the full spectrum of processing options for electronically-stored information (to include culling, filtering, de-duplication on custodial or global level, troubleshooting and special handling of problem files, etc.); the hosting of data in Relativity databases, including the ongoing assistance to attorney teams with substantial document review projects; hard copy scanning; and, most importantly, the support for all industry standard document production formats. Approximately 5,750 requests comprising a wide range of both complexity and volume were submitted and completed during the year, an increase of over 1,000 compared to last year, when OPUS was first deployed. This increase in the number of requests during 2015 is illustrative of the Division's acceptance of OPUS as an effective means to not only track the progress of requests to OLS, but to also confirm that the processing decisions made (and often mandated by court order) are documented and consistently followed.

The Office of Litigation Support provides a full range of automated litigation support services that are available to the Division's employees. During 2015, approximately 6 million documents (45 million pages) were processed and 2 million unique documents (9 million pages) were produced by OLS technical staff members. A total of 6 million copies (54 million pages) were also produced and copies of production media including CDs, DVDs, and external hard drives.

Working with Client Agencies

The Office of Litigation Support made tremendous strides during 2015 in providing guidance to ENRD attorneys, as well as agency technical staff and counsel, on the collection of forensically-sound, electronically-stored information (ESI). OLS staff provided advice on collection issues such as the scope of the collection, the potential use of search terms to find responsive data, the selection of custodians, and the technical options available to effectively handle the data to be collected. OLS staff are now familiar with the relevant technical contacts at some of our biggest client agencies as well as the technical limitations posed by the email and document storage systems used by these agencies. This familiarity has made it easier for OLS staff to provide consultation and advice to the Division's attorneys prior to the start of discovery, and to provide troubleshooting assistance once the data has arrived for processing. As part of our collaboration with the client agencies on collection issues, OLS continued in 2015 to allocate licenses to the Harvester collection software owned by ENRD to assist those agencies that do not currently have an effective collection tool for preserving metadata. OLS provides instruction and guidance on the use of this software to ensure that collection is done correctly and in compliance with the discovery agreements reached in the case. The expertise in the collection of electronically-stored information that resides in ENRD's Office of Litigation Support has made its staff a consistent resource for both the ENRD attorney teams and the client agencies. In fact, in 2015, OLS staff was invited to participate in numerous meetings with the client agencies to provide advice on how these agencies can replicate the type of efficient litigation support that is provided by OLS to the Division.

Automating Work Processes

ENRD's Service Center continued to support Division attorneys and support staff in fiscal year 2015 by processing more than 35,000 electronic court filings. ENRD's Service Center downloaded the electronic documents from court websites, saved a copy to the lead attorney's document management directory, coded each filing, and printed a paper copy for the official files. The Service Center also processed 483 scanning requests from section personnel, and reproduced almost 1.5 million pages of electronic documents to paper format.

Employing Innovative Technology Solutions for ENRD's Workforce

The Office of Information Management rolled out a web-based version of its Case Management System replacing antiquated front-end software not supported commercially since 1999. CMS Web is an invaluable repository of case and time data allowing ENRD to provide critical information needed to effectively present Division costs in litigation, support our annual Superfund reimbursable funding agreement with EPA, and respond to various audit and congressional inquiries. CMS Web is also an increasingly useful resource for Division managers, allowing them to manage attorney workloads and case assignments, assess more efficient organizational structures, and streamline docket reviews.

The Office of Administrative Services, in concert with the Office of Information Management, developed a new website to keep ENRD staff informed about the latest news regarding the Division's potential future move to the NoMa ("North of Massachusetts Avenue") area of D.C. The site has a calendar, maps of the area, current dining options, transportation information, Division contact information and a suggestion box.

In fiscal year 2015, ENRD achieved success in implementing several significant information technology upgrades that will benefit all employees and enhance the Division's ability to effectively carry out its mission.

Deployed a VoIP-based phone system in the Denver Field Office

The Denver Field Office was in need of a phone system upgrade due to the age and condition of its existing system. A VoIP system was deployed in September of 2015. Included in the new VoIP deployment were new phone handsets for all employees along with advanced calling features such as enhanced call conferencing, follow-me call routing, voicemail integration with email, Bluetooth capability and more. Eventually all ENRD sites are expected to be upgraded to VoIP phone systems.

Installed new virtual server infrastructure in the San Francisco office

Two members of OIT traveled to the San Francisco Field Office in order to install new servers and network storage to be used as a new server virtualization platform for this office. The new virtual server platform will provide enhanced network services to this office but require less hardware. All of the new virtual servers were deployed using the latest operating system and all application software was upgraded to the latest versions. All of the legacy server and storage hardware was able to be excessed from the computer room, which resulted in a much lower overall power requirement for this site.

Deployed new Remote Access Servers across all ENRD Sites

ENRD has offered remote network access to all employees for over 20 years. The servers used to provide this service are deployed to four primary locations, including DC, Denver, San Francisco and our Continuity of Operations (COOP) site in Rockville MD. All of these servers were upgraded to the latest Microsoft operating system.

Completed the JCON5 upgrade for all ENRD locations

OIT deployed the JCON5 network upgrade primarily during 2014 but a few remote field sites were not able to be upgraded until 2015. The last offices that were upgraded to JCON5 included the Seattle and New Orleans offices. The JCON5 upgrade included new workstation hardware as well as upgrades to all software. Productivity, security, and morale are all dependent upon ENRD keeping such information technology assets up to date and providing employees with updated applications.

Procured 130 new laptops to replace aging inventory

OIT acquired 130 new laptops to replace aging inventory deployed throughout ENRD. These new laptops are in addition to 100 new laptops that were deployed during the previous year. OIT will continue to upgrade laptops, tablets and other mobile devices as needed.

Upgraded the Verizon mobile network infrastructure in PHB

OIT deployed Apple iPhones to all eligible employees in 2014 which utilize the Verizon LTE network for wireless communications. Shortly after the iPhone deployment was completed the wireless coverage in the Patrick Henry Building seemed to be problematic and unreliable. Based on these observations OIT contacted Verizon to have them perform a site survey. Based on the survey, Verizon decided to install new LTE hardware throughout PHB to upgrade wireless coverage and performance. These upgrades were completed in June 2015 and provided improved performance and coverage for all employees located in PHB.

Acquired and deployed licenses for online web conferencing services

ENRD employees have expressed an interest in utilizing online web conferencing services for many years, but historically JMD has blocked these services from being used on DOJ networks. Once JMD changed their policy, OIT acquired hosting licenses from three online web conferencing companies, which included GoToMeeting, Adobe Connect and WebEx. OIT distributed the licenses to many employees and the response has been very positive. Some examples of how these services have been used throughout ENRD include providing virtual online classrooms, hosting meetings to provide case litigation and support updates, utilizing online meeting events versus having employees travel, and participating in online collaboration activities that provide real-time document creation and mark-up.

Acquired and deployed new high-performance workstations for OIM and OLS

OIT acquired and deployed 30 high-performance workstation PCs for specific employees within the OLS, OIT and OIM groups. These PCs were deployed for staff members who required

greater performance for such tasks as application development, software testing, and GIS processing.

Supporting Travel for ENRD—Through the Division’s Web-Based Travel Management System

The Office of the Comptroller continues to support the Division’s travel management system, “E2,” first implemented in FY 2014. This new system ended the resource intensive practice of handling paper forms for employees seeking approval to travel and for securing reimbursement for travel expenses. We currently have 633 E2 users in the Division. Because E2 is integrated with CWTSato’s online booking engine and is a web-based system, travelers, travel arrangers, approving officials, and finance officials have greater flexibility and access to handle the travel needs of the Division. In addition, E2 provides important audit and compliance related checks-and-balances and introduces a much higher level of data integrity for the Division’s travel-related transactions that could not have been achieved using the previous, outdated travel system.

Supporting Records and Systems Management

The Office of Administrative Services (OAS) establishes and promotes a records management program for the Division in accordance with Department policy. In support of the National Archives and Records Administration (NARA) requirement for all employees to complete annual records management training, OAS identified important records management topics and created training material for implementation. Topics included an overview of records management, federal records, and other activities involved in managing records and information for the Division. OAS collaborated with the Office of Human Resources (OHR) to arrange the accessibility of the annual training via learnDOJ for completion and tracking purposes. A total of 702 employees received 2015 annual records management training.

OAS also designed training on the Division’s records tracking database, Autonomy Records Manager. The monthly training sessions are open to all new employees and anyone who desires refresher training. The classes are included on the Division’s Training Calendar. A total of 34 employees received training in FY 2015.

OAS and OHR met and implemented a feedback evaluation system to be used for JCON’s new employee orientation, which includes records management training. The evaluation enables new employees to give feedback regarding computer and records management training. This valuable feedback will allow the Executive Office to make necessary adjustments to the orientation process. A total of 104 new hires received training.

Promoting Security

To ensure the safety of Division personnel and facilities, in fiscal year 2015, ENRD held emergency evacuation drills for all PHB personnel and coordinated a number of COOP training and testing events for the entire Division. ENRD Continuity Program Managers participated in a COOP orientation at the primary continuity facility at Skyline Tower in Alexandria, Virginia in March 2015 and in April, 63 employees from Washington, D.C., and five field offices participated in a telework exercise that tested the ability of the Division’s computer systems to handle a large volume of remote users simultaneously. The Division also completed annual safety inspections

of all ENRD offices (Washington, D.C., and field offices) in compliance with DOJ Safety Order 1779.2B.

Greening the Division

The Division held its 12th annual Earth Day service celebration at Marvin Gaye Park in April 2015. This year's projects were once again focused on the Park's Greening Center. The Greening Center is the largest inner city garden in the Washington area and provides tons of fresh produce to the people in the neighborhood. This year over 80 ENRD volunteers helped



Earth Day Marvin Gaye Park,

DOJ photo

plant new gardens, erect new greenhouses, weed and cut grass. The new greenhouses will allow park personnel to grow vegetables for the community all year long.

ENRD also continued to lead the Department in green building initiatives. The Division maintained its trend of lowering energy usage in the Patrick Henry Building (PHB) for the 8th consecutive year. PHB, where ENRD is the primary tenant, received an Energy Star certification in 2014 and continues to meet the environmental standards necessary to continue the LEED certification received in 2012.

Finally, the Division saved staff time and money by having contractors in the records management warehouse in Landover, Maryland, shred and recycle over 468 boxes of paper in fiscal year 2015 using the Division's high speed shredder.