

ENRD

Accomplishments Report Fiscal Year 2018



United States Department of Justice
Environment & Natural Resources Division

**ENRD
SUMMARY OF DIVISION ACCOMPLISHMENTS
FISCAL YEAR 2018**

**UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION**

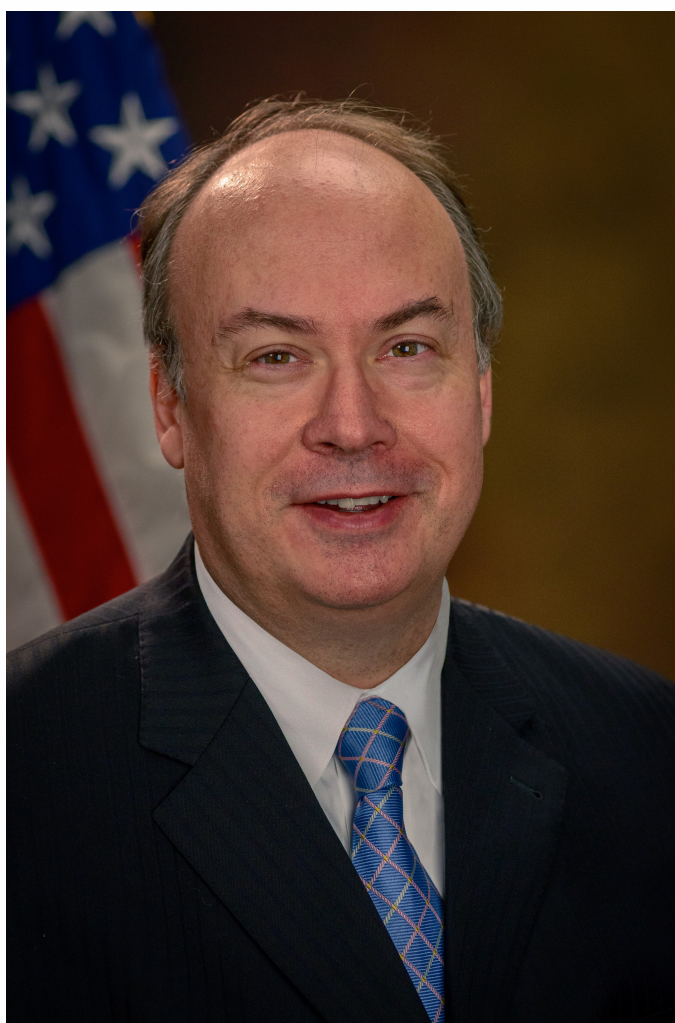


White River National Forest, Colorado, Department of Interior

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Foreword



Jeffrey Bossert Clark, Assistant Attorney General of the Environment and Natural Resources Division

Foreword

I am proud to share the 2018 accomplishments of the Environment and Natural Resources Division of the United States Department of Justice. The United States Senate confirmed me to be the Division's Assistant Attorney General on October 11, 2018, just after fiscal year 2018 concluded. While the accomplishments described in this report pre-date my tenure, I am honored to report them to the American people and am privileged to have been chosen to continue the legacy and mission of this Division.

The Accomplishments Report that follows represents the Division's work in fiscal year 2018, under the leadership of then-Acting Assistant Attorney General Jeffrey H. Wood. I am deeply thankful for his service and fine leadership during the start of this Presidential administration. I also want to express my appreciation to our Division's front office leadership, who served the Division during 2018 and continue to serve with me as we move into 2019: Principal Deputy Assistant Attorney General Jonathan Brightbill; Deputy Assistant Attorneys General Jean Williams, Bruce Gelber, Eric Grant; and Lawrence VanDyke; and Counsel and Chief of Staff Corinne Snow. I thank them for their work assisting my transition and leading ENRD in achieving the Division's mission. We all look forward to continuing our work together under the leadership of Attorney General William Barr, confirmed earlier this year.

In fiscal year 2018, the Division focused on several key objectives, which we continue into 2019: vigorously enforcing the pollution abatement and wildlife protection laws of the United States, particularly in cases involving fraud or abuse; promoting energy independence and economic growth by defending the reduction of regulatory burdens and supporting infrastructure development; strengthening national security and border protection; promoting cooperative federalism; and protecting the public fisc.

The Division achieved many impressive enforcement successes in 2018. In all of our work, ENRD takes seriously our role in protecting the public. In fiscal year 2018, ENRD worked on approximately 3,800 cases and matters, while maintaining a robust docket of over 6,750 cases and matters. We obtained over \$260 million in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief obtained—including clean-up and pollution-prevention actions funded by private parties—exceeded \$3.3 billion.

On the civil side, ENRD continued a robust program of enforcement that reflects key priorities of our client agencies designed to protect the health and well-being of the American people. For example, consistent with the priority the Environmental Protection Agency (EPA) has placed on protecting children from lead exposure, we entered into a civil settlement with Doe Run Resources Company that requires the company to pay for the excavation of lead-contaminated soil from over 4,000 residential properties in an area where between 10 and 15 percent of children are known to have elevated blood lead levels as a result of historical lead contamination.

On the criminal side, ENRD continued its successful efforts to ensure the integrity of the renewable fuels program through prosecutions of companies that knowingly cheat the federal treasury and the American public through the sale of fraudulent Renewable Identification Numbers (RINs), credits that reflect a volume of renewable fuel manufactured. The Division added to its success in 2018 by convicting four defendants who were sentenced to lengthy prison terms (totaling 279 months of imprisonment) and ordered to pay over \$65 million in restitution and forfeit \$12.5 million for various multistate schemes to defraud RIN buyers and U.S. taxpayers.

The Division was honored to join then-Attorney General Jeff Sessions in representing the United States at the London Conference on Illegal Wildlife Trade. ENRD also hosted the Attorney General's Forum on Combating Wildlife Poaching and Trafficking, in Washington, D.C. The Forum emphasized the Department's and this Division's commitment to combating wildlife trafficking and ending the devastating consequences of these transnational organized crimes.

The Division's defensive work was just as impressive. We successfully defended legal challenges to the Trump Administration's regulatory and other actions by agencies such as the EPA, the Department of Interior (DOI), the Department of Homeland Security (DHS), and the Department of Defense (DOD). By defending the actions of our client agencies, the Division plays a critical role in paving the way for infrastructure and energy security projects that will strengthen the U.S. economy and facilitating border control and military operations to protect our national security. We successfully defended against challenges to permitting decisions related to the Dakota Access Pipeline and the Bayou Bridge Pipeline, allowing construction of those pipelines to proceed. We also have successfully defended against challenges to coal leases and mining plans. Through the successful defense of claims brought against the government, ENRD estimates it saved the government over \$10.6 billion in 2018.

As we reflect on our 2018 accomplishments, we also look forward to 2019. Under my leadership in 2019, we have already had a number of successes. For example, the Division continued its important work bringing to justice automobile companies that illegally and fraudulently installed "defeat devices" in diesel engines meant to cheat Clean Air Act requirements. As a result of that work, ENRD concluded a settlement with Fiat Chrysler in early 2019 that requires the company, among other things, to implement a recall program to repair their noncompliant vehicles. We also concluded a long-standing case addressing PCB contamination at the Lower Fox River and Green Bay Site in Wisconsin. This resulted in clean-up actions at the site and reimbursement to EPA of past costs and future oversight costs, as well as restoration of natural resource damages and long-term monitoring and maintenance.

I am committed to continuing the good work of our Division, defending the rule of law, and promoting the President's agenda of regulatory reform. We will fairly enforce our Nation's environmental laws, focusing on bad actors who aim to get an advantage over others by cheating the system. We will also support the high priority work of our client agencies, such as acquiring land for the construction of a wall along our southern border.

In closing, I reflect on the oath of office that I took in October. I swore to “support and defend the Constitution of the United States” and “bear true faith and allegiance to the same.” Environmental law always leads us back to the bedrock principles enshrined in our Constitution—core principles like federalism, the separation of powers, and due process, to name a few. These principles have guided our Nation for almost a quarter of a millennium, and they serve as a guidepost for everything we do in ENRD. As I observed at my investiture ceremony, it is a commitment to these principles that will guide us in implementing President Trump’s agenda, allowing the American people to enjoy clean water, clean air, safe beaches, and national parks along with secure borders and a prosperous national economy.

I am proud of the hard work of our extraordinary and dedicated attorneys and staff, in 2018 and beyond. I look forward to continuing the important work of the Division in achieving our mission together.



Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
May 31, 2019

Overview of the Environment and Natural Resources Division



Eagletail Mountains Wilderness, Arizona, Bureau of Land Management

Overview of the Environment and Natural Resources Division

The Environment and Natural Resources Division (the Division or ENRD) was established in 1909, on the heels of the administration of President Theodore Roosevelt. He reminded us, “The Nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value.” 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. Wickersham 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. Its name changed to the “Environment and Natural Resources Division” to better reflect those responsibilities. Over 100 years after our founding, ENRD is as mindful as ever of the strong legacy that we 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, organized into ten sections. The Division represents virtually every federal agency in cases arising in all 50 states and the United States territories.

The Division has a critical role enforcing federal environmental laws, both criminally and civilly. These include the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Act to Prevent Pollution from Ships (APPS), the Oil Pollution Act (OPA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), the Toxic Substance Control Act (TSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The main federal agencies that the Division represents in these areas are the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), the U.S. Coast Guard (USCG), and federal natural resource trustee agencies, including the U.S. Department of the Interior (Interior or DOI), the U.S. Department of Agriculture (USDA), and the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce (DOC or Commerce). The Division’s sections that carry out this work are the **Environmental Enforcement Section (EES)**, the **Environmental Defense Section (EDS)**, and the **Environmental Crimes Section (ECS)**. The Chiefs of these sections are Tom Mariani, 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 and rain forest, 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; 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 timber and subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, including USDA's Forest Service and the many components of DOI, such as the National Park Service (NPS), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). The **Natural Resources Section (NRS)**, led by Lisa L. Russell, is primarily responsible for these cases.

The Division's **Wildlife and Marine Resources Section (WMRS)** handles civil cases arising under the Federal fish and wildlife conservation laws. This work includes defending agency actions under the Endangered Species Act (ESA), which protects endangered and threatened animal and plant species; the Marine Mammal Protection Act (MMPA), which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which regulates fishery resources. The section also has responsibility for civil enforcement and forfeiture related to federal animal welfare statutes. The Chief of WMRS is Seth Barsky. The **Environmental Crimes Section** brings criminal prosecutions under these laws, often through provisions of the Lacey Act, which makes interstate and international trafficking in illegal wildlife a felony. The main federal agencies that ENRD represents in this area are the FWS and NOAA's National Marine Fisheries Service (NMFS). ECS also works with agents from USDA prosecuting animal welfare crimes.

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 taken an interest in real 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 CAA and CWA, 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 (DOD), EPA, the Corps, the U.S. Department of Transportation (DOT), and DOI'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-security related purposes, national parks, and the construction of federal buildings. The **Land Acquisition Section (LAS)** is responsible for this litigation. The Chief of the Land Acquisition Section is Andrew Goldfrank.

The Division's **Indian Resources Section (IRS)** litigates on behalf of federal agencies to protect the lands and associated resources of federally recognized Indian tribes and their members; the United States holds the majority of these lands and resources in trust for tribes. This litigation

includes defending against challenges to statutes and agency actions that protect tribal interests, and bringing suit on behalf of federal agencies to protect tribal rights, lands, and natural resources. The Chief of the Indian Resources Section is Craig Alexander. The rights, lands, and resources at issue include water rights, hunting and fishing rights, the protection of trust lands and minerals, and the government's ability to acquire reservation land, 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 (BIA).

The **Appellate Section** handles the appeals of all cases originally 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 (LPS)** 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 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. It also coordinates the Division's Freedom of Information Act (FOIA) and correspondence work. LPS, along with EPA, is leading the development of the federal Environmental Crime Victim Assistance Program. The Chief of the Law and Policy Section is Karen Wardzinski.

The **Executive Office (EO)** 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 **Office of the Assistant Attorney General (OAAG)** is a cadre of extraordinary attorneys who ensure the Division's work is accomplished in a timely and professional manner each day. Principal Deputy Assistant Attorney General Jonathan Brightbill supervises the Environmental Defense Section, the Land Acquisition Section, and the Law and Policy Section. Deputy Assistant Attorney General Eric Grant supervises the Appellate Section and the Indian Resources Section.

Deputy Assistant Attorney General Lawrence VanDyke supervises the Natural Resources Section. Deputy Assistant Attorney General Jean Williams supervises the Environmental Crimes Section and the Wildlife and Marine Resources Section. Deputy Assistant Attorney General Bruce Gelber supervises the Environmental Enforcement Section and the Division's Executive Office. In addition, Andrea Berlowe is the Counselor for State and Local Matters, Cynthia Ferguson is the Counselor for Environmental Justice, Sarah Himmelhoch is the Senior Litigation Counsel for E-Discovery, and Alan Tenenbaum is the Division's National Bankruptcy Coordinator. The Chief of Staff and Counsel is Corinne Snow.

Recognizing Our Staff



Assembly in Great Hall, Department of Justice

Recognizing Our Staff

In ENRD, we are proud of the work we do and the people who do it. Our attorneys and staff have been recognized for their great work in a number of areas this past year.

The Attorney General's Award for Distinguished Service, the Department's second highest award for employee performance, was presented to Jean Williams, Deputy Assistant Attorney General in the OAAG Office.

The Attorney General's Award for Providing Legal Advice was presented to R. Justin Smith, Assistant Section Chief of the Law and Policy Section, and Wendy J. Miller, Senior Counsel in the Law and Policy Section, for their work implementing then-Attorney General Sessions' June 5, 2017 memorandum generally prohibiting settlement payments to third parties in U.S. Department of Justice cases.

The Attorney General's Award for Support of Litigation was presented to Allen M. Brabender, Trial Attorney in the Appellate Section, and John P. Tustin, Senior Attorney in the Natural Resources Section, for obtaining an outstanding result in the Tongass National Forest Litigation. The team defeated efforts to scuttle a well-designed logging project vital to the economic well-being of rural Alaskan communities. The team went above and beyond, quickly mastering an immense administrative record and responding to multiple coordinated attacks on the project, including several attempts at preliminary injunctive relief that, if granted, would have stopped the local timber economy in its tracks.

Andrea L. Berlowe, Senior Counsel in the Law and Policy Section, was awarded the Claudia J. Flynn Award for Professional Responsibility for her exceptional and dedicated work as the Division's primary professional responsibility and ethics advisor. Ms. Berlowe provided indispensable advice with respect to two high-profile Division enforcement matters, namely the cases against Volkswagen and Fiat Chrysler Automobiles. These raised a wide range of novel and difficult professional responsibility issues. During her tenure, Ms. Berlowe has provided timely, measured, and high quality guidance on numerous, difficult matters critical to the Division's mission, often under great time pressure, helping to ensure that the Division is able to vigorously represent its clients while also complying with its professional responsibility obligations.

Jennifer Blackwell received an Executive Office for United States Attorneys (EOUSA) Director's Award for Outstanding Work by a Litigative Team in recognition of her work on the Volkswagen investigation.

Nathaniel Douglas, Deputy Section Chief in EES, received a length-in service award for serving in the federal government for 50 years.

A number of Division staff also received awards from other federal agencies and from outside organizations.

Katherine Abend, Nicole Veilleux, Jason Dunn, and Elias Quinn of EES received an EPA Gold Medal in recognition of the Carbon Black Team's outstanding work concluding settlements that will result in significant reductions in air pollution in six states.

Richard Knodt, Sheila McAnaney, Joe Warren, and Steve Willey of EES received an EPA Gold Medal in recognition of negotiations and implementation of a consent decree requiring Enbridge Energy to pay a \$62 million penalty and implement comprehensive measures to prevent oil spills across 1,900 miles of pipeline.

Rachel King and Ruben Gomez of EES received an EPA Gold Medal for extraordinary achievement in the judicial enforcement of underground storage tank rules, resulting in significant environmental benefits and enhanced deterrence of illegal conduct.

Peter Flynn and Betty Yu of EES received an EPA Silver Medal for the successful negotiation and entry of a consent decree resolving CWA violations at 65 home construction sites and requiring corporate-wide stormwater compliance.

Anna Cross and Jeffrey Spector of EES received an EPA Silver Medal for efforts leading to a settlement with S.H. Bell Company to address health impacts on the East Liverpool, Ohio, and Glasgow, Pennsylvania, communities from manganese emissions.

Chris Costantini and Stephen Foster of ECS received an EPA Bronze Medal for their work on the Halek Criminal Case Team, leading to the successful Safe Drinking Water Act prosecution involving the disposal of wastewater from fracking operations in Dickinson, North Dakota.

Adam Cullman and Jeremy Korzenik of ECS received an EPA Bronze Medal for their work on the Triton Energy Team. The team successfully prosecuted eight individuals in Indiana and Ohio for their roles in a scheme that generated over \$60 million in renewable fuels credit and tax fraud related to EPA's renewable fuels credits program.

Samara Spence and Erica Zilioli of EDS were recognized with an EPA bronze medal for their work on the 9th Circuit challenges to the TSCA risk prioritization and evaluation rules, one of the more significant of EPA's foundational rules implementing the 2016 amendments to TSCA.

Eileen McDonough of EDS was awarded an EPA Bronze Medal for her handling of three related suits alleging that EPA failed to timely review certain emissions standards. EPA specifically commended her excellent counsel and advocacy.

EES attorney Mark Elmer received an EPA Bronze Medal for his success in achieving a CAA settlement, involving more than 300 facilities in eastern Ohio and western Pennsylvania that gather and transport natural gas and natural gas condensates through pipelines.

In November 2017, ECS Deputy Chief Joe Poux and his Pollution Crime Working Group received the International Criminal Police Organization's (INTERPOL) Environmental Compliance and Enforcement Committee's first-ever INTERPOL Award for Outstanding Achievement in the

Fields of Environmental Compliance and Enforcement for their work on Operation 30 Days of Action.

Thomas Franzinger of ECS was presented with the Internal Revenue Service (IRS) Criminal Investigation Division Chief's Award for Investigative Excellence. The Gen-X Biofuel Fraud Investigative Team unraveled a scheme that generated more than 72 million Renewable Identification Numbers (RINs) that netted participants at least \$57 million in proceeds, as well as \$9.5 million in illegal tax credits. To date, Gen-X defendants have received sentences ranging from 73 to 105 months, and have been ordered to pay restitution of more than \$15 million to the IRS and third-party victims of the RIN fraud.

Adam Cullman of ECS and Erica Zilioli of EDS received the Federal Bar Association's Younger Federal Lawyers Award. This national award is presented to only five federal attorneys each year, in recognition of their outstanding legal ability and significant contributions to the community.

ECS/ENRD received the American Society for the Prevention of Cruelty to Animals' (ASPCA) Champion for Animals Award in April. The award honors organizations and individuals who have shown outstanding dedication to end dogfighting in their communities.

Enforcing the Nation's Environmental and Wildlife Protection Laws



Sockeye Salmon in a Small Stream, Fish and Wildlife Service

Enforcing the Nation’s Environmental and Wildlife Protection Laws

Robust enforcement of our nation’s environmental and wildlife protection laws is a high priority and a vital feature of the Division’s mission. In pursuing our enforcement mission, we strive to adhere to the fair and impartial rule of law, enhance federalism, exercise pragmatic decision-making, coordinate and collaborate with lead agencies and U.S. Attorneys offices, and protect the public fisc.

The Division brings civil and criminal actions under the nation’s environmental and wildlife protection laws to ensure that all Americans enjoy a clean environment and our wildlife is protected. Civil enforcement results in injunctive relief — court orders requiring defendants to clean up contaminated sites or install pollution-control equipment. Civil enforcement also imposes civil penalties on violators and recovers “costs” — the money government agencies spent responding to spills or cleaning up contaminated sites. Criminal cases may lead to confinement and the payment of criminal penalties, including fines, restitution, and forfeiture.

Fiscal year 2018 was a successful year for the Division’s enforcement program. The Division obtained over \$3.3 billion in injunctive relief, over \$100 million in cost recovery and over \$54 million in civil penalties. ENRD also achieved convictions of 51 defendants in 34 cases. Criminal penalties totaled \$48 million, and confinement of 65 years was ordered for 70 individuals.

Superfund: Requiring Cleanups and Recovering Government Expenditures

By filing suits under CERCLA, the Division requires responsible parties to clean up hazardous waste and to reimburse the government for cleanups already conducted by the United States. The CERCLA program operates on the principle that the cost of cleaning up a site should fall not on taxpayers, but on those responsible for the contamination. The Division’s CERCLA litigation primarily deals with contamination left behind by past operations.

In fiscal year 2018, the Division secured 30 CERCLA settlements and judgments. The settlements and judgments obtained in actions brought on behalf of EPA obtained clean-up work estimated to cost more than \$170 million and over \$88 million in costs previously expended by EPA.

The consent decree in *United States v. Doe Run Resources Corporation* (E.D. Mo.), a settlement signed by the United States, the State of Missouri, and the Doe Run Resources Corporation, requires the company to excavate lead-contaminated soil on approximately 4,100 affected residential properties near the Big River Mine Tailings Site in St. Francois County, Missouri, and to perform additional cleanup at the Hayden Creek mine waste area. Historical mining activities had released hazardous heavy metals, including lead, cadmium, and zinc, onto residential properties. In certain areas of the mine site, between 9.3 percent and 16.7 percent of children have elevated blood lead levels. Under this settlement, EPA will contribute up to approximately \$31.5 million toward the cleanup, which is estimated to cost more than \$109 million.

In *United States v. AAI Corporation* (D. Md.), the Division negotiated a settlement with more than 40 parties to clean up the 68th Street Dump/Industrial Enterprises Superfund Site in Baltimore County, Maryland, which encompasses several landfills that accepted industrial and commercial waste from the 1950s through the 1970s. Among other things, the planned cleanup requires the excavation of the most contaminated soil and pond sediments, the installation of a soil cap over contaminated areas, and the collection and treatment of contaminated groundwater and leachate from the old fills. The approved cleanup is estimated to cost \$51.5 million. The settlement also resolved claims of the natural resources trustees.

Keeping Our Air Clean

ENRD enforces the Clean Air Act, which is the primary federal statute protecting the quality of the nation's air. The pollutants regulated under the CAA have numerous adverse effects on human health, including severe respiratory and cardiovascular impacts and premature death, and are significant contributors to acid rain, smog, and haze.

Addressing Pollution from Vehicles

On January 10, 2019, the United States and the State of California announced a settlement with Fiat Chrysler resolving alleged violations of the CAA and California law. The United States' case against the automaker — *In Re: Chrysler-Dodge-Jeep Ecodiesel Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal.) — began in May 2017, when the Division filed a civil complaint alleging that the company had used “defeat devices” to cheat on emissions tests. A defeat device is something — here software — that reduces the effectiveness of the emission control system during normal on-road driving conditions. Defeat devices detect when a vehicle is being tested for compliance with emissions standards and so fully activate the vehicle's emissions controls. During normal driving conditions, however, defeat-device software renders certain emission control systems completely or partially inoperative, greatly increasing the vehicle's emissions. The U.S. complaint alleged that Fiat Chrysler equipped over 100,000 3.0-liter “EcoDiesel” Ram 1500 and Jeep Grand Cherokee vehicles in model years 2014 through 2016 with illegal defeat devices. EPA discovered the defeat devices during enhanced vehicle testing at the National Vehicle and Fuel Emissions Laboratory (NVFEL). Under the settlement, Fiat Chrysler will implement a recall program to repair noncompliant diesel vehicles. To offset the air pollution emitted by the non-compliant vehicles, the settlement requires Fiat Chrysler to work with one or more vendors of aftermarket catalytic converters and improve the efficiency of 200,000 converters sold in the 47 states that do not already require the use of the California-mandated high-efficiency gasoline-vehicle catalysts. The mitigation program under the joint U.S. and California settlement is expected to fully mitigate nitrogen oxide (NOx) emissions caused by Fiat Chrysler's violations outside of California. The recall and mitigation project required by the joint U.S. and California settlement is estimated to cost approximately \$185 million. (The State of California has a separate settlement with Fiat Chrysler with a separate mitigation program that will fully address excess NOx from affected vehicles in California. That mitigation project is expected to cost \$19 million.) To resolve the alleged violations of the CAA, Fiat Chrysler will pay a penalty of \$305 million.

Addressing Air Pollution from Stationary Sources

The settlement negotiated by the Division in *United States v. Exxon Mobil Corp.* (S.D. Tex.) will eliminate thousands of tons of harmful air pollution from eight of Exxon's petrochemical manufacturing facilities in Texas and Louisiana. It requires ExxonMobil to pay \$2.5 million in civil penalties, to both the United States and Louisiana. The settlement resolved allegations that the company violated the CAA by failing to properly operate and monitor industrial flares at its petrochemical facilities, which resulted in excess emissions of harmful air pollution. ExxonMobil will spend approximately \$300 million to install and operate air-pollution-control-and-monitoring technology, which is estimated to reduce emissions of volatile organic compounds (VOCs), a key component in the formation of smog, by more than 7,000 tons per year, and reduce toxic air pollutants including carcinogens by more than 1,500 tons per year.

The Division negotiated a settlement in *United States v. Anchor Glass Container, Inc.* (M.D. Fla.), involving all six of its container-glass manufacturing facilities, located in Florida, Georgia, Indiana, Minnesota, New York, and Oklahoma. The agreement requires Anchor Glass to implement pollution controls and meet more stringent emissions limits. The complaint alleged that Anchor Glass violated the CAA when it failed to seek New Source Review permits for major modifications at manufacturing facilities. It is estimated that NO_x emissions will be reduced by over 2,000 tons per year, sulfur dioxide (SO₂) emissions will be reduced by over 700 tons per year, and particulate matter (PM) emissions will be reduced by over 100 tons per year, as a result of the settlement. The company will spend approximately \$40 million implementing the pollution reduction requirements and pay a \$1.1 million civil penalty.

The Division also negotiated a settlement in *United States v. PDC Energy, Inc.* (D. Colo.), in which the United States alleged that PDC Energy violated requirements to reduce VOC emissions from its oil and gas exploration and production activities in the Denver area. Under the settlement, PDC will spend an estimated \$18 million on system upgrades, improved operations and maintenance practices, monitoring, and inspections. PDC will also be required to implement environmental mitigation projects at certain sites to further reduce VOC and NO_x emissions, at an estimated cost of \$1.7 million, and pay a \$2.5 million civil penalty split between the United States and Colorado. Some of the state penalty amount may be offset with a supplemental environmental project. EPA estimates that these efforts will reduce VOC emissions by more than 1,600 tons per year.

Reducing the Risk of Accidental Releases of Hazardous Chemicals

Under the settlement agreement in *United States v. MFA Inc. and MFA Enterprises, Inc.* (W.D. Mo.), MFA will assure that its accident prevention program complies with all applicable CAA requirements. The complaint alleged that the company's management of anhydrous ammonia, a nitrogen fertilizer, at nine Missouri facilities violated the accident-prevention provisions of the Risk Management Program of the CAA. Under the settlement agreement, MFA will install emergency shutoff equipment at 53 facilities, at an estimated cost of \$400,000; list accidents

and releases on its website; and hire an independent third-party auditor to conduct Risk Management Program audits at 20 facilities to identify and correct any potential violations of MFA's risk management program. MFA will also pay a civil penalty of \$850,000.

Keeping Our Water Clean

ENRD helps to keep our nation's waters clean, by enforcing the Clean Water Act, which is the primary federal statute protecting the quality of the nation's water, and regulates pollution from both industrial and municipal facilities. Together with the Oil Pollution Act (OPA), the CWA also prohibits oil spills.

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 — the discharge of untreated or poorly treated sewage from aging collection and treatment systems. Overflows from municipal sewage collection systems often occur in areas used by the public, including children. Overflows pose a significant threat to public health and remain a leading cause of water quality impairment. Raw sewage contains organic matter, toxins, metals, and pathogens that threaten public health, contaminate fish, and deter recreational use of beaches, rivers, and streams. Untreated and poorly treated sewage often contains total suspended solids, nitrogen, phosphorus, and "biological oxygen demand" (organic matter that consumes oxygen as it is broken down by aquatic organisms). High levels of total suspended solids increase water temperatures, decrease oxygen levels, and, by blocking sunlight, inhibit photosynthesis. Too much nitrogen and phosphorus can cause algal blooms that contribute to the creation of hypoxic "dead zones," where oxygen levels are so low that little can survive.

Our principal objective in municipal cases is to reach agreements requiring collection and treatment works to comply with the CWA. Our work also helps to protect low-income and minority communities in older urban areas with serious infrastructure problems. In fiscal year 2018, courts approved three major Division settlements, which collectively required an estimated \$2 billion in infrastructure improvements.

Enforcing CWA Discharge Permits

Clean Water Act permits authorize the discharge of limited amounts of certain pollutants to rivers, streams, and other water bodies. Permit holders are required to monitor their discharges and report the results to the state agency that issued the permit.

In *United States v. Starkist Co. and Starkist Samoa Co.* (W.D.Pa.), the Division negotiated a settlement resolving alleged environmental violations at the companies' tuna processing facility in American Samoa. An EPA investigation, prompted by information from the American Samoa Environmental Protection Agency, revealed that the facility's wastewater treatment system was discharging pollutants at levels that consistently exceeded the amounts allowed by the facility's

CWA discharge permit. The settlement includes a requirement that the companies upgrade the wastewater treatment system. The facility's annual discharge of pollutants will be reduced by at least 85 percent — a total reduction of more than 13 million pounds of pollutants per year. StarKist will also provide \$88,000 worth of emergency response equipment to the American Samoa Fire Department, the department that would respond to a chemical release at the facility. StarKist will also pay a \$6.3 million civil penalty.

Protecting Our Oceans, Rivers, and Streams from Oil Spills and Spills of Hazardous Substances

ENRD protects water bodies from spills of oil and hazardous substances through enforcement of the CWA, OPA, APPS, and the Refuse Act. In 2018, the Division pursued a number of matters against shipping and fishing companies for spills into waters of the United States. Cases often involve the discharge of oily bilge water, which contains fuel, lubricating oils, and other wastes. Discharging oily mixtures overboard, whether by directly discharging oily bilge water that has not been properly treated or by attempting to pump only the portion of the oily water that lies beneath a layer of floating oil (so-called “decanting”) has long been illegal under federal law. The Division has brought both criminal and civil cases in this area. Cumulative criminal penalties imposed as a result of ENRD's Vessel Pollution Program, which began in the late 1990s, total more than \$466 million in criminal fines and more than 319 months of confinement. This program has resulted in convictions for 145 organizations. Some 1,500 vessels associated with those investigations, most of them foreign-flagged, have been subject to extra scrutiny under environmental compliance plans. Civil enforcement has also been very effective.

In *United States v. MST Mineralien Schiffahrt Spedition und Transport GmbH* (D. Minn.), MST was on probation for vessel pollution in the District of Minnesota. It was discovered to have bypassed pollution control equipment and illegally discharged oily waste from a vessel in the District of Maine. MST pleaded guilty to violating APPS, which implements the International Convention for the Prevention of Pollution from Ships (MARPOL), and obstruction of justice for maintaining and presenting a false oil record book on eight occasions in ports of Maine. MST was sentenced to pay a \$3.2 million fine, and to serve a four-year term of probation during which vessels operated by the company will be required to implement an environmental compliance plan, including inspections by an independent auditor.

In *United States v. Oceanic Illsabe & Oceanfleet Shipping* (4th Cir.), the Fourth Circuit affirmed the convictions and sentences of two Greek shipping companies prosecuted under APPS. Defendants were the owner and operator of the vessel Ocean Hope. The vessel's second engineer, with the chief engineer's knowledge, directed crew members to use a “magic pipe” to pump oily bilge water and sludge directly overboard rather than using the ship's oily water separator or incinerator. Under a theory of vicarious corporate liability, the defendants were convicted of aiding and abetting the failure to maintain an accurate oil record book under APPS and of several counts of obstructing justice during the Coast Guard's port state control examination and subsequent criminal investigation. Together, the defendants were sentenced to a \$2.7 million fine and probation conditions that included a five-year prohibition on entering

a port of the United States. The Fourth Circuit upheld the defendants' convictions and sentences.

In *United States v. Darren Byler* (9th Cir.), the Ninth Circuit affirmed the defendant's conviction for violations of the Refuse Act. This prohibits the dumping of refuse into navigable waters, and for making false statements in violation of 18 U.S.C. 1001. The defendant operated an infamous "stripper boat" in the harbor of Kodiak, Alaska, during the summer of 2015. He provided logs to the Coast Guard representing that he had disposed of the waste from the two bathrooms aboard the ship by emptying the refuse into a large rubber bladder and disposing of it more than three miles offshore. However, a Coast Guard inspection determined that at least one of the bathrooms emptied directly into the harbor. The appellate court rejected arguments that the defendant's activities were not prohibited by the Refuse Act.

The Division reached a settlement in *United States v. Challenge Fisheries LLC* (D. Mass.), involving allegations that two companies and two individuals were liable for violations of the CWA related to the fishing vessel *Challenge's* operations in New Bedford Harbor and in coastal waters off of southeastern New England. The complaint alleged that, to extend the duration of their fishing voyages, the defendants discharged engine-room bilge rather than retain the waste onboard. The settlement requires the defendants to pay a total of \$414,000 in civil penalties and implement corrective measures across the defendants' fleet of fishing vessels.

United States v. Capt. Millions III, LLC (D. Haw.) and *United States v. (CFV) Triple Dragon* (D. Haw.), involved similar violations. The settlement agreement in these cases requires the defendants to pay civil penalties based on ability to pay, and implement corrective measures including repairing the vessels to reduce the quantity of oily waste generated during a fishing voyage, providing crewmembers with training on the proper handling of oily wastes, documenting proper oily waste disposal after returning to port, and submitting compliance reports to the Coast Guard and the Department of Justice.

Protecting Wetlands

The Division pursued a number of cases under CWA section 404, which prevents the discharge of dredged or fill material into wetlands without a permit.

In *United States v. Robertson* (9th Cir.), the circuit court affirmed a conviction for depositing fill material into stream beds without a permit. On appeal, the defendant unsuccessfully argued from a recent Ninth Circuit en banc decision that the applicable law changed.

In *United States v. Case* (D. Or.), ENRD obtained a favorable ruling on liability against defendants who had constructed an 835-foot long revetment and an 800-foot dike in the North Santiam River, and filled wetlands adjacent to the river, near Albany, Oregon. The district court found that the defendants had violated the CWA by illegally placing fill material in the river and the wetlands, and it rejected the defendants' claim that government inspectors had implicitly authorized the work.

ENRD reached a settlement in *United States v. Goose Pond Ag, Inc.* (E.D. Cal.), a case involving allegations that the defendant had conducted extensive ripping and other activities in streams and wetlands without a CWA dredge-or-fill permit, in conjunction with converting a 1,500 acre site to orchards. Under the settlement, the defendants will pay a \$1.75 million civil penalty; perform \$3.55 million worth of off-site compensatory mitigation; and remediate and forever preserve a 616-acre section of the site, which contains at least 75 and potentially as many as 139 acres of streams, wetland vernal swales, and wetland vernal pools, the majority of which are unaltered.

The settlement in *United States v. Saratoga Springs Owners Association* (D. Utah), resolved claims that a homeowners association and a dredging contractor conducted unauthorized filling of Utah Lake and adjacent wetlands in connection with a marina redevelopment project. The defendants will pay a \$150,000 penalty and perform onsite restoration and mitigation to address the unauthorized fill.

Preventing Renewable Fuel Fraud

Through the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007, Congress required fuel producers and importers to produce specific annual volumes of renewable fuel, or in the alternative, to purchase credits, called RINs, representing renewable fuel made elsewhere. RINs, generated on a per gallon basis with bonuses for advanced renewables, can be traded or sold to refiners and international fuel traders to help them comply with the renewable fuels program. A robust market for RINs has developed, with prices that change daily, but a single RIN is often worth a dollar or more. Criminals have attempted to generate RINs fraudulently, including by generating RINs without producing any renewable fuel, or by generating RINs on the same fuel multiple times. Similarly, criminals have obtained tax credits for renewable fuels that were either not produced, or had already been used to obtain a tax credit. Ensuring the integrity of this program is a Division priority.

ENRD, in partnership with U.S. Attorneys' Offices and criminal investigators from EPA, the Tax Division, the Secret Service, IRS, DOT, and the Federal Bureau of Investigation (FBI), successfully prosecuted 33 individuals and corporations involved in fraud related to RINs this year. Since the program began, these prosecutions have resulted in more than 200 years of incarceration, \$3.2 million in fines, \$345 million in restitution, and \$168 million in forfeiture. In fiscal year 2018, four defendants were sentenced to lengthy prison terms (totaling 279 months imprisonment), as well as ordered to pay over \$65 million in restitution and forfeit \$12.5 million for various multistate schemes to defraud RIN buyers and U.S. taxpayers.

Restoring Injuries to Natural Resources

When wildlife, habitat, and other natural resources are injured by discharges of oil or releases of hazardous substances, the federal government, states, and Native American tribes may bring claims under CERCLA, the OPA, the CWA, and other statutes for "natural resource damages."

When recovered, such damages must be used to restore, replace, or acquire the equivalent of the injured resources. Federal, state, and tribal natural resource trustees — in the federal government most often FWS and NOAA — are responsible for assessing the extent of the injuries and planning restoration actions. In fiscal year 2018, the Division recovered over \$36 million in natural resource damages.

In *United States v. Honeywell International Inc.* (N.D.N.Y), the Division and the State of New York settled natural resources damages claims against Honeywell and Onondaga County related to contamination in and around the Onondaga Lake Superfund Site in Syracuse. The settlement resolved CERCLA claims for damages to natural resources stemming from releases of mercury and other hazardous substances from facilities owned and operated by Honeywell (formerly Allied-Signal) and the county. Under the settlement, Honeywell will implement 20 projects to increase recreational opportunities and to restore and protect wildlife habitat and water quality. Honeywell will maintain 15 of the projects and the county will maintain five. Honeywell will also pay over \$6 million for restoration and preservation programs overseen by the natural resource trustees: the U.S. Department of Interior and the New York Department of Environmental Conservation. The total value of settlement is approximately \$26 million.

In *United States v. Tecumseh Products Company* (E.D. Wis.) and two related settlements, the Division and the State of Wisconsin resolved claims against three companies for natural resource damages at the Sheboygan River & Harbor Superfund Site, as a result of historical discharges of polychlorinated biphenyls (PCBs) and/or polycyclic aromatic hydrocarbons (PAHs). The settlements required the payment of \$1,295,500 to Sheboygan County as partial reimbursement for costs the county incurred acquiring the Amsterdam Dunes restoration area. The defendants also paid \$2,532,500 to the trustees to be used for preservation and restoration, including the creation of an approximately 140-acre Willow Creek Preserve within the City of Sheboygan. The natural resource trustees — FWS, NOAA, and the Wisconsin Department of Natural Resources — received \$695,000 to reimburse previously incurred assessment costs. Altogether, the three settlements totaled \$4.5 million. Additional funds were invested by the federal government through the Great Lakes Restoration Initiative along with state, city and county funds to speed the restoration of, and restore navigation in, the Sheboygan River.

Protecting Environmental Obligations During Bankruptcy Proceedings

The Division also takes actions in bankruptcy cases to protect environmental obligations owed to the United States when a responsible party goes into bankruptcy. During fiscal year 2018, the Division resolved twelve bankruptcy proceedings securing an estimated \$153 million in relief. \$143 million was for injunctive relief and \$9.3 million reimbursed the Superfund. In addition, debtors paid over \$1.6 million during fiscal year 2018 under bankruptcy agreements concluded by the Division in prior fiscal years.

Protecting Wildlife

Criminal enforcement of federal wildlife protection statutes deters the illegal killing and commercialization of wildlife, fish, and plants. It also augments the wildlife protection efforts of states, tribes, and foreign governments. Criminal prosecutions for violations of wildlife laws 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.

In *United States v. Obendorf* (9th Cir.), the Ninth Circuit affirmed defendant's conviction of illegal baiting of migratory game birds and conspiring to do the same. At issue was whether a certain regulatory exception to the unlawful "take" prohibition—the Agricultural Practice Exception—applied only to hunters or also to baiters under the Migratory Bird Treaty Act. The appellate court found in favor of the United States, holding that the exception did not apply to baiters even though all parties in the district court had assumed that it did. While noting that the government's argument on appeal was new, the court of appeals exercised its discretion to hear this purely legal issue, and to help clarify the law. While a person could avoid prosecution for hunting over a farmer's field (if the field appeared in accordance with normal agricultural practices), a farmer could still be prosecuted if he purposefully baited that same field for hunters.

This year, ENRD also enforced laws prohibiting the illegal poaching of American eels. These eels are in high demand due to the decline of global eel stocks. Eels will not reproduce in captivity. Therefore, the current commercial demand centers on the eel in its juvenile stage, known as a "glass eel" or "elver." Poached elvers are shipped live to aquaculture facilities in Asia, where they are grown into mature eels for meat. Because they are so critical to this business, elvers may sell for as much as \$2,500 per pound internationally. This black market trade undercuts lawful fishing businesses and harms our nation's fish stocks. As part of a multi-district undertaking known as Operation Broken Glass, the Division successfully prosecuted 22 individuals in Maine, New Jersey, South Carolina, and Virginia for poaching American eels. Combined, these defendants illegally trafficked elvers worth more than \$7 million. 19 of these defendants have been sentenced, resulting in a combined 66 months imprisonment followed by 216 months supervised release, 348 months probation, \$92,500 in fines, and \$236,300 in restitution.

Individual defendants were also sentenced during fiscal year 2018 to periods of incarceration for illegally trafficking rhino horns, tiger skulls, and sperm whale teeth, as well as turtle poaching, overharvesting fish, and mislabeling seafood.

Enforcing the Animal Welfare Statutes

In 2014, the Attorney General's Advisory Committee added oversight of six animal welfare statutes to the Division's portfolio. By the end of fiscal year 2018, the Division had secured 45 counts of conviction against 16 individuals under these statutes, particularly laws that

criminalize interstate animal fighting ventures, such as dogfighting rings. The defendants who have been sentenced thus far have received 216 months incarceration and 384 months supervised release. Additionally, the Division has helped rescue 202 dogs, some of which were pregnant at the time of rescue and have subsequently given birth to 20 puppies. ENRD has reached agreements with appropriate non-governmental organizations (NGOs) to care for these animals after a dogfighting ring has been taken down.

Many of these prosecutions were part of Operation Grand Champion, a coordinated effort across numerous federal judicial districts to combat organized dog fighting. The phrase “Grand Champion” is used by dog fighters to refer to a dog with more than five dog-fighting “victories.” Operation Grand Champion is joint investigation by the U.S. Department of Agriculture, Office of the Inspector General; Department of Homeland Security (DHS), Homeland Security Investigations; and the FBI, in coordination with the Department of Justice.

Enforcing Federal Criminal Laws Internationally

In addition to criminal prosecutions in the U.S. federal courts, ENRD also implements a robust program of international activities that advances the goals of President Trump’s Executive Order 13773 on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking (Feb. 9, 2017). The Division successfully prosecutes cases involving wildlife trafficking and other transnational environmental crimes in order to thwart criminal organizations and persons engaged in illicit activities that present a threat to public safety and national security. Division attorneys also provide critical training for law enforcement partners in other countries to help them work more effectively with us in investigating and prosecuting transnational environmental crimes.

Attorneys from the Division also participate in negotiation and implementation of trade agreements and international environmental agreements, to ensure they promote effective environmental enforcement. For example, the Division has supported the Administration’s work to renegotiate the United States-Mexico-Canada Agreement and incorporate provisions addressing illegal trafficking in wildlife, fish, and timber.

Division attorneys also provide leadership in international law enforcement organizations. For example, we work with groups such as INTERPOL that promote international efforts to combat transnational criminal organizations. ENRD also represents the Department on the Presidential Task Force on Wildlife Trafficking, which the Department co-chairs along with the Department of State and DOI. This year, we continued to work closely with the other federal agencies on the Task Force to implement the requirements of the Eliminate, Neutralize, and Disrupt (END) Wildlife Trafficking Act and develop new reports to Congress that analyze global challenges to combatting wildlife trafficking and provide a new, country-specific focus to our ongoing efforts. We also supported the Office of the Attorney General to prepare then-Attorney General Sessions to lead the U.S. delegation and deliver the statement of the United States at the October 2018 London Conference on the Illegal Wildlife Trade. Later that month, we took the lead role in presenting the Attorney General’s Forum on Combating Poaching and Wildlife

Trafficking, which assembled governmental and non-governmental leaders to assess the challenges and potential responses to this form of transnational crime.

In fiscal year 2018, ENRD led the world's first global law enforcement operation targeting marine pollution. The month-long operation, named 30 Days of Action at Sea, involved 276 law enforcement agencies, environmental agencies, maritime agencies, border agencies, national police forces, customs authorities, and port authorities across 58 countries. Participants in the operation conducted over 10,000 inspections that uncovered more than 500 offenses worldwide involving serious cases of marine pollution, including illegal discharges of oil and garbage from vessels, illegal shipbreaking, violations of vessel air emission regulations, and pollution to rivers and land-based runoff to the sea. The operation resulted in at least 185 criminal investigations. In preparation for the worldwide operation, ENRD attorneys organized five regional planning meetings in Singapore, European Union Agency for Law Enforcement Cooperation (EUROPOL) Headquarters in The Hague, Nairobi, Cape Town, and Ottawa. ENRD attorneys led the meetings and provided operational planning guidance assisted by representatives from the U.S. Coast Guard and the Coast Guard Investigative Service.

Through the Division's capacity-building efforts, Division attorneys work to help law enforcement partners, particularly in countries where illegal poaching of wildlife and deforestation occur, to strengthen their evidence-gathering abilities and improve their judicial and prosecutorial effectiveness. These training programs also foster positive relationships with prosecutorial counterparts, thereby increasing the Division's ability to prosecute under U.S. criminal laws such as the Lacey Act and Endangered Species Act.

In fiscal year 2018, Division attorneys provided training on combatting wildlife trafficking and associated financial crimes for prosecutors, magistrates, and judges – often at the request of the State Department, other federal agencies or the United Nations Office on Drugs and Crime – in countries across the globe, including Africa, Asia and Latin America. This included prosecutor training in Malaysia that coincided with participation in the Association of Southeast Asian Nations (ASEAN) Wildlife Conference. We also supported the Criminal Division's placement in Laos of an ENRD prosecutor as a Resident Legal Advisor focused on wildlife trafficking in the Southeast Asia region.

Division attorneys also provided training on criminal enforcement of illegal logging for partners in Asia, Africa, South America, and Eastern Europe. This included training programs for magistrates, prosecutors, and investigative officials in Indonesia, Vietnam, Colombia, Chile, Argentina, Brazil, and Peru. Additionally, we conducted the fourth in a series of workshops on combatting illegal logging in the Congo Basin. This workshop focused on mentoring regional inter-agency law enforcement teams from Cameroon and Gabon. We also conducted a timber trafficking prosecution workshop for Eastern European prosecutors at the State Department's International Law Enforcement Academy (ILEA) in Hungary. Similar training was provided on combatting illegal pollution. Prosecutors from the Division now lead annual pollution enforcement workshops at the ILEAs in Thailand, Hungary, El Salvador and Botswana.

Additionally, the Division provided training for vessel pollution prosecutions in Singapore and South Africa.

Supporting Crime Victims

ENRD is committed to not just bringing perpetrators of crime to justice, but also to ensuring victims of crime are treated with dignity and respect, pursuant to the Crime Victims' Rights Act and other victims' rights laws. ENRD, in partnership with the EPA, is developing the nation's first federal Environmental Crime Victim Assistance Program to ensure that victims of environmental crimes are supported from the opening of an investigation through final adjudication. Some environmental crimes can have a devastating impact on people. For example, criminal misuse of pesticides has led to brain damage and other permanent disabilities. Funding for this program is provided by the Crime Victims Fund, which is financed by fines and penalties paid by convicted federal offenders. This year, ENRD and EPA hosted a listening session for crime victims and environmental law practitioners to provide information about the Assistance Program and solicit feedback on issues unique to environmental crime victims. The audience contained approximately 50 stakeholders who attended in person or via web conference.

Defending Pollution-Control Measures and Supporting the Administration's Regulatory Reform Agenda



De Sale Restoration Area Phase 3 Settling Pond, Seaton Creek, Butler County, Pennsylvania, EPA

Defending Pollution-Control Measures and Supporting the Administration’s Regulatory Reform Agenda

ENRD handles challenges to federal actions implementing the nation’s pollution control laws and assists with achieving the Administration’s agenda of regulatory reform.

Defending EPA Rule-Making

In *Cooling Water Intake Coalition v. EPA* (2d Cir.), the court upheld an EPA rule regulating the intake of cooling water for power plants and other large industrial facilities. The rule recognizes both the benefits and costs of advanced cooling water technologies, established factors to be used in selecting the appropriate standards, and left much of the final decision on what should be required at any particular plant to the CWA permitting authority, which is usually a state agency. The rule also established a process that allows the EPA and the federal resource agencies to weigh in on ESA-related impacts from these individual permit decisions.

In *Ohio Valley Environmental Coalition v. EPA* (4th Cir.), environmental groups sued to compel EPA to establish Total Maximum Daily Loads (TMDLs)—the maximum amount of a pollutant that may enter a waterbody on a daily basis—for over 500 West Virginia streams that are biologically impaired. The plaintiffs focused primarily on “ionic stress,” a form of biological impairment that can be caused by dissolved solids from mountaintop mining. The Fourth Circuit held that EPA was not required to establish TMDLs because West Virginia had demonstrated that it was making—and will continue to make—good-faith efforts to comply with applicable state law, and because West Virginia has a credible plan in concert with EPA to produce ionic toxicity TMDLs.

In *NRDC v. EPA* (D.C. Cir.), the court upheld EPA’s 2016 rule granting states CAA waivers for “exceptional events.” The rule specifies when air quality monitoring data reflecting exceedances of National Ambient Air Quality Standards (NAAQS) can be excluded from attainment determinations because the data were influenced by exceptional events, including “natural events.”

Defending EPA Permitting Decisions

ENRD successfully defended a CWA permit for a major municipal wastewater treatment plant in Massachusetts in *City of Taunton v. EPA* (1st Cir.) that limits the amount of nitrogen that the city’s wastewater treatment plant may discharge.

In *Conservation Law Foundation v. EPA* (1st Cir.), the court rejected the plaintiff’s argument that EPA has a mandatory duty to require certain stormwater dischargers in Massachusetts and Rhode Island to obtain National Pollution Discharge Elimination System (NPDES) permits under the CWA.

Defending Against Federal Liability to Clean Up Private Hazardous Waste Sites

ENRD obtained wholly favorable rulings in two major defensive CERCLA matters that, collectively, could have exposed taxpayers to hundreds of millions in CERCLA liability.

In *Cranbury Brickyard LLC v. United States* (D.N.J.), the current owners of a former munitions assembly site sought to recover \$52 million in past cleanup costs and \$41 million in estimated future costs from the United States. The court ruled on summary judgment that the plaintiffs' sole claim was time-barred.

In *PPG v. United States* (D.N.J.), the plaintiffs alleged that the United States was liable for clean-up costs based on federal wartime involvement with a chromium chemical plant, and sought an unspecified share of over \$360 million in response costs. The court ruled on summary judgment that there was no evidence to support federal CERCLA liability.

Supporting Federal Regulatory Review Efforts

To assist our client agencies in implementing Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (Jan. 30, 2017), ENRD continues to work with EPA, DOI, and other agencies to facilitate the effective review of regulations that are at issue in pending cases. In numerous cases – including such high-profile matters as challenges to the Clean Power Plan, the 2015 revised ozone NAAQS, EPA's 2015 rule establishing effluent limitation guidelines for steam electric utilities, BLM's hydraulic fracturing rule, BLM's waste prevention rule, and the sage-grouse land use management plans of BLM and the Forest Service – ENRD has secured continuances and abeyances of litigation to allow the Administration time to review existing regulations subject to ongoing litigation. ENRD has further prepared numerous filings for the D.C. Circuit to assure continued abeyance of litigation, including immediately apprising the court of significant administrative developments.

Strengthening National Security



Automatic Gate in Brownsville, Texas, Customs and Border Protection

Strengthening National Security

The Division's work advances the missions of the DOD and DHS to keep our nation safe, secure, and resilient.

Increasing Security Along the Southern Border

In January 2017, the President issued Executive Order 13,767, directing the Secretary of the DHS to "immediately plan, design and construct" a "physical wall" or "barrier" along the border between Mexico and the United States. The Division immediately started collaborating with the DHS, Customs and Border Patrol (CBP), the Corps, and the U.S. Attorney's Office for the Southern District of Texas to ensure that construction of the border wall is completed as quickly as possible. The Division is aiding in the acquisition of land for the wall, fencing, towers, roads, infrastructure, and agent housing (along with developing associated title and appraisal work), as well as addressing legal challenges under a host of environmental, procedural, and inverse takings statutes.

The Division is initially aiding in the acquisition of land for the project by ensuring that proper survey work and title review is completed, as well as by ensuring negotiations and consultations are conducted with landowners prior to acquisition through condemnation. ENRD is also providing expert appraisal review services in connection with land acquisitions to ensure uniformity in the valuation of the land. This ensures uniform results to satisfy the mandate of the U.S. Constitution for just compensation in the form of market value fair to both the landowners and the taxpayers who must pay for this land.

The Division, working with the U.S. Attorney's Office for the Southern District of Texas, negotiated the acquisition of voluntary rights of entry on behalf of the Corps and the CBP in connection with surveying for the project. In particular, ENRD acquired hundreds of voluntary rights of entry in the Rio Grande Valley to allow surveying in connection with the construction of the wall and the implementation of other border security measures.

Separately, the Division secured a favorable settlement on behalf of the CBP in a land acquisition matter, enabling the remediation of an illegal subterranean tunnel on the United States-Mexico border in Arizona. A portion of the tunnel was underneath the surface of the subject property. Following the settlement of *United States v. 0.2731 Acres of Land, More or Less, Situate in Cochise County, State of Arizona, and Jeffrey G. Beister, et al.* (D. Ariz.), CBP filled the tunnel, disabled the illegal crossing, and remediated the land.

ENRD secured dismissal of several improper programmatic challenges to DHS policies in *Whitewater Draw Natural Resource Conservation District v. DHS* (S.D. Cal.). In that matter several "population stabilization" plaintiffs' groups claimed that DHS was required to conduct NEPA and other environmental analyses on the effects of immigration on the environment. Their claims were dismissed for failure to challenge a final agency action.

Supporting Military Operations

ENRD's litigation also supports DOD's decisions regarding the siting of military operations.

ENRD successfully acquired land on behalf of the U.S. Navy for the expansion of the Marine Corps Air Ground Combat Center located in Twentynine Palms, California, in the settlement of *United States v. 4,263.92 Acres of Land, More or Less, Situate in San Bernardino, State of California, and the Gabrych Family Limited Partnership, et al.* (C.D. Cal.). This acquisition will enable Marine Expeditionary Brigade training for three battalions using air and ground live fire. Over the past few years, ENRD has filed a number of additional cases in the Central District of California in connection with the same military project. The terms of the settlement reflect fair and just compensation for the land and will likely serve as a measurement for potential resolution of the remaining cases as well as several additional cases the Division anticipates it will file in 2019 in support of this military training project.

The Division also filed two cases on behalf of the U.S. Navy to acquire land to support aviation readiness and training activities at Townsend Bombing Range in McIntosh County, Georgia. While valuation litigation is ongoing in both *United States v. 4,211 Acres of Land, More or Less, Located in Long County, State of Georgia, Jamestown Timber, 2, L.P., et al.* (S.D. Ga.), and *United States v. 1.432 Acres of Land, More or Less, Located in McIntosh County, State of Georgia; Estates of Ellis Rozier and Mahalie Rozier, et al.* (S.D. Ga.), the Division was able to promptly acquire possession of the property to ensure that the bombing range is timely operational for pilot training to ensure military preparedness.

The Division achieved a favorable settlement on behalf of the U.S. Army to acquire land to support training at the Joint Readiness Training Center at Fort Polk in Vernon Parish, Louisiana. The settlement of *United States v. 40.00 Acres of Land, more or less, situate in Vernon Parish, State of Louisiana, and Berman Dalton Burns, et al.* (W.D. La.), will enable continued training at the base.

The Division successfully resolved a time-sensitive matter on behalf of the U.S. Navy that will finally permit construction of the Navy's Broadway Complex Redevelopment Project in San Diego, California. Continued litigation of the matter, *United States v. 1.647 Acres of Land, More or Less, Located in San Diego County, State of California, et al.* (S.D. Cal.), would have potentially delayed construction of the project which is valued at \$1.3 billion. The project will result in a new regional headquarters at no cost to taxpayers in exchange for granting use of the remainder of the site to a developer for commercial development.

In a pair of cases, *Center for Biological Diversity v. Mattis* (N.D. Cal.) and *Tinian Women's Ass'n v. Navy* (D. N. Mar. I.), ENRD successfully defended two aspects of DOD's long planned relocation from Okinawa, Japan. In *Mattis*, the district court upheld the DOD's plans to construct a replacement facility for the Futenma Air Field after concluding that DOD had met its requirements under the National Historic Preservation Act. In *Tinian*, the court rejected challenges to the Navy's plan to conduct training on the islands of Tinian and Pagan as a

component of the relocation effort. These successes removed barriers for this important military priority.

Supporting Infrastructure Development and Energy Security and Independence



Electrical Transmission Tower, Wikipedia

Supporting Infrastructure Development and Energy Security and Independence

ENRD's work supports our nation's investment in infrastructure development and energy security. Rebuilding the nation's infrastructure is a critical part of the President's agenda to promote job creation and grow the U.S. economy. On August 24, 2017, the President announced his One Federal Decision policy, established in Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. This requires federal agencies to process environmental reviews and authorization decisions for major infrastructure projects as one federal decision, and sets a government-wide goal of reducing the average time for each agency to complete its reviews. ENRD is part of an inter-agency workgroup tasked with implementing this policy. ENRD also continues to assist client agencies as they advance the goals of Executive Order 13783, Promoting Energy Independence and Economic Growth (Mar. 28, 2017). Through our litigation and counseling support we have helped various federal agencies expeditiously proceed with critical projects related to these Executive Orders.

Promoting the Power Sector

ENRD defends and supports federal agency action designed to ensure the nation's electricity is affordable, reliable, safe, secure, and clean, and can be produced from coal, natural gas, nuclear material, flowing water, and other domestic sources.

The Division successfully resolved an acquisition matter, *United States of America v. 4.70 Acres of Land, More or Less in the County of Pennington, State of South Dakota* (D.S.D.), which will enable the Western Area Power Administration of the Department of Energy to construct transmission lines outside of Rapid City, South Dakota, in connection with the Pick Sloan Project. The project concerns the conservation, control, and use of water resources in the Missouri River Basin, and it provides for improved flood control, irrigation, water supply, pollution abatement, and power generation in North Dakota, South Dakota, and Nebraska. The case was the last in a series of real estate acquisitions to support construction of expanded transmission lines outside Rapid City.

ENRD also acquired property on behalf of the Western Area Power Administration to permit the construction of a new transmission line with an increased voltage rating in Grand County, Colorado. The new line will improve reliability of the federal transmission system to support the Administration's power marketing function. One matter, *United States v. 4.07 Acres of Land, More or Less, Situate in Grand County, Colorado and Stillwater Creek Limited Liability Company, et al.* (D. Colo.), was settled. Litigation in the other matter, *United States v. 8.11 Acres of Land, More or Less, in the County of Grand, Colorado and Lambright, LLC, et al.* (D. Colo.), is ongoing as to the value of the land; however, the Division was able to promptly acquire possession of the property thereby preventing costly delays in construction.

In *In re State of Texas* (5th Cir.), the Division successfully defended against claims by the State of Texas, which is opposed to having a permanent nuclear waste repository located in the state.

It claimed the United States violated the Nuclear Waste Policy Act (NWPA) by failing to complete the nuclear waste storage licensing proceeding for the permanent storage of nuclear waste at Yucca Mountain, Nevada. The court of appeals dismissed most of Texas' claims outright, holding that they were beyond the NWPA's 180-day time limit for seeking a review of agency action or a failure to act. As to the one timely claim against the Department of Energy (DOE) regarding "consent-based siting activities," the court concluded these actions were not reviewable actions under NWPA or the Administrative Procedure Act (APA).

Promoting Access to Oil

ENRD also handles litigation regarding the development of infrastructure to facilitate our nation's access to oil and to promote energy security.

ENRD provided legal support for the successful implementation of the January 24, 2017, Presidential Memorandum Regarding Construction of the Dakota Access Pipeline. ENRD advised the Army and Army Corps with respect to implementing the Presidential Memorandum, which resulted in the pipeline becoming operational in June of 2017. ENRD continues to defend the Army Corps' authorizing decisions for the Dakota Access Pipeline in *Standing Rock Sioux Tribe v. Army Corps* (D.D.C.), and in 2018, secured partial summary judgment which resulted in the dismissal of various claims.

ENRD also defended the Army Corps' permitting decisions with respect to the Bayou Bridge Pipeline in Louisiana. Our attorneys opposed a motion for a temporary restraining order and preliminary injunction in district court and ultimately defeated the preliminary injunction in the court of appeals, which allowed pipeline construction to proceed.

The Division also handles litigation designed to protect the Strategic Petroleum Reserve. In *United States v. 9,345 Acres of Land Situate in Iberville Parish, Louisiana, and Sidney Vincent Arbour, III, et al.* (M.D. La.), the Division successfully settled a case on behalf of DOE, acquiring a massive underground salt cavern in western Louisiana capable of storing ten million barrels of crude oil for the Strategic Petroleum Reserve. The matter has been one of ENRD's most challenging land acquisition cases. Its conclusion will help ensure the United States' energy security in the future. The Division achieved a favorable resolution, resulting in over \$60 million in savings.

Supporting Water Supply Management

ENRD also handles litigation that supports the management of the nation's water supply, with a particular focus on the western states, as articulated in the October 19, 2018, Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West.

In *Texas v. New Mexico* (S. Ct.), an original action, ENRD supported the Office of the Solicitor General in winning a unanimous ruling from the Supreme Court that the United States may assert a claim against New Mexico for alleged violations of the Rio Grande Compact, which is

an interstate compact between the states of Colorado, Texas, and New Mexico, approved by the U.S. Congress, to equitably apportion the waters of the Rio Grande Basin.

ENRD also continued to handle litigation in support of the Bureau of Reclamation's (BOR's) management of the vast and complex Central Valley Project in California. In *North Coast Rivers Alliance v. Department of the Interior* (E.D. Cal.), the Division successfully defended BOR against a challenge to its NEPA compliance in connection with issuing two-year interim water contract renewals.

ENRD also filed a number of land acquisition cases in the Eastern District of California on behalf of the Corps to acquire property and easements in connection with the Isabella Lake Dam Safety Modification Project. The Isabella Dam, built over 60 years ago and situated on an active seismic fault line, is one of the highest risk dams in the United States. The acquisitions will enable the Corps of Engineers to reinforce the dam and reduce the risk of a potential dam failure that could impact the downstream population of the City of Bakersfield.

ENRD obtained an important victory in *Baley v. United States; John Anderson Farms v. United States* (Fed. Cl.), a Fifth Amendment takings case stemming from the BOR's management of the Klamath Project during extreme water shortages in 2001. After trial, the court issued a decision holding that the United States was not liable for a taking of any water rights held by the plaintiffs.

Defending Resource Extraction Decisions on Federal Land

ENRD continues to defend the United States in litigation involving the extraction of resources on federal lands.

In *Western Organization of Resource Councils v. Zinke* (D.C. Cir.), the Division obtained a dismissal of a case challenging the federal coal leasing program on the basis that environmental reviews of the program did not adequately consider new information regarding climate change. The district court dismissed. It held that BLM had no mandatory duty to issue a supplemental Programmatic Environmental Impact Statement (EIS), the relief sought by the plaintiffs. The D.C. Circuit affirmed, concluding that the federal action establishing the Federal Coal Management Program was completed in 1979. Because the Secretary had not proposed to take any new action respecting the program, neither NEPA nor the APA required the Secretary to update the earlier Programmatic EIS.

In *High Country Conservation Advocates v. United States* (D. Colo.), ENRD prevailed in a challenge to BLM's NEPA analysis for the West Elk Mine, Colorado. Recognizing the complexity of greenhouse gas analysis on a project-specific level, the court upheld the Forest Service's and BLM's consideration of project alternatives and the agencies' analyses.

In *Fisheries Survival Fund v. Jewell* (D.D.C.), ENRD successfully moved to dismiss a challenge to the Bureau of Ocean Energy Management's decision to enter into a valuable lease for a wind energy project on the outer continental shelf off the coast of New York.

In *Center for Biological Diversity v. Export-Import Bank of the United States* (9th Cir.), the Division achieved dismissal of a lawsuit alleging that the Export-Import Bank improperly approved loans for the construction of two natural gas projects in Queensland, Australia, without conducting analyses under the Endangered Species Act and the National Historic Preservation Act (NHPA). The Ninth Circuit affirmed the district court ruling. It held that the plaintiffs had failed to show the performance of additional NHPA and NEPA procedures could result in the projects being reconsidered.

Promoting Transportation Infrastructure Projects

ENRD successfully defended numerous challenges to projects related to transportation this year.

In *Friends of the Capital Crescent Trail v. Federal Transit Administration* (D.C. Cir.), the Division successfully overturned an adverse district court decision that had blocked any federal funding for the State of Maryland's Purple Line Project, a light-rail project that would connect to the D.C. area's Metrorail System, and expand transit options in the Maryland suburbs. The appellate court held that the FTA had sufficiently examined the environmental impacts of the new project and that no supplemental analysis was required to account for Metrorail's recent safety and ridership issues.

ENRD also successfully defended the State Department in a challenge to a new bridge between Canada and the United States. In *Detroit Int'l Bridge Co. v. Gov't of Canada* (D.C. Cir.), after Canada and the State of Michigan agreed to build the Gordie Howe International Bridge, the plaintiff sued the State Department and other federal agencies, as well as Canada and the Ontario Department of Transportation. The district court ruled for the defendants, and the D.C. Circuit affirmed. It held that the Secretary of State did not violate the International Bridge Act when it approved the Crossing Agreement between Michigan and Canada. The court also found that the plaintiffs' challenge to the permit for the new bridge was not subject to judicial review under the APA because in the foreign affairs arena, the court lacks a standard to review the agency action.

In *Georgetown v. Federal Aviation Administration* (D.C. Cir.), ENRD defended a challenge to a decision of the Federal Aviation Administration (FAA) to approve new departure procedures from National Airport over the Georgetown area of the District of Columbia. These new flight procedures were almost never flown until one-and-a-half years after the publication of the decision document, when the FAA concluded its safety and risk-management analysis and published charts that essentially made the new procedures the default departure route for National Airport. When petitioners claimed to have noticed this change in air traffic patterns, they filed suit. The D.C. Circuit held that the agency's publication of a final decision document,

and not its subsequent implementing actions, was the “final order” for purposes of when the statute of limitations began. The petitioners were therefore untimely as the governing statute only provides 60 days to challenge an “order” of the FAA.

In *Love Terminal Partners v. United States* (Fed. Cir.), the lessees of property at the Love Field Airport in Dallas, Texas, sued the United States for a Fifth Amendment taking, arguing that Congress’ 2006 action of loosening, but not totally repealing, flight restrictions imposed by Congress in 1980, had taken their property – a terminal at Love Field that Dallas wanted to close. The trial court agreed and awarded over \$133 million in compensation. On appeal, the Federal Circuit held that the 2006 Wright Amendment Reform Act did not effect a regulatory taking of leases of property at the airport, concluding that Congress’ failure to repeal the 1980 Wright Amendment could not support a regulatory takings claim because “government inaction cannot be a basis for takings liability.” Neither did the 2006 Act effect a physical taking as the Act did not codify an earlier agreement, to which the United States was not a party, which allegedly required Dallas to destroy the plaintiffs’ terminal. In any event, the court concluded that the earlier agreement only required Dallas to negotiate with the plaintiffs, to be followed by condemnation if negotiation was unsuccessful, so a statutory codification of these requirements was not a taking.

In *Sierra Club v. Chao* (D. Colo.), ENRD defeated an emergency motion designed to halt work on the expansion of I-70 in Denver, Colorado.

ENRD obtained a favorable ruling in *SOS OBX v. North Carolina DOT* (4th Cir.), a case challenging a decision to extend the Bonner Bridge in Dare County, North Carolina.

Defending Against Navigation-Management Claims

ENRD protects the public fisc by defending against claims that the United States is responsible for damages caused by flooding.

In *St. Bernard Parish v. United States* (Fed. Cir.), the Federal Circuit unanimously reversed the Court of Federal Claims’ judgment holding the United States liable for a temporary taking of business, residential, and local government real property due to flooding during Hurricane Katrina. The lower court had found that the flooding was exacerbated by the Army Corps of Engineers’ construction, operation, and failure to maintain the Mississippi River-Gulf Outlet (MRGO), a navigation channel between New Orleans and the Gulf of Mexico. The court of appeals held that the government cannot be liable on a takings theory for inaction and that the government action in constructing and operating the MRGO was not shown to have been the cause of the flooding during the Hurricane. Further, the appellate court held that the trial court had failed to apply the correct legal standard, which requires that the causation analysis account for government flood-control projects that reduce the risk of flooding. The Supreme Court subsequently denied the plaintiffs’ cert petition.

Protecting the United States' Interest in Federal Lands

In *United States v. California* (E.D. Cal.), ENRD and the U.S. Attorney's Office for the Eastern District of California secured a favorable decision in affirmative litigation filed against the State of California and the California State Lands Commission. Our lawsuit challenged a state law commonly known as Senate Bill 50 (SB 50). This established a state policy of discouraging the federal government from transferring land owned by the United States in California out of federal ownership, including by donation or exchange. SB 50 purported to render *void ab initio* any such transfer, including those involving the mere issuance of a lease or easement, unless the state was provided a right of first refusal to the conveyance. After we filed the lawsuit, the California State Legislature amended SB 50 in several respects, including to make the right of first refusal applicable only to federal lands meeting certain criteria, rather than to all federal lands. Nonetheless, the district court agreed with our position that SB 50 violated the doctrine of intergovernmental immunity and thus was invalid under the Supremacy Clause. The state law violated the doctrine both because it directly regulated the United States and because it impermissibly discriminated against the United States and those with whom it deals in connection with land transfers. The defendants declined to take an appeal to the Ninth Circuit.

Promoting National Parks

ENRD litigates in support of the work of the National Park Service (NPS) to preserve the natural and cultural resources of the National Park System for the enjoyment, education, and inspiration of this and future generations.

ENRD facilitated the final acquisitions for the completion of Everglades National Park on behalf of the NPS. Since the passage of the 1989 Everglades National Park Protection and Expansion Act, the NPS has acquired more than 8,000 tracts, totaling over 109,000 acres in South Florida for inclusion in Everglades National Park. ENRD has led the charge on this project since 1996 in the courts, filing over 3,000 cases to acquire tens of thousands of acres of land to build and expand the Park. This year, ENRD facilitated the acquisition of the last six tracts necessary to complete the expansion and allow the raising of waters in the Park. Of these six tracts, three were owned by commercial airboat operators along the Tamiami Trail. ENRD successfully negotiated the acquisitions, obtaining the underlying land while allowing the continued operation of the airboat businesses as concessioners of the NPS. By preserving and ensuring the integrity of these historic airboat businesses, the Division will help carry forward the cultural traditions of Florida. These acquisitions also support the ultimate goal of restoring natural hydrological and ecological conditions to Everglades National Park.

Defending Federal Programs



Sleeping Bear Dunes National Lakeshore in Michigan, Department of Interior

Defending Federal Programs

ENRD also defends the United States in litigation challenging agency actions involving public lands, wildlife and marine resources, and pollution control, among others. Our defense of these cases and our legal counsel allow our client agencies to accomplish their missions efficiently and effectively, and in accordance with the Administration's policy and regulatory reform agenda.

Facilitating Responsible Ocean Fisheries Management

ENRD successfully defended various fishery management actions necessary to meet the objectives of the Magnuson-Stevens Act and other related statutes that charge the NMFS with managing ocean commercial fishing to provide for sustainable fishing while, at the same time, optimizing fishing yield. As expressed in the June 19, 2018 Executive Order 13840 on Regarding the Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States, our fisheries resources help feed the nation and present tremendous export opportunities.

In *Ocean Conservancy v. Ross* (D.D.C.), ENRD attorneys succeeded in obtaining dismissal of a suit involving a challenge to a NMFS rule extending the Gulf of Mexico red snapper fishing season. This allowed NMFS to pursue a new State/Federal framework for management of the fishery advocated for by many stakeholders.

Protecting Wildlife Habitat

ENRD also defends agency action that protects wildlife habitat.

In *New Mexico Farm & Livestock Bureau v. DOI*, (D.N.M.), ENRD successfully defended FWS's designation of critical habitat under the ESA for the endangered jaguar.

In *Defenders of Wildlife v. Corps* (D. Mont.), ENRD successfully defended an important Corps water diversion and fish passage project on the Yellowstone River in Montana, aimed to protect the endangered pallid sturgeon. The project involved the proposed construction of a replacement weir and bypass channel on the Yellowstone River to mitigate adverse effects on the endangered sturgeon while still providing irrigation water to eastern Montana farmers. This project will provide fish passage and access by the endangered sturgeon to more than 100 miles of river that have been inaccessible for almost 100 years.

Defending Federal and Tribal Interests in Water and Treaty Fishing Rights

The Division defends the federal water rights that the United States holds in trust for tribes. Pursuant to longstanding federal policy, the United States seeks to resolve these water rights claims through settlement, which are typically complex, multi-party agreements involving

tribes, states, and water users that often require implanting federal legislation. These settlements bring neighbors together in an effort to share a critical common resource.

In 2018, then-Secretary Zinke signed two historic tribal water rights settlements, one involving a settlement between the Blackfeet Tribe, the State of Montana, and the United States, and another involving the Pechanga Band of Luiseno Mission Indians and several large water districts in southern California. Both settlements bring to a close many decades of dispute and negotiations, protect tribal water rights, and provide funds to improve tribal infrastructure and water delivery systems.

Despite our efforts to settle water rights claims, in some cases we must litigate tribal claims to conclusion. In *United States v. Walker River Irrigation District* (9th Cir.), the Ninth Circuit upheld our arguments that the district court had improvidently dismissed our claims by ruling on issues that had not been argued by any party. In Arizona's *In re Adjudication of Water in the Gila River Basin* (Maricopa Sup. Ct.), following a six-day trial, we prevailed on our claims that groundwater pumping in the Gila Basin improperly impacted riparian rights held by the United States for several tribes.

In *United States v. Washington* (9th Cir.), the United States and tribes in western Washington prevailed in a critical case involving the impact of barriers to fish passage on treaty-confirmed tribal fishing rights. An equally divided Supreme Court affirmed the Ninth Circuit's favorable decision that the State of Washington must remove or replace culverts under State highways that significantly impede the movement of anadromous fish to and from spawning grounds.

Defending Against Challenges to Indian Land Management Decisions

The Division continued to have considerable success in defending decisions by the Department of the Interior to acquire land in trust for the benefit of tribes.

In *Patchak v. Zinke* (S. Ct.), ENRD defended the Secretary of Interior's decision to take land into trust for the Gun Lake Tribe of Michigan for the tribe to use for building and operating a casino. The district court initially dismissed the suit on sovereign immunity grounds but on appeal, the Supreme Court held the suit could go forward. While the remand was ongoing, Congress enacted the "Gun Lake Act." This confirmed the Indian-land status of the property and provided that any action challenging its trust status "shall not be filed or maintained in a Federal court and shall be promptly dismissed." The plaintiffs then argued that this new statute was unconstitutional as it allegedly infringed on judicial powers to adjudicate ongoing lawsuits. The Supreme Court affirmed the dismissal of the plaintiff's suit for lack of subject-matter jurisdiction.

In *Upper Skagit Indian Tribe v. Lundgren* (S. Ct.), a neighboring landowner to the Upper Skagit Indian Tribe, located in Washington State, sued the tribe to quiet title related to a 40-acre tract of land outside of the tribe's reservation. Although the tribe held record title to the entirety of this tract, its adjacent neighbor claimed an approximately one-acre strip along the southern

border by adverse possession against the prior owner. The Washington state courts held that the tribe's sovereign immunity did not preclude the quiet title action. The U.S. Supreme Court granted review, and remanded the case to the Washington Supreme Court to consider whether the common-law immovable-property exception to sovereign immunity allows the case to proceed against the tribe. The United States filed an *amicus* brief in support of the tribe. After the remand to the Washington state courts, the case was dismissed.

In *Geysler v. United States* (C.D. Cal.), the district court rejected allegations that acquiring land in trust for a tribe violated the Constitution's Enclave Clause (Clause 17 of Section 8 of Article I), as well as other claims. The district court concluded that the Enclave Clause—which requires state consent and cession for a new federal enclave over which the United States acquires exclusive jurisdiction—does not control acquisition of trust land for tribes, because federal jurisdiction over such lands is not exclusive.

In *Club One Casino, Inc. v. DOI* (E.D. Cal.), the Division prevailed in a challenge to the Secretary of the Interior's decision authorizing the North Fork Rancheria of Mono Indians' gaming in a casino on trust land located outside of the tribe's reservation. The court held that the tribe had sufficient jurisdiction over the trust land for purposes of the Indian Gaming Regulatory Act (IGRA), and that Interior's action did not violate state law.

In *Stand Up for California! v. DOI* (D.C. Cir.), the D.C. Circuit upheld Interior's decision to take land into trust in Madera County, California, for the North Fork Rancheria to be used for gaming purposes. Local groups opposed to gaming and the Picayune Rancheria (which owns a competing casino) challenged that decision. The court held that Interior had acted within its authority under the IGRA when taking land into trust, that Interior's finding under the IGRA that gaming would "not be detrimental" to the surrounding community was supported by substantial evidence, and that Picayune's challenge to the validity of the California governor's concurrence in the not detrimental finding was forfeited. Finally, the court held that Interior did not violate the CAA when, after taking a voluntary remand to comply with a procedural step of mailing its conformity analysis to additional recipients, Interior declined to reopen the analysis to use a new emissions model. The Supreme Court subsequently denied the plaintiffs' request to review the decision.

In *Comanche Nation of Oklahoma v. Zinke* (W.D. Okla.), the Comanche Nation of Oklahoma sought to prevent the opening of a casino being constructed by the Chickasaw Nation, arguing that the Secretary of Interior's taking of land into trust was unauthorized and violated NEPA. The district court ruled for the government, denying the motion to preliminarily enjoin DOI from acquiring land into trust for the benefit of the Chickasaw Nation. In December 2018, the Tenth Circuit affirmed.

In *County of Amador, California v. DOI* (9th Cir.), the court of appeals affirmed a judgment by the district court that had upheld DOI's decision to take a parcel of land in Amador County, California, into trust for the lone band of Indians for purposes of tribal gaming.

In *Butte County v. Chaudhuri* (D.C. Cir.), the D.C. Circuit affirmed the district court’s judgment in favor of DOI in a case challenging Interior’s decision to take land into trust for the Mechoopda Tribe in California gaming under the “restored lands” exception of the IGRA.

Protecting the Public Fisc Against Unwarranted Attorney Fee Claims

ENRD also continues to defend against unwarranted attorney fee claims.

In *Natural Resources Defense Council v. EPA* (9th Cir.), the petitioners, of which NRDC was only one, challenged EPA’s conditional registration of a pesticide. After the Ninth Circuit decided in favor of petitioners, they filed a claim for attorney fees under the Equal Access to Justice Act (EAJA) requesting a total of \$273,237.32. The EAJA has a provision that prevents companies with more than 500 employees at the time a law suit is filed from receiving a fee award. Upon inquiry from the United States, NRDC subsequently made a public concession that it was ineligible to receive an EAJA award because it had more than 500 employees at the time suit was filed. The remaining petitioners then amended their fee request, seeking only \$79,362.40. The United States and the remaining petitioners subsequently resolved that reduced claim through settlement.

In *Sanitary Board of the City of Charleston v. EPA* (S.D. W. Va.), ENRD obtained a favorable decision that clarifies when parties can obtain attorney fees under the CWA. A municipal wastewater authority had sued EPA for failing to approve or disapprove a state water-quality standard. While the case was pending, EPA disapproved the standard. After the court granted the United States’ motion to dismiss the case as moot, the wastewater authority sought to recover its attorney fees, arguing that it was a “prevailing or substantially prevailing party” under the CWA’s fee provision because its lawsuit prompted EPA to act. The court denied that motion.

On September 27, Principal Deputy Assistant Attorney General Brightbill testified before the U.S. House of Representatives Oversight and Government Reform Subcommittee on the Interior, Energy, and Environment concerning the award of attorney fees in environmental and natural resources cases. Certain statutes allow for the recovery of attorney fees, typically for the prevailing or substantially prevailing party in a case. ENRD closely scrutinizes all demands for attorney fees in its cases to ensure that they are lawful, justified, and reasonable. As Mr. Brightbill testified, while many attorney fee applications may be substantially justified and reasonable, the Division faces five recurring challenges in handling these claims: (1) ineffective limits on hourly rates; (2) no cap on the maximum amount of attorney fees awardable in a case; (3) low eligibility requirements, allowing large tax-exempt organizations with high net worth to recover attorney fees; (4) permitted recovery of attorney fees for seeking the payment of attorney fees (providing incentive to litigate the recoverable amount); and (5) limited court allowance of attorney fees to the United States when it is successful in defending suits against it.

Focusing on Our Internal Operations



AAG Clark Speaking at ENRD Earth Day Event, Department of Justice

Focusing on Our Internal Operations

While we assist our client agencies in their actions to advance the President's policy agenda, we look internally and review our own operations to examine how we can identify activities that could be improved, realigned, or eliminated in order to save money, gain efficiencies, and better serve the American people, consistent with the March 13, 2017 Executive Order 13781 on a Comprehensive Plan for Reorganizing the Executive Branch.

Training Our Staff

The Division provides training to its staff tailored to need. In FY 2018, there were 38 unique courses sponsored by ENRD with 2,001 attendees at these courses. Trainings included skills courses, professional responsibility courses, managerial courses, and courses on e-discovery. This fiscal year also marked the third consecutive ENRD Academy event series, which offers a range of professional development opportunities for Division personnel. These courses are internally developed and delivered by Division experts on a variety of topics. The Division also continued its ten-day training program for new honor grad attorneys in September which provides CLE credit and practical advice and guidance on many topics.

Updating the U.S. Attorney's Manual (now Justice Manual)

The Office of the Deputy Attorney General oversaw an effort by all DOJ components to review and revise all sections of the U.S. Attorney's Manual, now known as the Justice Manual. Many ENRD revisions to the Justice Manual deleted outdated material or processes and corrected erroneous or unnecessary references, better reflecting and improving current day-to-day practices (especially vis-à-vis U.S. Attorneys' Offices). Along with several other Divisions, ENRD presented and explained revisions to its section of the Justice Manual in a September 2018 Department-wide webinar that accompanied the revised Justice Manual roll-out.

Promoting Diversity

The Division's Diversity Committee sponsored trainings and events on a range of topics related to workforce diversity. Additionally, the committee sponsored a book club where employees select books for interesting discussion. The Division also continues to be an active participant in the Department's Diversity Inclusion and Dialogue Program, which facilitates a deeper understanding of diversity and inclusion issues among DOJ employees. Further, the Division continued its efforts to achieve geographic diversity in the hiring process through the successful ENRD Ambassadors Program. The program facilitates relationships between Division attorneys and faculty at over 200 law schools across the country.

Snapshots of ENRD Award Recipients



The Attorney General's Award for Distinguished Service presented to Jean Williams, Deputy Assistant Attorney General.



The Attorney General's Award for Providing Legal Advice presented to Wendy J. Miller, Senior Counsel in the Law and Policy Section, and R. Justin Smith, Assistant Section Chief of the Law and Policy Section.



The Attorney General's Award for Support of Litigation presented to John P. Tustin, Senior Attorney in the Natural Resources Section, and Allen M. Brabender, Trial Attorney in the Appellate Section.



The Claudia J. Flynn Award for Professional Responsibility presented to Andrea L. Berlowe, Senior Counsel in the Law and Policy Section.

Snapshots of ENRD Award Recipients



A length-in-service award for serving in the federal government for 50 years, presented to Nathaniel Douglas, Deputy Section Chief in the Environmental Enforcement Section.



The Federal Bar Association's Younger Federal Lawyer's Award presented to Adam Cullman, attorney for the Environmental Crimes Section.



ASPCA's Champion for Animals Award presented to the Environmental Crimes Section for having shown outstanding dedication to end dogfighting in their communities.