

ENRD

Accomplishments Report Fiscal Year 2019



United States Department of Justice
Environment & Natural Resources Division

**ENRD
SUMMARY OF DIVISION ACCOMPLISHMENTS
FISCAL YEAR 2019**

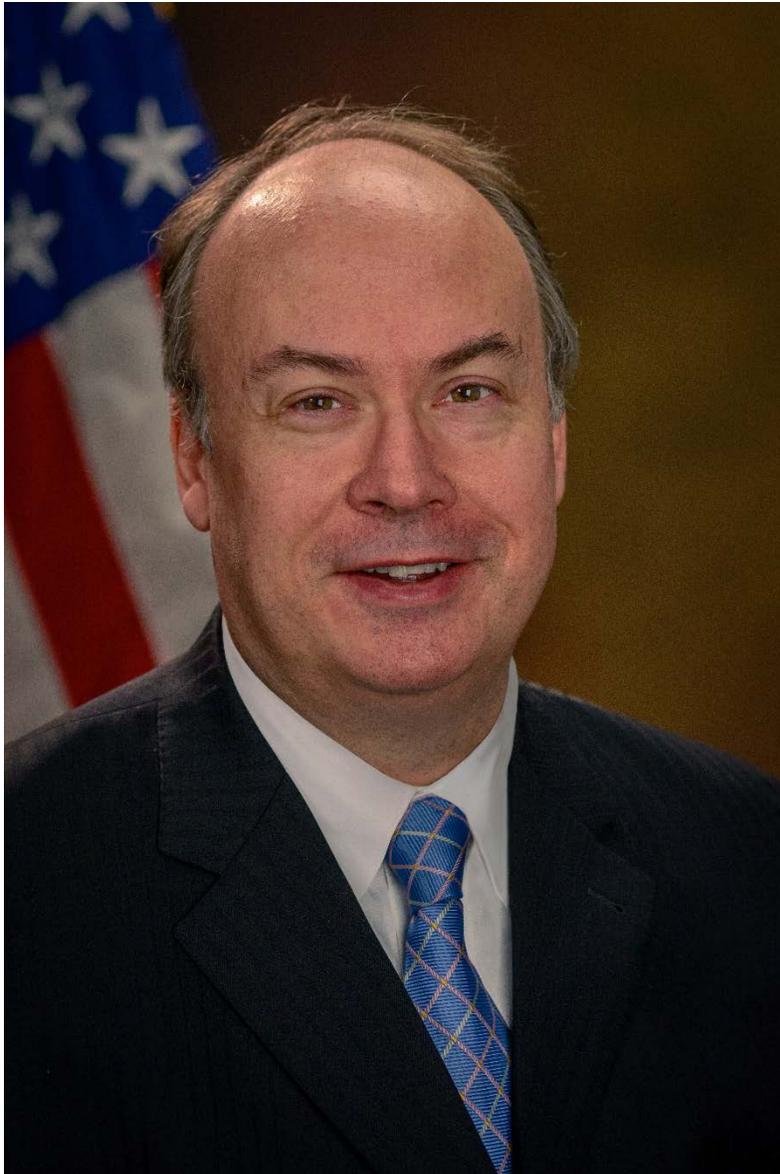
**UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES
DIVISION**



Yellowstone National Park, Wyoming, National Park Service

Foreword.....	1
Commemorating the 50th Anniversary of Earth Day.....	5
Overview of the Environment and Natural Resources Division.....	8
Recognizing our Staff.....	13
Enforcing the Nation’s Environmental and Wildlife Protection Laws.....	18
Defending Pollution-Control Measures and Supporting the Administration’s Regulatory Reform Agenda.....	33
Strengthening National Security.....	39
Supporting Infrastructure Development, Energy Security, and Independence.....	43
Defending Federal Programs and Agency Management of Public Lands.....	49
Focusing on Our Internal Operations.....	57
Snapshots of ENRD Award Recipients.....	60

Foreword



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

Foreword

It is my pleasure to present the Environment and Natural Resources Division's Accomplishments Report for fiscal year 2019. This report covers my first year as the Assistant Attorney General for the Division, and I deeply appreciate this opportunity to serve the American people and support President Trump's ambitious agenda. Under my leadership, the Division won significant victories for the United States across our broad mandate. As ever, our litigators and staff excelled as they enforced and defended this nation's environmental, public lands, and natural resources laws. I am privileged to continue the Division's legacy and mission, and it is my honor to report our accomplishments to the American people.

From the outset, I want to thank the Division's front office leadership for their service. I am grateful to Principal Deputy Assistant Attorney General Jonathan Brightbill; Deputy Assistant Attorneys General Jean Williams, Bruce Gelber, Eric Grant, and Prerak Shah; Chief of Staff and Counsel Stephanie Maloney; Senior Counsel Paul Salamanca; Counsel Michael Buschbacher; former Chief of Staff and Counsel Corinne Snow; and former Deputy Assistant Attorney General Lawrence VanDyke as we continue the Division's record of excellence and service to the nation.

In fiscal year 2019, the Division remained focused on several key objectives: vigorously enforcing pollution abatement and wildlife protection laws, particularly in cases of 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 federalism; and protecting the public fisc. These objectives support the Administration's reinvigoration of certain ideals that are part of the fabric of the United States: individual liberty; respect for private property rights; prioritizing enforcement against cheating and actions that cause bodily harm; valuing the role of state and local governments; advancing the ability of people to be self-reliant and economically productive; and wisely using our abundant natural resources. I am proud that the Division's work reflects these objectives and ideals.

Starting with affirmative litigation accomplishments during fiscal year 2019, the Division achieved many important enforcement successes while carrying out its role in protecting the public. In fiscal year 2019, ENRD worked on approximately 3,077 cases and matters, while maintaining a robust docket of over 6,110 active cases and matters. We obtained over \$858 million in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief obtained—including cleanup and pollution-prevention actions funded by private parties—exceeded \$3.4 billion.

On the civil side, the Division continued a robust program of enforcement that reflects the key priorities of our client agencies (as well as my own priorities) that are designed to protect the health and well-being of the American people. For example, consistent with the priority the Environmental Protection Agency has placed on reducing volatile organic compounds (VOCs), we entered into a settlement with HighPoint Operating Corporation that requires the company to reduce emissions of VOCs that contribute to high levels of ground-level ozone, a pollutant

that irritates the lungs, exacerbates diseases such as asthma, and can increase susceptibility to respiratory illnesses, such as pneumonia and bronchitis. In addition to civil penalties, the settlement requires the company to implement control measures and mitigation to reduce VOC emissions in the Colorado Front Range. We also reformed and eliminated the illegal practice of supplemental environmental projects, leaving to Congress the prerogative in most situations of deciding how to allocate the monies that the Division secures for the American people and ensures are paid into the federal treasury.

On the criminal side, the Division continued its commitment to prosecution of companies and individuals that use or sell “defeat devices” designed to cheat Clear Air Act requirements. For example, the Division won a conviction against IAV GmbH, a German software company, including a \$35 million fine and two years of probation, for its role in Volkswagen’s long-running scheme to sell vehicles equipped with defeat devices. The Division also had numerous successes enforcing animal cruelty laws. Operation Grand Champion, a multi-jurisdictional federal dog-fighting investigation, resulted in the convictions of 12 defendants in four federal districts and a total of 315 months in prison. The investigation led to the rescue of 113 dogs that were either surrendered or forfeited to the government. All of these efforts are examples of enforcement efforts that are *malum in se* (wrong in themselves). They are not mere technical violations.

The Division is committed to wildlife protection and combating trafficking through enforcement and collaboration with states and tribes. With estimated annual revenues of \$10 billion or more, wildlife trafficking is one of the most profitable types of transnational organized crime. To combat this growing trafficking crisis, the Division brought numerous wildlife trafficking cases against individual traffickers and organizations, including a Florida couple that smuggled wildlife articles from Indonesia into the United States and conducted approximately 4,596 wildlife sales over the Internet. In 2019, we convicted two companies and nine individuals for violations of the Lacey Act as part of Operation Fishing for Funds, a years-long investigation of the illegal harvesting and trafficking of lake trout and other Great Lakes fish species.

The Division’s defensive work was similarly impressive. We successfully defended legal challenges to the Trump Administration’s regulatory and other actions by agencies such as the Environmental Protection Agency, the Department of the Interior, the Department of Agriculture, the Department of Homeland Security, and the Department of Defense. 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 increase our national security. This work includes representing the United States in lawsuits challenging agency approvals of coal mining projects, oil and gas development on public lands, offshore energy production, and many other vital energy projects. For example, we successfully defended against challenges to over 2,000 Bureau of Land Management oil and gas leases covering 3 million acres of federal lands. Over 2019, the Division continued its vigorous defense of various client approvals for pipeline infrastructure throughout the Nation, including the Dakota Access and Keystone XL Pipelines. And in a collaborative effort with the Civil Division, we secured wins for the Trump Administration’s southern border infrastructure. Foremost, the

Division acquired land for the wall, fencing, towers, roads, infrastructure, and agent housing, but behind that work there was an infrastructure of appraisal, title clearing, and defense to legal challenges under several environmental, procedural, and inverse takings statutes.

In fiscal year 2019, the Division also took a number of actions to advance the United States' ability to protect and speak for the interests of the American people. For example, the Division successfully struck down a California law obstructing the sale of federal land contrary to the United States' exclusive right to do so under the Constitution. Starting in 2019 and continuing into 2020, the Division has been active in several lawsuits that may affect the federal government's role in crafting regional and international greenhouse gas policies. We have similarly defended against lawsuits challenging the United States' authority in this space. And we have already had some early successes in 2020 on this vital front, including a recent decision affirming that the federal government's political branches have the power to make climate change policy — where those branches deem it necessary — not the courts.

In closing, I continue to believe that environmental law must always be guided by the bedrock principles enshrined in our Constitution. 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. 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. To our Division these core principles of federalism, the separation of powers, and due process, to name a few, are not dead letters but a vital part of what we do.

I am proud of the hard work of our extraordinary and dedicated attorneys and staff and their commitment to the Division's mission and priorities. I consider leading the Division one of the great privileges of my career, and I look forward to continuing our important work over the next year and beyond. As I write this, the Nation is in the grip of the unprecedented COVID-19 challenge. We are hard at work, for instance, on trying to ensure that fraudsters making unlawful claims about being able to kill the virus are brought to justice, working with EPA to use its Federal Insecticide, Fungicide, and Rodenticide powers to that end. I hope to be able to report next year on specific litigated or settled successes in that area.

Jeffrey Bossert Clark
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice
April 22, 2020

Commemorating the 50th Anniversary of Earth Day



Zion National Park, Utah, National Park Service

Commemorating the 50th Anniversary of Earth Day

Fifty years ago, on April 22, 1970, over 20 million people participated in a wide variety of public gatherings as part of the nation's first Earth Day. From coast to coast, the American people provided a powerful civic response to environmental degradation and a clear demand for broad national measures to protect the environment and conserve natural resources. Earth Day's founder, Senator Gaylord Nelson, recognized that this "awakening" included more than just a concern for "an environment of clean air and water and scenic beauty," because the goal of Earth Day is "an environment of decency, quality and mutual respect for all other human beings and all living creatures."¹

Earth Day 1970 helped launch this nation's "environmental decade," starting with the enactment of the National Environmental Policy Act ("NEPA"), including the creation of the Council on Environmental Quality ("CEQ"), and the formation of the Environmental Protection Agency ("EPA"). And Earth Day 1970 encouraged policymakers to begin the project of building our contemporary system of environmental protection and natural resource management. Over the next ten years, Congress passed many of the foundational environmental and natural resources statutes of the modern era, including the Clean Air Act (1970), the Federal Water Pollution Control Act (1972), the Coastal Zone Management Act (1972), the Marine Mammal Protection Act (1972), the Endangered Species Act (1973), the Safe Drinking Water Act (1974), the Federal Land Policy and Management Act (1976), the National Forest Management Act (1976), the Magnuson Fishery Conservation and Recovery Act (1976), the Surface Mining Control and Reclamation Act (1977), and the Public Rangelands Improvement Act (1978).

Throughout this flurry of legislative activity, the Environment and Natural Resources Division grew and adapted to enforce these new statutes and defend client agencies' decisions under them. For example, in *United States v. Ashland Oil & Transp. Co.* (6th Cir.), the Division successfully defended its enforcement action against a pipeline company for oil discharges and the Clean Water Act's jurisdictional reach to non-navigable tributaries that flow into navigable waterways. Similarly, in *E. I. du Pont de Nemours & Co. v. Train* (S. Ct.), ENRD defeated challenges from inorganic chemical manufacturing companies to EPA's authority to promulgate certain industrywide effluent limitations. Near the end of the decade, in *Andrus v. Sierra Club* (S. Ct.), the Division persuaded the Supreme Court to find that substantial deference was owed to CEQ's interpretation of NEPA.

In the 1970s and 1980s, the Division also played a key role in responding to cascading environmental and public health problems caused by the disposal of toxic wastes in American communities. Yet the existing patchwork of laws proved inadequate to address the storage and disposal of toxic wastes, requiring federal and state governments to instead developed case-by-case remedial plans and declare emergencies to direct funds towards cleanups and relocations of affected communities. Recognizing the need for a comprehensive approach, Congress worked closely with ENRD to develop the Comprehensive Environmental Response,

¹ Senator Gaylord A. Nelson, Earth Day Speech in Denver, Colorado, April 22, 1970.

Compensation, and Liability Act (“CERCLA”) (1980), commonly known as Superfund, which established a framework to fund the investigation and cleanup of hazardous waste sites and recover costs from those responsible. After its enactment, the Division swiftly brought CERCLA cost-recovery actions against the chemical companies responsible for the Love Canal (N.Y.) and “Valley of Drums” (K.Y.) disasters. ENRD initiated numerous other CERCLA actions throughout the 1980s in response to waste dumps and environmental disasters, including the Times Beach, Missouri dioxin crisis, and the Exxon Valdez oil spill.

In the 1990s, as the federal government’s environmental programs matured, ENRD continued to defend and enforce existing programs and major amendments. For example, the Division was at the forefront of defending and enforcing the Clean Air Act Amendments of 1990, which included more than 175 deadlines for major regulatory actions to protect the ozone layer, reduce acid rain and toxic air pollutants, implement a national permit system for major stationary sources, and improve air quality. Over this period, ENRD also successfully defended EPA’s National Contingency Plan, which provides a blueprint for responding to oil spills and hazardous waste sites, and it won major criminal enforcement cases, including the conviction of Allan Elias for illegally storing and treating hazardous waste that led to a 20-year old employee’s severe and irreversible brain damage.

By the 2000s and 2010s, the environmental statutes responsive to Earth Day 1970 had grown into a powerful force for protecting the nation’s air, water, land, and public health, and the Division deployed its resources to secure compliance and negotiate unprecedented settlements. For example, in 2002, ENRD recovered \$252.7 million in reimbursement for costs in connection with the cleanup of asbestos contamination in Libby, Montana. The Division was also actively involved in conservation work in this period, typified by its active involvement in the acquisition of land as part of the expansion of the Everglades National Park in South Florida and the protection of the park’s water resources.

In the last 50 years, ENRD’s diverse practice has included an essential role in shaping and defending the legislative and regulatory responses to pollution and conservation. The achievements described above, and in the rest of this year’s Accomplishment’s Report, highlight the Division’s efforts to advance environmental values since Earth Day 1970.

Reflecting on the 50th anniversary of Earth Day, the Division looks forward to continuing its tradition of honoring Earth Day and its legacy.

Overview of the Environment and Natural Resources Division



Great Sand Dunes National Park and Preserve, Colorado, National Park Service

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 (DOJ) to address all cases concerning “enforcement of the Public Land Law” and relating to Indian affairs. He 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 three field offices in Denver, San Francisco, and Sacramento. 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 Department of the Interior (Interior or DOI), the Department of Agriculture (DOA), and the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce (DOC or Commerce). The Division’s sections that carry out this enforcement work are the **Environmental Enforcement Section (EES)**, the **Environmental Defense Section (EDS)**,² 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. ENRD’s litigation docket touches all kinds of public lands, ranging from entire ecosystems (such as the nation’s largest sub-tropical wetlands and rain forests) 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

² Although it primarily works on cases defending the United States, EDS handles civil enforcement of wetlands fill cases because those cases often draw on the section’s expertise in the law governing what waters the CWA covers.

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 natural resource development, including timber and subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, particularly the Forest Service within USDA and the many components of DOI, including the National Park Service, 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, which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA), 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 (ECS)** 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 in 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 the plaintiffs claim to have violated such statutes. The Division's main clients in these areas include the DOD, EPA, the Corps, the U.S. Department of Transportation (DOT), and Interior's various components. The **Natural Resources Section** and the **Environmental Defense Section (EDS)** 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, border infrastructure, 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, rights, and resources of federally recognized Indian tribes and their members, because, through treaty provisions and other law, the United States holds the majority of these lands and resources in trust for the 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 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. The Chief of the Indian Resources Section is Craig Alexander. 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 DOJ'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 legal and policy questions, particularly those that affect multiple sections in the Division. It reviews and analyzes legislative proposals on environmental issues, Indian law, 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. 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 is the Division's center for financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services. 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 internally developing 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)** ensures that the Division's work is accomplished in a timely and professional manner each day. It aligns the Division's work with the administration's agenda and provides high-level supervision of the work of each Section. Moreover, it ensures consistency of legal positions across all Sections and is responsible for

many critical decisions about ongoing litigation in consultation with leaders from client agencies. The Assistant Attorney General is Jeffrey Bossert Clark. 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 Prerak Shah 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. Chief of Staff and Counsel is Stephanie Maloney. Paul Salamanca is Senior Counsel. Michael Buschbacher is Counsel.

Recognizing Our Staff



Assembly in the 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 Martha C. Mann, Assistant Section Chief of the Environmental Defense Section for her outstanding counseling and supervision of litigation involving EPA's and the Corps' reconsideration of the Clean Water Act rule defining "waters of the United States." Jeffrey S. Beelaert, Trial Attorney for the Appellate Section also received the award for his exceptional work in support of the effort to appoint then-Judge Brett M. Kavanaugh to the Supreme Court of the United States.

The Attorney General's Award for Excellence in Legal Support was presented to Deshonda L. Young, Supervisory Administrative Assistant in WMRS for her 20 years of service and her expert oversight of litigation support for more than 28 attorneys, including paralegal support and research, travel and expert witness management, document production and management, case management and docket tracking, compliance with all DOJ and ENRD policies.

The John Marshall Award—Trial of Litigation—was presented to the St. Bernard Parish Team, including William J. Shapiro and Joshua P. Wilson, Senior Attorneys in the Natural Resources Section; William B. Lazarus, Assistant Section Chief and Brian C. Toth, Trial Attorney, in the Appellate Section; Alisa Klein, Trial Attorney in the Civil Division; and Edwin S. Kneeler, Deputy Solicitor General and Erica L. Ross, Assistant to the Solicitor General in the Office of the Solicitor General, for establishing valuable precedent against constitutional takings claims arising from hurricanes and other natural disasters. The team went above and beyond to defend against a novel class-action lawsuit seeking to hold the United States liable for damages that occurred when Hurricane Katrina struck New Orleans, Louisiana in August 2005. After the trial court ruled against the United States, the team worked together to convince the Court of Appeals for the Federal Circuit that the federal government is not liable for alleged improper maintenance and that the trial court could not ignore the benefits of federal flood control projects. The appellate court unanimously found for the United States, and the Supreme Court denied the plaintiffs' petition for review.

The John Marshall Award—Providing Legal Advice—was presented to the Border Wall Land Acquisition Team, including Andrew M. Goldfrank, Section Chief and Barry A. Weiner, Deputy Section Chief in the Land Acquisition Section, for advising senior members of the U.S. Department of Homeland Security, Customs and Border Protection, and the Corps on a path forward for identifying and efficiently acquiring the property interests needed for border wall infrastructure. Following the team's guidance, the United States was able to acquire scores of voluntary acquisitions for rights of entry along the planned Border Wall without litigation and many months ahead of schedule.

The John Marshall Award—Alternative Dispute Resolution—was presented to the Salt Dome

Trial Team, including Renita Y. Ford, Assistant Section Chief, Johanna M. Franzen, Anthony C. Gentner, Eugene N. Hansen, and Reade E. Wilson, Trial Attorneys in the Land Acquisition Section, for their efforts condemning a massive underground salt cavern in western Louisiana, capable of storing ten million barrels of crude oil, on behalf of the U.S. Department of Energy (DOE) as part of efforts to enhance energy security. The team successfully navigated prior adverse rulings and an extensive alternative dispute resolution process to settle the case for \$37.5 million, avoiding a costly trial and saving the federal government approximately \$60 million.

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

Laura Thoms of EES received the Arthur S. Flemming Award for excellence in government service from George Washington University, in partnership with the Arthur S. Flemming Awards Commission. The commission recognized her work prosecuting civil violations of the CWA by actors in the coal industry. Her efforts, in partnership with EPA and multiple states, required company improvements that will foster compliance with the applicable federal and state laws with an estimated value of \$412 million. In addition, her efforts yielded \$55 million in civil penalties and should reduce water pollution by an estimated 150 million pounds.

James Bezio, Whitlee Dean, James Freeman, Kate Matthews, Alexandra Sherertz, Laura Thoms, and Katherine Tribbett of EES received an EPA Gold Medal in recognition of the NGL Crude Logistics Case Team's efforts in securing a successful resolution for violations of the Renewable Fuel Standards (RFS) program.

Eric Albert of EES received an EPA Gold Medal in recognition of the Hyundai Construction Equipment Americas CAA Criminal/Civil Enforcement Matter Team's pursuit of enforcement actions against Hyundai Construction Equipment Americas.

Jerry MacLaughlin and Myles Flint of EES received an EPA Silver Medal Award in recognition of the Centredale Settlement Team's proactive efforts to reach a common-sense agreement, which included a \$100 million cleanup and 100% recovery of past and future EPA costs.

Pete Flynn of EES received an EPA Bronze Medal for his work on the Nuclear Metals Superfund Site settlement, which required Textron and Whittaker to remediate contamination from many years of manufacturing depleted-uranium munitions.

Brian Donohue of EES received an EPA Bronze Medal for his work on the Tradebe RCRA/CAA settlement, which resulted in a \$525,000 civil penalty and almost \$1 million in injunctive relief, including installation at two thermal oxidizer facilities and upgraded internal procedures to avoid future violations.

Betty Yu and Mark Gallagher of EES received the EPA Bronze Medal for their work on the Sherwin Williams Omnibus Superfund Consent Decrees that required the defendants to

perform remedial work in Gibbsboro, New Jersey and to pay EPA over \$1.4 million in past costs.

Laura Rowley and Brian Donohue received an EPA Bronze Medal for their work on a cash-out agreement of nearly \$4.5 million related to cleanup of the lower Passaic River from parties potentially liable for an operable unit of the Diamond Alkali Superfund Site. The award was also given in recognition of their work in advising EPA on the establishment of an allocation process related to over 100 other potentially responsible parties at the site.

Bill Weinischke of EES received the EPA Bronze Medal for his work on the Sanitation District 1 of Northern Kentucky settlement that resulted in specific performance standards and stipulated penalty provisions that will help expedite performance in addition to the \$500 million the District had already spent.

Steven Shermer of EES received the EPA Bronze Medal for his work on the Exxon Mobil Corp. and ExxonMobil Oil Corp. settlement, which required the defendants to pay a \$2 million civil penalty to the United States, a \$470,000 civil penalty to the Louisiana Department of Environmental Quality, and \$300 million in injunctive relief.

Nick McDaniel and Cathy Rojko of EES received the EPA Bronze Medal for their work on the Indiana Harbor Coke Clean Air Act settlement. Under the Consent Decree, defendants paid a \$5 million civil penalty (split evenly with co-plaintiff Indiana).

Jeffrey Spector of EES received an EPA Bronze Medal as part of the Mesabi Nugget settlement team for achieving an outstanding settlement of CAA violations resulting in significant reductions in emissions of mercury, nitrogen oxide (NOx), and VOCs.

Samara Spence of EDS received an EPA Bronze Medal for her work defending EPA's new framework rules under the 2016 amendments to the Toxic Substances Control Act in *Safer Chemicals Healthy Families, et al. v. EPA* (9th Cir.).

Rachel Evans King of EES received the Assistant Administrator's Award for Regional Excellence in Enforcement in recognition of the Clean Rentals Enforcement Team's success in addressing air pollution caused by industrial laundry facilities in New England. Rachel received a second Assistant Administrator's Award for Regional Excellence in Enforcement in recognition of the Town of Ticonderoga – SDWA Judicial Enforcement Team's successful negotiation of a SDWA judicial consent decree that eliminates an uncovered finished water reservoir, addresses violations of the Sewer Water Treatment Rule and ensures safe and reliable drinking water for the residents of Ticonderoga, New York.

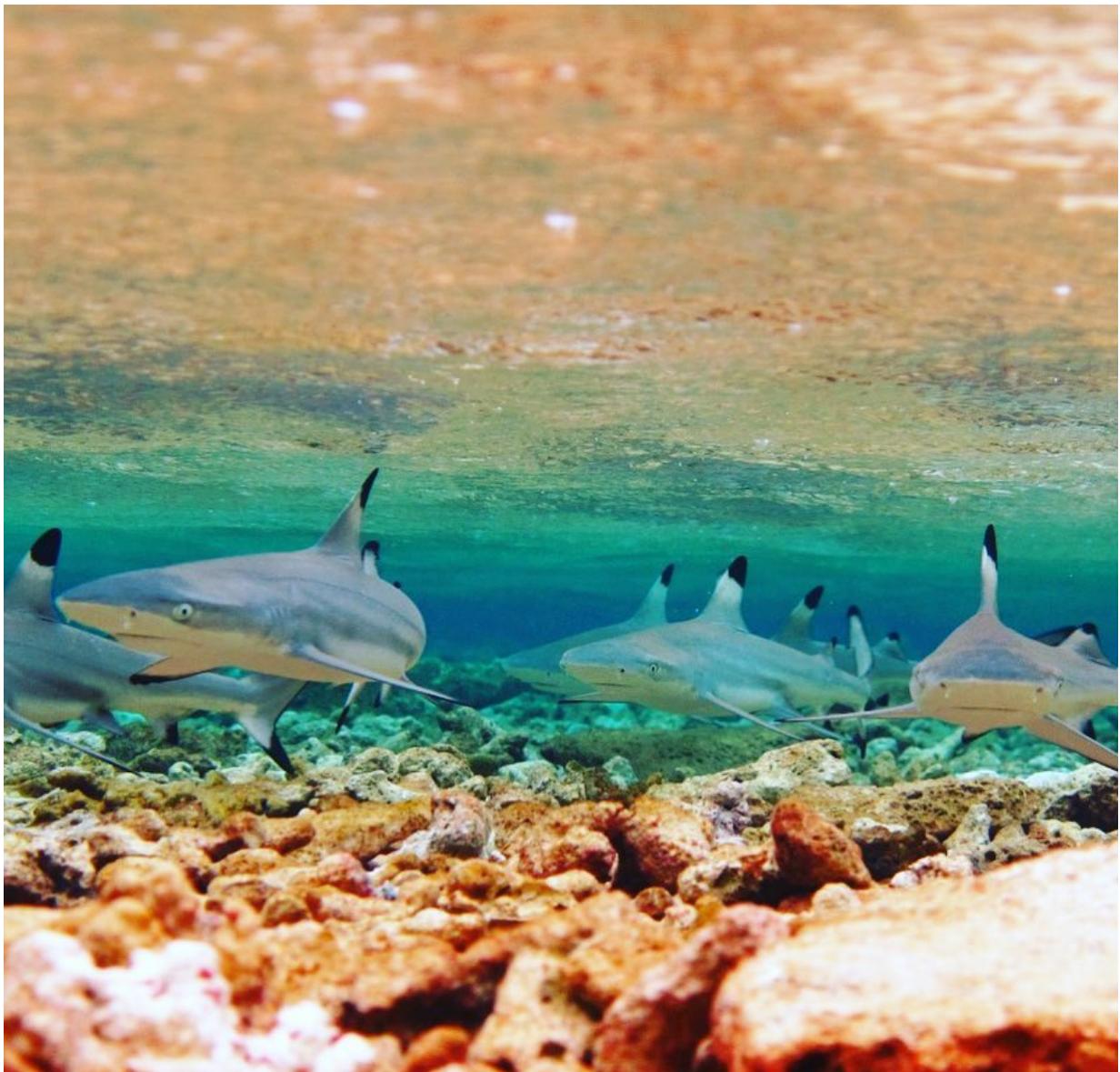
Mark Elmer of EES received the Assistant Administrator's Award for Regional Excellence in Enforcement in recognition of the MarkWest Piggling Settlement Team's efforts to reduce uncontrolled VOC emissions by a large natural gas producer during transmission in Pennsylvania and Ohio.

David Dain and Kate Matthews of EES received the Assistant Administrator's Award for Regional Excellence in Enforcement in recognition of the hard work and perseverance in securing cost recovery in the Federal Resources Corporation Bankruptcy Case.

Jerry MacLaughlin of EES received the Regional Administrator's Award in recognition of his work on the Standard Chlorine Chemical Superfund Site Consent Decree, which required the four settling defendants to fund and perform an investigation and study, pay for EPA's oversight costs, carry out the \$11.2 million remedy selected by EPA, pay all future costs, and pay a large percentage of the United States' costs.

Austin Saylor of EDS received a Commander's Coin from the Corps of Engineers' Pittsburgh District for his work in settling *Marshall County Coal Co. v. US Army Corps of Engineers* (N.D. W. Va.), a challenge to the Corps' 2016 jurisdictional determination for a coal ash impoundment site.

Enforcing the Nation's Environmental and Wildlife Protection Laws



Palmyra Atoll National Wildlife Refuge, U.S. 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 cooperative federalism, exercise pragmatic decision-making, coordinate and collaborate with lead agencies and U.S. Attorney's 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 prison terms for individuals and the payment of criminal penalties, which may include fines, restitution, and forfeiture.

Fiscal year 2019 was a successful year for the Division's enforcement program. The Division obtained over \$3.3 billion in injunctive relief, over \$343 million in cost recovery and over \$325 million in civil penalties. ENRD also achieved convictions of 93 defendants in 40 cases. Criminal penalties totaled nearly \$87 million, and confinement totaling 52 years was ordered for 78 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 2019, the Division secured 44 CERCLA settlements and judgments. The settlements and judgments obtained in actions brought on behalf of EPA addressed future cleanup work estimated to cost more than \$222 million and over \$198 million in costs previously expended by EPA.

In *United States and the State of Wisconsin v. NCR Corp., et al.* (E.D. Wis.), the Division negotiated a settlement with P.H. Glatfelter Company to pay \$20.5 million for reimbursement of EPA's past costs and natural resource damages related to extensive PCB contamination. The company must also reimburse all future government costs of overseeing one of the nation's largest Superfund cleanup projects at Wisconsin's Lower Fox River and Green Bay Site. P.H. Glatfelter also agreed to take on responsibility for EPA's long-term monitoring and maintenance activities.

In *United States v. Apogent Transition Corp* (D.N.J.), the Division negotiated a settlement for part of the Standard Chlorine Superfund Site in the Town of Kearny, New Jersey. The four settling defendants operated various chemical plants disposing of wastes directly onto the soil near the Hackensack River from the early 1900's to the 1990's. The chemical plants' wastes then seeped into the groundwater. Pursuant to the consent decree, the settling defendants will perform all of EPA's chosen \$11.2 million remedy, pay all future costs, and pay over 75% of the United States' past costs.

In *United States v. Dico* (8th Cir.), the Eight Circuit affirmed CERCLA liability against a tire company and its corporate parent that sold certain buildings in Des Moines, Iowa contaminated with Polychlorinated Biphenyls (PCBs). These buildings were subject to an EPA order directing defendants to remove some of the PCB contamination, encapsulate the remainder, and submit a long-term maintenance plan to control PCB contamination. Without informing EPA, the defendants arranged to dispose of the PCBs through the sale in order to avoid the costs of remediation. The defendants then sold the contaminated buildings to an unsuspecting third party that demolished and removed them. The Eighth Circuit upheld the lower court's decision imposing approximately \$5.45 million in response costs and \$5.45 million in punitive damages against the defendants.

The Division negotiated a settlement in *United States v. Honeywell International, Inc. et al.* (E.D.N.C.) addressing soils and sediments contaminated with mercury and PCBs at the LCP-Holtrachem Superfund Site in Riegelwood, North Carolina. Under the settlement, defendants will remediate the site through a combination of on-site treatment and storage and off-site treatment and disposal. The selected remedy is valued at \$16.2 million, and the defendants will reimburse the United States for all past and future response costs.

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 September 19, 2019, the United States announced a settlement in *United States v. Hyundai Construction Equipment Americas Inc.* (D.D.C.), resolving the United States' allegations that Hyundai illegally sold heavy construction vehicles with diesel engines that did not meet current emission standards, which violated Title II of the Clean Air Act. Hyundai purchased engines that met older emissions standards and then installed these engines in heavy construction equipment. The settlement requires Hyundai to pay a \$47 million civil penalty.

The Division negotiated a settlement in *United States v. Performance Diesel, Inc.* (D. Utah) to resolve violations of the CAA associated with the manufacture, sale, and installation of

aftermarket products that defeat the emissions control systems of heavy-duty diesel engines. The suit alleged that the company manufactured, sold, and installed thousands of aftermarket defeat devices, resulting in thousands of heavy-duty trucks operating without the filters, catalysts, and other emissions controls that keep our air clean. As part of the settlement, the company has agreed to stop the sale of all products the government alleged violate the CAA and pay a civil penalty of \$1.1 million.

In *United States v. IAV GmbH* (E.D. Mich.), a German software company pleaded guilty to one count of conspiracy for its role in a long-running scheme with Volkswagen AG (VW) to sell diesel vehicles in the United States that used a defeat device to cheat U.S. emissions testing procedures. The plea is the most recent success in an ongoing criminal investigation into unprecedented emissions cheating by VW. The company was sentenced to pay a \$35 million fine, complete a two-year term of probation, and engage an independent corporate compliance monitor.

Addressing Pollution from Vessels

United States v. Ionian Shipping & Trading Corp. and Lily Shipping Ltd. (D.V.I.) is the first case enforcing a new provision of a global treaty designed to protect the environment from harmful air emissions from ships by prohibiting them from burning dirty, high-sulfur diesel fuel in their engines. An investigation revealed that the companies used the illegal fuel for a year and a half, provided false documents, and made false statements to the Coast Guard to cover up the use of the dirty fuel. The ship's owner and operator were each sentenced to pay \$1.5 million, complete four-year terms of probation, and implement environmental compliance plans.

Addressing Air Pollution from Stationary Sources

In *United States v. Southeastern Grocers, Inc. et al.* (M.D. Fla.) the Division negotiated a settlement with Southeastern Grocers, Inc., BI-LO, LLC, and Winn-Dixie Stores, Inc., covering 576 grocery stores in seven southeastern states. The United States alleged refrigerant leak repair and recordkeeping violations at the defendants' stores. In addition to a \$300,000 civil penalty, the settlement requires defendants to implement a refrigerant leak management system at all of their retail grocery stores. Moreover, the defendants must reduce their corporate-wide average leak rate, retrofit or replace all at-risk appliance components to use non-ozone-depleting refrigerants by 2022, and retrofit or replace all appliance components to use non-ozone-depleting refrigerants at five additional existing stores per year for three years. For all new stores acquired during the lifespan of the decree, the defendants must use non-ozone-depleting refrigerants.

In *United States et al. v. MPLX, LP et al.* (N.D. Ohio), the Division reached a settlement with MPLX and several of its subsidiaries for violations of several CAA leak detection and repair requirements at 20 gas plants in four states. Under the settlement, MPLX must come into compliance with the CAA and pay a civil penalty of \$925,000. The Commonwealth of Pennsylvania and the States of West Virginia and Oklahoma joined the United States in this

action and will receive a portion of the civil penalty.

Under the settlement agreement in *United States v. Aux Sable Liquid Products LP* (N.D. Ill.), Aux Sable must strengthen air pollution controls and reduce air pollution at its natural gas processing facility—the largest natural gas processing plant in the United States—located southwest of Chicago. The consent decree resolved numerous allegations of violations of the CAA, Illinois law, and the plant’s permits. Under the terms of the settlement, Aux Sable will pay a \$2.7 million civil penalty and at least \$4.5 million on improvements to pollution controls and projects to reduce VOCs and NOx emissions.

Reducing the Risk of Accidental Releases of Hazardous Chemicals

Together with the Mississippi Department of Environmental Quality, the Division negotiated a settlement in *United States and State of Mississippi v. Chevron USA Inc.* (N.D. Cal.) that requires Chevron to improve safety measures at all of its petroleum refineries across the United States. The settlement resolved allegations that the company violated the CAA by failing to properly perform equipment inspections and maintenance, which caused the accidental releases of regulated chemicals at three of its facilities and endangered workers and local communities. Chevron will spend \$150 million to implement safety improvements and pay a \$2.95 million civil penalty. The overall value of the settlement is the largest in the history of efforts to enforce the Risk Management Plan Rule under CAA Section 112(r).

Defending Investigations of the Industrial Chemical Accidents

In *United States v. Exxon Mobil Corp.* (9th Cir.), the Division defended the United States Chemical Safety and Hazard Investigation Board’s (CSB) broad power to seek information during its investigation of an explosion at an oil refinery in Torrance, California. The explosion caused a release of flammable hydrocarbons and ash mixed with debris, injured four workers, and required closing of the unit for 15 months. In the resulting CSB investigation, the company refused to honor numerous administrative subpoenas, and CSB filed a petition to enforce the subpoenas in federal court. However, the district court rejected certain subpoenas that sought information on aspects of the refinery that were not directly involved in the explosion, including information on the effects and potential harms were a similar incident to occur. The Division persuaded the Ninth Circuit that the CSB’s subpoenas were relevant to its investigation and to reverse the district court.

Keeping Our Water Clean

ENRD helps to keep our nation’s waters clean by enforcing the CWA, which is the primary federal statute protecting the quality of the nation’s water, and regulates pollution from both industrial and municipal facilities. With the OPA and APPS as additional tools, Division litigators handled cases that address pollution from streams to rivers, from the coasts out into the open ocean.

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 2019, courts approved two major Division settlements, which collectively required an estimated \$42 million in infrastructure improvements.

In a third major settlement, in *United States and State of Texas et al. v. City of Houston* (S.D. Tex.), the Division and the State of Texas negotiated a resolution with the City of Houston to implement corrective measures to its sewer system. The system has caused longstanding problems with sanitary sewer overflows and discharges into surrounding water bodies, exceeding the permitted limits from wastewater treatment plants. The city’s discharge of raw sewage into waters of the United States and waters of the state contributed to bacteria contamination, illness causing viruses, and degraded water quality. These measures will be implemented over a span of 15 years and will cost the City of Houston an estimated \$2 billion.

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

ENRD protects water bodies from discharges of oil and hazardous substances through enforcement of the CWA, OPA, APPS, and the Refuse Act. In fiscal year 2019, the Division pursued a number of matters against shipping and fishing companies for discharges 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 \$506 million in criminal fines and more than 319 months of confinement. This program has resulted in convictions for 155 organizations. In addition, about 1,510 vessels associated with those investigations, most of them foreign-flagged, have been subject to extra scrutiny under environmental compliance plans.

In *United States and Louisiana Department of Environmental Quality v. Sunoco Pipeline L.P. and Mid-Valley Pipeline Company* (W.D. La.), the Division and the Louisiana Department of Environmental Quality negotiated a settlement resolving allegations that Sunoco violated the CWA and state environmental laws connected to three crude oil spills in Texas, Louisiana, and Oklahoma. The crude oil flowed from Sunoco's corroded oil pipelines into nearby waters. The settlement requires Sunoco to identify and remediate the types of problems that caused the oil spills, which includes performing inspections and repairs to prevent future spills. Sunoco will also pay \$5 million to the United States in civil penalties and \$436,274 to the Louisiana Department of Environmental Quality in civil penalties and response costs.

The Division reached a settlement in *United States and Arkansas v. Delek Logistics Operating, LLC, et al.* (W.D. Ark.), resolving the claims of the United States and the State of Arkansas against Delek Logistics Operating, LLC, SALA Gathering Systems, LLC, and Delek Logistics Partners, LP. The claims address a March 2013 oil spill from Delek's oil tank facility in Magnolia, Arkansas and related violations of spill-prevention regulations that impacted approximately 3.5 miles of an Arkansas creek and the Little Cornie Bayou. Under the consent decree, Delek will perform injunctive relief and pay a civil penalty of \$2.26 million, with \$1.7 million paid to the United States, and \$550,000 to the State.

In *United States and State of Mississippi v. Denbury Onshore, LLC.* (S.D. Miss.), the Division and State of Mississippi settled claims alleging that Denbury allowed numerous spills from its production facilities in one oil field in Alabama and seven oil fields in Mississippi, violating the CWA and the Mississippi Air and Water Pollution Control Law. Under the consent decree, Denbury must pay a penalty of \$3.5 million, with \$2.4 million paid to the Oil Spill Liability Trust Fund, and \$1.1 million paid to the Mississippi Department of Environmental Quality. The Consent Decree also requires Denbury to undertake comprehensive injunctive relief to prevent future spills.

In *United States v. Fox* (9th Cir.), the Ninth Circuit affirmed the defendant's conviction and 30 day prison sentence for discharging oil in violation of the CWA. The defendant operated a fishing vessel that regularly pumped oily bilge water into the coastal waters of Washington State. During the relevant period, the vessel was not equipped with an oil-water separator and was leaking more than two gallons of oil into its engine room every 24 hours. The defendant instructed his crew to take various half-measures to collect the spilled oil before discharging the engine room bilge into the ocean. Because the defendant knew excessive oil was in the engine room bilge, the appellate court rejected the argument that a rational jury could not conclude that he knowingly ordered his crew to discharge oily bilge water.

In *United States v. d'Amico Shipping Italia S.p.A.* (D.N.J.), d'Amico Shipping discharged oily bilge

wastes into the ocean and falsified vessel records to hide its illegal discharges from the U.S. Coast Guard. The company admitted that one of its oil tankers intentionally bypassed its pollution prevention system by discharging wastes and oily water through the tanker's sewage holding tank. The company pleaded guilty to violating APPS, which implements the International Convention for the Prevention of Pollution from Ships, for its unlawful discharges and attempts to evade detection. The company was sentenced to pay a \$3 million fine, make a \$1 million community service payment to the National Fish and Wildlife Foundation, and 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. Princess Cruise Lines Ltd.* (S.D. Fla.), Princess Cruise admitted to committing several probation violations, including failing to implement an environmental compliance program and continuing to discharge oily wastewater from its vessels. In 2016, the company pleaded guilty to conspiracy, obstructing justice, and violating APPS. As a result, Princess Cruise was sentenced in 2017 to pay a \$30 million fine, make a \$10 million community service payment, hire an independent corporate monitor, and complete a five-year term of probation. For its probation violations in 2019, the company was ordered to pay an additional \$20 million fine and to complete an additional three-year term of enhanced supervision.

Guilty pleas were entered by nine corporate defendants and ten individual defendants in seven additional cases involving deliberate violations by vessel operators and crew members: *United States v. Portline Bulk International S.A.* (D.S.C.); *United States v. Fukuichi Gyogyo Kabushiki Kaisha* (D. Guam); *United States v. Interorient Marine Services Ltd.* (W.D. La.); *United States v. Avin International Ltd.* (E.D. Tex.); *United States v. Navimax Corp.* (D. Del.); *US v. Ionian Shipping and Trading* (D.V.I.); and *United States v. MST Mineralien Schifffahrt Spedition und Transport GmbH* (D. Maine). In fiscal year 2019, defendants prosecuted under the Division's vessel pollution program were sentenced to pay a total of \$38.2 million in criminal penalties, with each serving a term of probation, for crimes including conspiracy, false statements, obstruction of justice, and Oil Record Book violations under APPS.

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 *Foster Farms v. EPA* (S.D. W. Va.), the Division obtained a favorable ruling on liability against defendants who had filled nearly 2,000 linear feet of wetlands near Parkersburg, West Virginia. In preparing their property for future development and sale, the defendants filled wetlands with over 100,000 cubic yards of rock and debris. The district court ordered defendants to buy credits from a mitigation bank and pay a \$100,000 civil penalty for its CWA violations.

In *United States v. Brace* (W.D. Pa.), Division attorneys won a second CWA enforcement case against an individual defendant and his closely-held corporations for the unpermitted discharges of fill into wetlands in Erie County, Pennsylvania. The district court found that

defendants' land clearing activities resulted in the illegal filling and draining of approximately 20 acres of wetlands along a stream that flows into Lake Erie. The district court ordered defendants to submit plans describing future restoration and mitigation activities for the affected wetlands.

In *United States and State of West Virginia v. Antero Resources Appalachian Corporation* (N.D. W. Va.), the Division resolved claims against Antero Resources for unpermitted discharges of fill into wetlands and streams at 32 natural gas extraction sites in West Virginia. At these sites, Antero Resources' damaged over 19,000 linear feet of streams and more than four acres of wetlands. Antero Resources will pay a civil penalty of \$3.15 million under the settlement, and it will restore affected resources at an estimated cost of \$8 million. The company will also implement a compliance improvement plan to prevent future violations.

Protecting Our Drinking Water Supplies

The Division enforces the Safe Drinking Water Act to ensure that every American has safe water to drink. When drinking water is kept in an open storage facility, such as a reservoir, as its last stop prior to distribution to residents, that water is subject to recontamination with microbial pathogens from birds, animals, and other sources, such as viruses, Giardia, and Cryptosporidium. Giardia and Cryptosporidium are protozoa that can cause potentially fatal gastrointestinal illness in humans.

In *United States v. City of New York et al.* (E.D.N.Y.), the Division reached a settlement with the City of New York and the New York City Department of Environmental Protection for their longstanding failure to cover and protect the Hillview Reservoir located in Yonkers, New York. The Hillview Reservoir is a key facility that delivers drinking water to City residents. It receives water from the Catskill-Delaware Drinking Water Supply. The 90-acre reservoir is part of New York City's public water system, which delivers up to a billion gallons of water a day. The settlement requires defendants to make improvements and cover the reservoir at an estimated cost of \$2.98 billion and to pay a \$1 million civil penalty. Until the cover is in operation, the settlement also requires defendants to implement interim measures to help protect the water, including enhanced wildlife management at the reservoir and reservoir monitoring.

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 renewable fuel identification numbers (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.

Since the program began in 2011, ENRD—in partnership with U.S. Attorneys’ Offices, the Tax Division, and criminal investigators from EPA, the Secret Service, IRS, DOT, and the FBI—has prosecuted 34 individuals and companies involved in fraud related to RINs. All of these cases involved many millions of dollars in fraud loss. Over the years, these prosecutions have resulted in more than 200 years of incarceration, \$3.2 million in fines, \$349 million in restitution, and \$168 million in forfeiture. In fiscal year 2019, in *United States v. Keystone Biofuels, Inc.* (M.D. Pa.), the company and two of its high-level executives were convicted after trial for unlawfully generating over sixteen million RINs. A cooperating defendant in that case was sentenced to pay \$4.15 million in restitution for conspiring to defraud the IRS as part of the biodiesel tax scheme. Likewise, in *United States v. David Dunham* (E.D. Pa.), a jury convicted the defendant on 54 of 55 counts arising out of a conspiracy to defraud the IRS, EPA, and USDA. In addition to being convicted of falsely claiming millions of dollars in credits from each of these programs, the defendant was convicted of obstruction of justice for his efforts to keep the agencies from holding him to account for his crimes. Both cases will be sentenced in fiscal year 2020.

On the civil enforcement side, the Division negotiated a settlement in *United States v. NGL Crude Logistics, LLC* (N.D. Iowa) resolving claims against NGL relating to a series of transactions between NGL and Western Dubuque Biodiesel, LLC in 2011. These transactions resulted in the generation of two sets of RINs for the same volumes of biodiesel. The settlement requires NGL to pay a \$25 million civil penalty and purchase and retire 36 million RINs (at a cost of approximately \$10 million) to offset the harm or its violations. Claims against Western Dubuque related to this transaction were resolved in a 2016 settlement requiring the company to pay a \$6 million civil penalty.

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 2019, the Division recovered over \$34 million in natural resource damages.

In *United States v. CITGO Petroleum Corporation, et al.* (W.D. La.), the Division and State of Louisiana resolved claims against CITGO and other defendants for natural resource damages at the Calcasieu Estuary. CITGO was responsible for discharges of various metal, dioxin/furans, PCBs, and polycyclic aromatic hydrocarbons (PAHs). The settlement required the payment of a total sum of \$11 million from which \$3.04 million will reimburse the federal and state trustees

for past assessment costs (\$2.98 million for federal trustees and \$63,204 for state trustees). The remaining \$7.95 million will be deposited into the Bayou d'Inde Area of Concern Site Restoration Account to be managed by the DOI for use by the trustees to pay for future natural resource restoration projects.

In *United States and State of Louisiana v. Hess Corp.* (E.D. La.), the Division and the State of Louisiana settled natural resource damages claims against Hess Corporation related to crude oil discharges from the company's offshore platform in Breton Sound, off the coast of Louisiana. These oil discharges led to the deaths of hundreds of brown pelicans and other birds. The settlement secures payment of \$8 million to the United States and \$642,110 to the State of Louisiana Trustees for future restoration projects and recovery of past assessment costs.

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 2019, the Division resolved seven bankruptcy proceedings securing an estimated \$23 million in cost recovery. In addition, debtors paid over \$128 million during fiscal year 2019 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. The imprisonment, fines, forfeiture, community service, and other penalties deter future crime and help mitigate the harm caused by violations.

In *United States v. Casey*, (E.D. Va.), the owner and president of Casey's Seafood, located in Newport News, Virginia pleaded guilty to conspiring to violate the Lacey Act. The defendant directed employees to remove crabmeat purchased from Southeast Asia, Central America, and South America from the original shipper's packaging containers, place it into different packing containers, and label the contents as "Product of USA." Casey and his co-conspirators falsely labeled close to 400,000 pounds of crabmeat, with a retail value in the millions of dollars. The defendant was sentenced to 45 months of incarceration, followed by three years of supervised release, and a \$15,000 fine.

In response to drastic declines in the Great Lakes' lake trout populations, federal, state, tribal, and Canadian entities have gone to great lengths to reestablish the fishery by enacting legislation, restoring habitat, extensively restocking, and controlling invasive species. The United States, through the National Fish Hatcheries, is responsible for 90% of all the lake trout stocked in the Great Lakes from 1952 through 2012, investing millions of taxpayer dollars. Because the stocking effort was not achieving the results anticipated, and in light of reports of

extensive over-fishing, the U.S. Fish and Wildlife Service undertook a covert operation into illegal harvest and trafficking of lake trout and other Great Lakes' species. The investigation (Operation Fishing for Funds) uncovered an extensive network of illegal fishing, as well as trafficking in those illegally-harvested fish.

Over the course of several years, the Division worked with five different tribes to identify which targets would be prosecuted in tribal court and which in federal court. In fiscal year 2019, two companies and nine individuals – the last of the Fishing for Funds defendants -- were convicted of Lacey Act violations and sentenced to a combined \$1.5 million in restitution to federal and tribal hatcheries.

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 2019, the Division secured 48 counts of conviction against 19 individuals under these statutes, particularly laws that criminalize interstate animal fighting ventures, such as dogfighting rings. So far, the defendants have been sentenced to 520 months of incarceration and 528 months of supervised release. Additionally, the Division helped rescue 240 dogs, some of which were pregnant. ENRD reached agreements with non-governmental organizations to care for these animals after they were rescued. Finally, in fiscal year 2019, the Division received more than 60 requests for advice and assistance from U.S. Attorney's Offices on animal welfare matters.

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," which almost always means "kills." Operation Grand Champion is a joint investigation by the DOA, Office of the Inspector General; DHS, Homeland Security Investigations; and the FBI. The Department of Justice, particularly ENRD, has had a critical coordinating role.

In fiscal year 2019, ENRD continued to pursue civil forfeiture claims for dogs seized from criminal dogfighting ventures in violation of the Animal Welfare Act. This year more than 100 dogs from suspected dog fighting operations around the country were seized and forfeited, resulting in significant taxpayer savings and more humane treatment for the dogs.

Protecting Worker Health and Safety

The Division is responsible for enforcing laws to protect health and safety in the workplace, including the laws and regulations administered by the Occupational Safety and Health Administration (OSHA) and relevant provisions in the environmental laws that address worker safety.

In *United States v. C&J Well Services, Inc.* (D.N.D.), an oilfield services company pleaded guilty to OSHA violations that resulted in the death of an employee. The worker died while welding on an

uncleaned tanker trailer that contained flammable chemicals. The welding ignited flammable chemicals in the tanker, which then exploded. The company did not provide welding training to the victim or other welders at the facility, did not effectively supervise the welders, did not require the welders to obtain hot work permits prior to welding, and did not follow internal auditing procedures. As a result, the victim and other welders repeatedly welded uncleaned tanks that contained flammable residue. The company pleaded guilty and was sentenced to pay a \$500,000 fine and \$1.6 million in restitution to the victim's estate. The company will complete a three-year term of probation, during which OSHA personnel may make unannounced inspections of its facilities across the country.

International Activities to Promote Enforcement of Federal Law

ENRD implements a 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. 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.

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 2019, 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. 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 combatting timber trafficking for partners in Asia, Africa, and South America. Funding for these efforts was through an IAA with the Department of State. This included training programs for magistrates, prosecutors, and investigative officials

in Myanmar, Gabon, Colombia, and Brazil. Additionally, attorneys continued the Division's leadership role in the Timber Region Enforcement Exchange with our European counterparts, including the development of timber identification tools that meet requirements for use in both the U.S. and E.U. countries. Division attorneys also participate in international meetings crucial to the Division's ongoing timber initiative. Among other activities, Principal Deputy Assistant Attorney General Brightbill gave a keynote address at Forest Legality week and ENRD attorneys participated in the Asia-Pacific Economic Cooperation timber expert's group and related meetings.

ENRD attorneys also conducted workshops for prosecutors at the State Department's International Law Enforcement Academies (ILEA) in Botswana, Thailand, and Hungary on both timber trafficking and pollution crime.

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. In fiscal year 2019, ENRD led the world's largest-ever global law enforcement operation targeting marine pollution. The month-long operation, named 30 Days of Action at Sea 2.0, followed up on last year's successful 30 Days at Sea operation. 30 Days at Sea 2.0 involved law enforcement agencies, environmental agencies, maritime agencies, border agencies, national police forces, customs authorities, and port authorities from 61 countries. Participants in the operation conducted over 16,500 inspections and 12,000 hours of surveillance that uncovered more than 3,000 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 was conducted in partnership with INTERPOL's Pollution Crime Working Group—which is chaired by an ENRD prosecutor—the European Union Agency for Law Enforcement Cooperation (EUROPOL), Frontex, and the European Maritime Agency. ENRD attorneys organized several regional planning meetings and provided operational planning guidance assisted by representatives from the U.S. Coast Guard and the Coast Guard Investigative Service.

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 supported the Administration's work to renegotiate the United States-Mexico-Canada Agreement and incorporate provisions addressing illegal trafficking in wildlife, fish, and timber.

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. Funding for this program is provided by the Crime Victims Fund, which is financed by fines and penalties paid by convicted federal offenders. In 2019, ENRD and EPA provided presentations about the program at the National Crime Victim Law Institute's annual Crime Victims' Rights Conference. DOJ also sponsored annual Southern States Victim Assistance Conference. These presentations raised awareness about the issues faced by the victims of environmental crime, the services they require, and how victim services practitioners can provide assistance.

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



New Bedford Harbor (prior to saltmarsh plantings), Massachusetts, 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 Rulemaking

The Division works to defend EPA rulemakings and other regulatory actions arising under the major pollution control laws, including the CAA, the CWA, the TSCA, the FIFRA, and CERCLA.

Defense of CAA actions:

In *California v. EPA* (D.C. Cir.), the court upheld EPA's determination that it must revise greenhouse gas emissions standards for light-duty vehicles from model years 2022 through 2025. In making its determination, EPA examined the penetration of fuel efficient technologies in the marketplace and found that consumer demand was declining. EPA reviewed a wide range of other factors as well, including developments in powertrain technology, vehicle electrification, light-weighting, and vehicle safety impacts. Based on this review, EPA found that the existing standards are too stringent and must be revised through rulemaking.

In *Coffeyville v. EPA* (D.C. Cir.), *Alon Refining Krotz Springs v. EPA* (D.C. Cir.), and *American Fuel & Petrochemical Manufacturers v. EPA* (D.C. Cir.), the Division successfully defended EPA's implementation of the RFS Program under the CAA. Under the RFS, EPA implements a market-based program for introduction of renewable fuels, including setting annual renewable fuel volume obligations and maintaining a system of "renewable fuel identification numbers" or "RINs" to track compliance. In the series of cases mentioned above, the D.C. Circuit upheld EPA's RFS volume requirements for 2017 and 2018 and denied challenges to EPA's regulations establishing obligated parties under the program.

The CAA requires EPA to periodically review and revise National Ambient Air Quality Standards (NAAQS), which establish primary standards designed to protect public health, including the health of sensitive populations (e.g., children, the elderly, and asthmatics), as well as secondary standards designed to more generally protect public welfare and the environment (e.g., visibility, crops, animals, and plants). In *Murray Energy Corp. v. EPA* (D.C. Cir.), numerous industry and environmental groups brought petitions for review of the 2015 NAAQS for ozone. Many petitioners challenged the rule because they claimed it did not adequately consider background ozone levels. The D.C. Circuit court rejected this argument and upheld the primary NAAQS for ozone, though the court issued a narrow remand for EPA to further consider the secondary NAAQS.

Once NAAQS are established, EPA must designate areas as in "attainment" or "nonattainment" with the standards. The Division had a productive year defending EPA actions designating areas as in "attainment" or "nonattainment" with various NAAQS. In a series of other complex

petitions for review, Division attorneys successfully defended EPA's approach to regulating emissions by sources in upwind states that are transported to and prevent attainment and maintenance of the NAAQS in downwind states. For example, in *Wisconsin v. EPA* (D.C. Cir.), the court upheld the majority of EPA's rulemaking addressing interstate transport with regard to the 2008 ozone NAAQS. And in *State of New York v. EPA* (D.C. Cir.), the court upheld EPA's denial of a petition by several states to expand a multi-state ozone transport region based in part on EPA's success in regulating interstate pollutant transport under the CAA's good neighbor provision.

The Division also obtained favorable results in cases involving EPA programs for regulation of stationary source emissions. In *Sierra Club v. EPA* (D.C. Cir.), the court rejected a challenge by environmental groups to an EPA rule revising ambient air quality monitoring requirements. In *California Communities Against Toxics v. EPA* (D.C. Cir.), the court held that it lacked jurisdiction to consider a challenge to an EPA guidance memorandum regarding the classification of sources as "major" or "minor" for purposes of CAA permitting.

Defense of CWA actions:

ENRD also had a successful year defending EPA actions to administer the CWA and its permitting programs.

In *Clean Water Action v. EPA* (5th Cir.), the Division defeated several environmental groups' challenges to an EPA rule providing regulatory relief and postponing compliance deadlines for certain effluent limitations by two years. In the new rule, EPA postponed the deadlines established in an earlier rule for flue gas desulfurization wastewater and bottom ash transport water, though EPA retained the deadlines for other limitations and standards included in that rule. The new rule will allow steam electric power plants more time to build the necessary treatment facilities for the relevant wastewaters. The rule will also provide EPA with more time to consider whether it should further revise the limitations.

In *Center for Biological Diversity v. EPA* (5th Cir.), ENRD attorneys persuaded the Fifth Circuit to dismiss a petition for review of a CWA National Pollutant Discharge Elimination System (NPDES) general permit. The NPDES general permit at issue would allow for certain discharges from existing oil and gas wells in the Western portion of the Outer Continental Shelf in the Gulf of Mexico. On review, the court found that petitioners lacked standing because they did not adequately demonstrate an injury specific to those discharges that might occur under the permit.

Defense of TSCA actions:

In 2016, the Frank R. Lautenberg Chemical Safety for the 21st Century Act, the first major piece of environmental legislation to be enacted in decades, was signed into law. The amendments include a suite of new authorities for EPA to evaluate chemicals to identify unreasonable risks to humans and the environment and to appropriately manage those risks. The Division handled a

number of cases in fiscal year 2019 arising from EPA's implementation of these amendments.

In *Safer Chemicals, Healthy Families v. EPA* (9th Cir.), ENRD attorneys won a largely favorable decision upholding most aspects of EPA's foundational rules describing how it will prioritize and conduct risk evaluations for chemicals. Similarly, in *Environmental Defense Fund v. EPA* (D.C. Cir.), the Division persuaded the appellate court to uphold most significant aspects of EPA's final rule relating to the TSCA inventory of chemicals and leaving the rule intact, even though the court found EPA had not adequately explained its reasoning on one minor issue.

Defense of RCRA and CERCLA actions:

Under RCRA, EPA implements requirements for handling, disposal, and storage of solid and hazardous waste, and CERCLA authorizes EPA to clean up hazardous waste sites. The Division obtained favorable results defending EPA actions under both programs this fiscal year.

In *California Communities Against Toxics v. EPA* (D.C. Cir.), the Division successfully defended an EPA rule excluding hazardous secondary materials headed towards recycling from regulation as hazardous waste. The court agreed with EPA that it was reasonable to consider the materials purposed for recycling as not "discarded" under these conditions.

In *Idaho Conservation League v. EPA* (D.C. Cir.), the Division persuaded the court to uphold EPA's decision under CERCLA that it was not necessary to promulgate regulations imposing costly financial assurance requirements on the hard rock mining industry.

Defending the Army Corps of Engineers' Permitting Decisions

The Division defends permits issued by the Army Corps of Engineers under section 404 of the CWA for discharges of dredged and fill material associated with various types of construction projects.

In *National Audubon Society v. Army Corps of Engineers* (E.D.N.C.), an environmental group challenged the Corps' issuance of a section 404 permit for a structure called a "terminal groin" that will mitigate erosion on a barrier island in North Carolina. Division attorneys succeeded on all claims, and the court found that the Corps' conclusion—that the terminal groin would be the least environmentally damaging practicable alternative—was reasonable and appropriately considered secondary environmental effects of the project.

In *Conservancy of SW Florida, Inc. v. Fish & Wildlife Service and Army Corps of Engineers* (S.D. Fla.), plaintiffs challenged a permit for the construction and operation of the Hogan Island Quarry, which is a sand and limestone mine in Florida. The court upheld the Corps' determination of the project's overall purpose, *i.e.*, the establishment of a Florida Department of Transportation grade limestone extraction operation to serve the Southwest Florida market, and the Corps' analysis of alternatives.

Defending against Federal Liability to Clean Up Private Hazardous Waste Sites

The Division litigates (and where possible settles) claims under CERCLA seeking to impose liability for cleanup on federal agencies where a fair apportionment of costs can be reached. In fiscal year 2019, these included several multimillion-dollar settlements:

In *Boeing Company v. United States* (W.D. Wash.), the Division negotiated a settlement with Boeing to resolve claims against the Air Force for cleanup costs arising from past federal involvement at Boeing's aircraft manufacturing facility in Seattle and the Lower Duwamish Waterway. Under the settlement, the United States agreed to pay a \$51 million share of Boeing's past and future cleanup costs, projected to exceed \$300 million.

In *United States v. Atlantic Wood Industries* (E.D. Va.), the Division resolved claims by EPA, federal natural resource trustees, and the Commonwealth of Virginia, in a settlement to recover cleanup costs and natural resource damages from contamination in Portsmouth, Virginia and the adjacent Elizabeth River. The settlement requires the Navy to pay more than \$63 million for CERCLA cleanup costs and \$1.5 million in natural resource damages resulting from historical operations in the area.

The Division settled natural resource damages claims and response costs in *United States v. Dow Chemical Corp.* (E.D. Mich.), which involved actions during World War II relating to a chemical plant in Midland, Michigan. Under the settlement, the government will pay \$21 million, or 2.3%, of the private party's costs.

As part of the settlement in *In re West Lake Landfill Superfund Site* (E.D. Mo.), the Division successfully resolved threatened response costs claims against the DOE in connection with the alleged disposal of Manhattan Project radiological wastes at a landfill near St. Louis, Missouri. Under two related settlements, the government will pay approximately one-third of the cleanup costs.

In *Cranbury Brickyard LLC v. United States* (3d Cir.), the current owners of a former munitions assembly site appealed a district court decision granting summary judgment to the United States on their claim seeking over \$90 million in past and future cleanup costs. ENRD attorneys persuaded the Third Circuit to uphold the district court's ruling because the plaintiff's sole claim was time-barred.

In *TDY Holdings, LLC v. United States* (S.D. Cal.), the Division secured a favorable decision in a case involving the federal share of liability for CERCLA response costs at a former private aircraft and components manufacturing site in San Diego, California. Following a remand from the Ninth Circuit, the district court found the United States liable for a 5% share of response costs attributable to chromium contamination and a 10% share for costs related to chlorinated solvents (and a zero percent share for PCBs). As a result of the decision on remand, the United States' share at the site is .0037% (or \$49,601), a savings of more than \$12.1 million over the amount sought by the plaintiff.

The Division won a favorable decision in *El Paso Natural Gas Co. v. United States* (D. Ariz.), a case involving CERCLA action relating to 19 abandoned uranium mines on the Navajo Nation near Cameron, Arizona. El Paso asserted that the Atomic Energy Commission (now DOE) exercised pervasive control over uranium mining in the 1950s and 1960s, and that the government conducted rim stripping at some of the mines in the early 1950s. Following a two-week bench trial, the court assigned the United States a total share of 35% of cleanup costs, far less than the 86% sought by El Paso. The savings achieved by the judgment equates to approximately \$25-50 million.

Supporting Federal Regulatory Review Efforts

ENRD continues to work with EPA and other agencies to facilitate the effective review of new rules that will be at issue in future cases. This year ENRD reviewed and provided support for a substantial number of high-profile regulatory reform initiatives. Among these, ENRD provided support for EPA and the Army's repeal of a 2015 rule that failed to follow legal limits on the scope of the agencies' authority under the CWA. The Division also provided support to the proposed replacement rule that provides much needed clarity under the CWA, which was lacking in the 2015 rule. ENRD also provided support for the Affordable Clean Energy rule, which replaces the Clean Power Plan and gives states the regulatory certainty needed to continue to reduce emissions while providing a dependable supply of electricity. ENRD further provided support for the Safer, Affordable, Fuel-Efficient Vehicles Rule, which makes clear that federal law preempts state and local greenhouse gas vehicle emission standards.

In *Southern Environmental Law Center v. Council on Environmental Quality*, (W.D. Va.), the Division worked with the United States Attorney's Office to successfully defend against a collateral attack on the Council on Environmental Quality's (CEQ) efforts to amend CEQ's implementing regulations for the National Environmental Policy Act. The environmental organization sought a preliminary injunction under the FOIA to prevent CEQ from closing the comment period in the rulemaking proceeding. We persuaded the district court that FOIA did not grant it the power to enjoin the proceeding or otherwise disrupt the Administrative Procedure Act's statutory scheme. The district court ordered CEQ to produce relevant documents under FOIA, but it rejected plaintiff's efforts to keep the comment period open and thus delay the rulemaking. ENRD continues to assist and provide guidance to CEQ in its regulatory reform efforts.

Strengthening National Security



El Centro Sector Border Wall Infrastructure, California, U.S 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 an Executive Order directing the Secretary of the Department of Homeland Security 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, the U.S. Army Corps of Engineers, 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 litigates and provides other support (particularly title and appraisal work) for the acquisition of land for the border wall and associated infrastructure (such as housing for border agents, roads, and towers). Frequently, this involves addressing legal challenges under a host of environmental, procedural, and inverse takings statutes.

Major new border wall construction is first planned in Texas's Rio Grande Valley. This is part of a larger plan to construct 449 miles of new border barriers, composed of 260 miles of new primary pedestrian wall, 82 miles of new secondary wall, and 77 miles of replacement of existing pedestrian and vehicular barriers along the Mexico-United States border. The land acquisitions in Texas are complex because the wall will not run immediately along the border (which is the Rio Grande River) but, instead, will be located outside the floodplain and in concert with flood levees. As a result, dozens of landowners and hundreds of acres will be impacted and the Department is working with landowners to ameliorate the cultural and economic challenges caused by this national security project.

The Division ensures that prior to any acquisition of property by condemnation, the acquiring agency has completed the necessary prerequisites, including proper surveys of the property, a review of the relevant title, and negotiations and consultations with the landowners. 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 is also assisting with acquiring land for portions of border infrastructure outside of Texas. ENRD recently filed four cases in the Southern District of California to clear title to lands between the All-American Canal and the U.S.-Mexico border for construction of 30-foot tall secondary border fencing to replace existing fencing. ENRD was able to expedite filing of these matters to allow construction to proceed in a timely manner.

Supporting Domestic Law Enforcement Training

The Division assisted the DHS enlarge the Federal Law Enforcement Training Centers (FLETC) complex located in Charleston, South Carolina. The FLETC system is the nation's largest provider of law enforcement training. Its instructors train local, state, and federal officers from around the country in topics including firearms, driving, tactics, investigations, and legal procedure. DHS was able to complete a land exchange with the State of South Carolina in which the federal government conveyed 10.499 acres of the former U.S. Naval Base Complex in North Charleston in exchange for 25.373 acres of land within the FLETC's existing footprint. ENRD reviewed title data related to the land exchange and provided guidance to DHS necessary to facilitate the acquisition.

Supporting Military Operations

ENRD's litigation also supports DOD's decisions regarding the siting of military operations. ENRD continued to successfully acquire land on behalf of the U.S. Navy for the expansion of the Marine Corps Air Ground Combat Center in Twentynine Palms, California. The acquisition will enable Marine Expeditionary Brigade training for three battalions using air and ground live fire. The Division acquired six additional tracts of property for base expansion. And the settlements, which reflect fair and just compensation for the land, amounted to a savings of more than \$1.4 million from the landowners' initial demands. The Division continues to file new condemnation actions on behalf of the U.S. Navy in support of this project.

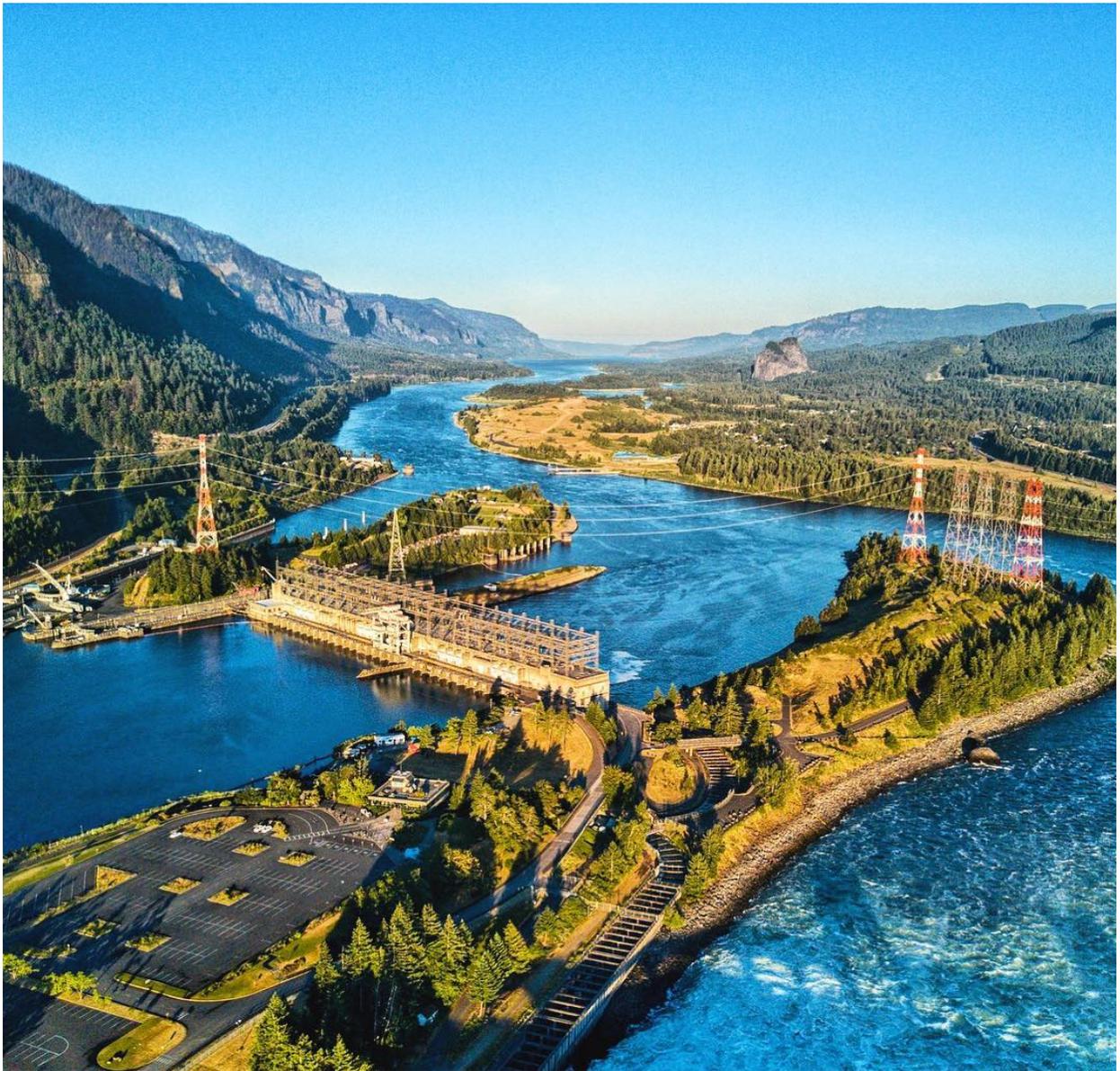
In *United States v. 400 Acres of Land in Lincoln County, State of Nevada, and Jessie J. Cox, et al.* (D. Nev.), the Division is helping the U.S. Air Force acquire land near the Nevada Test and Training Range (NTTR). The property at issue is surrounded by federal land and provides an unobstructed view of highly sensitive military testing and training operations. Although the case is still being litigated, the Division has engaged in a substantial motion practice and already achieved significant victories. Specifically, through the successful exclusion of certain unsupported expert opinions, ENRD has reduced the landowners' maximum allowable claim of just compensation from \$2.1 billion to \$50 million. The case is set for trial in early 2020.

The Division also achieved favorable settlements in four matters that will allow the U.S. Army to better conduct training exercises at the Joint Readiness Training Center (JRTC) at Ft. Polk, Louisiana. In the two largest of these cases, *United States v. 40.00 Acres of Land, More or Less, Situate in Vernon Parish; and Berman Dalton Burns, et al.* (W.D. La.) and *United States v. 160 Acres of Land, More or Less, Situate in Vernon Parish and Leesville Lumber Company, Inc., et al.*, (W.D. La.), the Division was able to acquire more than 200 acres for the Army at a cost of \$350,000 below owner demands.

In fiscal year 2019, the Division continued its work on several challenges to border enforcement operations and fence construction activities on the U.S.-Mexico border. For example, in *North American Butterfly Association v. Nielsen, et al.* (D.D.C.), ENRD attorneys sought and won the dismissal and denial of a preliminary injunction in a lawsuit challenging land clearing and other

construction activities that support border security and enforcement in the Rio Grande Valley.

Supporting Infrastructure Development, Energy Security, and Independence



Bonneville Dam, Oregon, Department of Energy
Photo by Rafael Kaup

Supporting Infrastructure Development, 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 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. For example, ENRD assisted the DOE in expanding its Pacific Northwest National Laboratory (PNNL) in Benton County, Washington. The PNNL is a national research leader in the fields of chemistry, earth sciences, and data analytics. The Division's assistance in acquiring nearly 100 acres of land will better allow the PNNL to accomplish its mission over the next 40-50 years.

ENRD supported the Western Area Power Association (WAPA) in its acquisition of expanded land easements necessary to modernize the utility's electrical transmission lines. In *United States v 8.11 Acres of Land, More or Less, in the County of Grand, Colorado, and Lambright, LLC, et al.* (D. Colo.), a landowner demanded more than \$1.5 million in compensation for the easements in question, dramatically higher than the estimate of just compensation provided by the United States' appraiser. After a week of trial, a Colorado jury returned a verdict for the Government, finding that just compensation for the land interests taken was just \$70,865. This result will allow WAPA to install new transmission lines with an increased voltage rating, permitting it to continue its mission of marketing and transmitting clean, renewable, reliable, cost-based hydroelectric power over a 15-state region.

ENRD is defending the interests of the United States in *Nevada v. United States* (D. Nev.), an ongoing case involving Nevada's challenge to the DOE's National Nuclear Security Administration shipment of plutonium from DOE's Savannah River Site, which is located in South Carolina, to DOE's Nevada Nuclear Security Site. ENRD secured the denial of a motion for preliminary injunction and successfully defended the appeal of that order.

In *Conservation Law Foundation v. Army Corps of Engineers* (D.N.H.), the court rejected the plaintiff's requested injunction against a Corps permit authorizing construction of the Seacoast

Reliability Project, an electric transmission line beneath Little Bay, New Hampshire. Specifically, the Corps permit would allow for “jet plowing” and underwater trenching. In opposing the permit, plaintiffs alleged that the project would affect oysters. After the Division successfully defended a motion for a preliminary injunction, the parties stipulated to dismissal of the case with prejudice without further litigation.

In *Protect Our Communities Foundation v. LaCounte* (9th Cir.), ENRD continued its successful defense of a wind farm consisting of 85 turbines on federally managed land. In the precursor litigation—which also yielded wins in the district court and court of appeals—two community organizations challenged the approval of a right of way through BLM managed lands to construct Phase I of the project. In Phase II, the plaintiffs challenged BIA’s approval of a right-of-way through Indian trust lands to construct the project on a ridgeline. Both appellate decisions vindicate important NEPA principles and pave the way for greater reliance on renewable energy.

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, resulting 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 2019, filed motions for summary judgment on all of the remaining claims.

The Division played an integral supporting role for the federal government’s permitting decisions relating to the Keystone XL Pipeline. ENRD advised the Department of State, DOI, and Army Corps of Engineers regarding NEPA, National Historic Preservation Act, and ESA compliance. ENRD is also actively defending all federal aspects of the pipeline project—including the President’s issuance of a border-crossing permit—in *Indigenous Environmental Network v. Trump* (D. Mont.), *Rosebud Sioux Tribe v. Department of State* (D. Mont.), and *Northern Plains Resource Council v. U.S. Army Corps of Engineers* (D. Mont.)

ENRD also defended the Army Corps’ permitting decisions with respect to the Bayou Bridge Pipeline in Louisiana. After previously defeating a preliminary injunction in the Court of Appeals, in 2019, ENRD attorneys briefed summary judgment and are awaiting a decision.

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.

The Division obtained a victory in *San Luis Obispo Coastkeeper v. Bureau of Reclamation* (N.D. Cal.), involving the operation of Twitchell Dam, the principal facility of the Bureau of Reclamation's (BOR) Santa Maria Project in California. The Santa Maria Project provides flood control and groundwater recharge capabilities to BOR. Plaintiffs alleged that the dam's operation violated Section 5937 of the California Fish & Game Code. ENRD attorneys removed the case to federal court and won dismissal of the case.

In *Navajo Nation v. Department of the Interior* (D. Ariz.), the Division obtained an important victory through the court's denial of the Navajo Nation's assertion of unquantified water rights on the Colorado River above Lake Mead, claims for breach-of-trust for the Interior's alleged failure to quantify and account for the Tribe's unmet water needs for its reservation, and violations of NEPA concerning Interior's management of Lower Colorado River water in the Lower Basin. On remand, the courts denied plaintiff's renewed motion for leave to file a third amended complaint and dismissed the litigation.

In *United States v. Fallbrook* (S.D. Cal.), ENRD negotiated a settlement agreement on behalf of the Department of the Navy and the United States Marine Corps providing for important benefits to Camp Pendleton. These benefits include resolving long-standing litigation initiated in 1951 against the Fallbrook Public Utility District. The parties are now moving forward with completing construction of the Santa Margarita River Conjunctive Use Project, which will enable the parties to cooperatively exercise and share the yield of their water rights.

In *Missouri v. Bernhardt* (D.C. Cir.), the Division defended the Northwest Area Water Supply Project, which is designed to transfer reliable, high quality water from the Missouri River basin to the Hudson Bay basin for communities in North Dakota. The appellate court affirmed the district court's dismissal for lack of standing.

ENRD assisted the Army Corps of Engineers' acquisition of land in support of its Isabella Lake Dam Safety Modification Project in Kern County, California. The Isabella Dam, completed in 1953, is one of the highest-risk dams in the United States and is upstream of more than 300,000 people, including the City of Bakersfield. The Division filed two condemnation actions to acquire land necessary to reduce the risk of dam failure due to water seepage and seismic activity: *United States v. 42.35 Acres of Land, More or Less, Situate in Kern County, California, and Donald E. Rinaldi, Trustee for Sierra Cragmyle Trust Dated December 28, 1987, et al.* and *United States v. 29.81 Acres of Land, More or Less, Situate in Kern County, California, and Malek & Schipper Investment and Development Corp., et al.* (E.D. Cal.). The Division achieved a favorable resolution in both settlements, which represent more than \$1.3 million in savings and allow the Army Corps of Engineers to stay on track for a planned 2022 project completion.

Defending Resource Extraction Decisions on Federal Land

ENRD continues to defend the United States in litigation involving the extraction of resources on federal lands, including through numerous cases where litigants seek to overturn over 2,000 BLM oil and gas leases—covering over 3 million acres of federal public lands and mineral

estate—and numerous cases where litigants challenge BLM’s issuance of permits to drill oil and gas wells on those leased public lands.

In *Center for Biological Diversity v. BLM* (D. Nev.), the Division successfully defended BLM’s issuance of 109 oil and gas leases in Nevada, where the court concluded that BLM had adequately assessed the environmental impacts of the challenged leases under NEPA through preparation of environmental assessments. In *Wildearth Guardians v. Zinke* (D.D.C.), the Division vigorously defended BLM in a case involving 470 oil and gas leases located in three separate western states. While the court ultimately remanded the leases pertaining to one of the three states, the Division persuaded the court not to vacate the leases or enjoin corresponding development activities. ENRD also provided legal support to BLM during the remand process, to facilitate BLM’s process of completing corrective NEPA analysis in all three states to address the perceived deficiencies.

Promoting Transportation Infrastructure Projects

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

In *Save our Sound OBX, et al. v. NC Dept of Transportation, et al.* (4th Cir.), the Fourth Circuit upheld federal approvals for a project to improve and protect North Carolina’s main road to the Outer Banks. In the district court, the Division had defended the Federal Highway Administration’s (FHWA) approval of a bridge across Pamlico Sound. The district court granted summary judgment to the FHWA, and the Fourth Circuit then affirmed, upholding the FHWA’s analysis of the environmental effects of the project under NEPA. Specifically, the appellate court held that FHWA did not need to prepare a supplemental Environmental Impact Statement, that FHWA adequately considered the impacts of bridge construction, and that FHWA’s choice of the bridge alternative was not predetermined by a prior settlement agreement. In so doing, the Fourth Circuit reaffirmed its rule that it does not look outside of an agency’s environmental analysis to assess whether an outcome was predetermined in violation of NEPA.

The Division secured temporary construction easements necessary for the expansion of the Washington Metropolitan Area Transit Authority (WMATA) Metrorail system in Alexandria, Virginia. ENRD negotiated favorable settlements in *WMATA v. 47,611 Square Feet of Land, More or Less, Situate in the City of Alexandria, Virginia, and Old Town Greens Townhome Owners Association, Inc. et al.*, and *WMATA v. 6,212 Square Feet of Land, More or Less, Situate in the City of Alexandria, Virginia, and Potomac Greens Homeowners Association, Inc.* (E.D. Va.). The agreements, equal to WMATA’s pre-filing estimates of just compensation, will allow construction to commence on the Potomac Yard Metrorail Station, a highly anticipated system expansion that will benefit Washington-area commuters and visitors.

ENRD regularly assists the Federal Aviation Administration with land acquisitions necessary to construct navigational aids for the national air traffic control system and for the safety of the

national airspace. The Division recently obtained a favorable settlement in *United States v. 0.028 Acres of Land, More or Less, Situated in Sebastian County, State of Arkansas, and Prairie Land Holdings, LLC, et al.* (W.D. Ark.). Construction of the new wind shear-monitoring station near Ft. Smith, Arkansas will improve flight safety for aircraft operating in the region.

Defending Federal Programs and Agency Management of Public Lands



Gates of the Arctic National Park and Preserve, Alaska, National Park Service

Defending Federal Programs and Agency Management of Public Lands

ENRD also defends the United States in litigation challenging agency actions involving public lands, wildlife and marine resources, commercial agriculture, 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.

Promoting Religious Liberty on Public Lands

In *American Legion v. American Humanist Ass'n* (S. Ct.), the United States filed an amicus brief supporting a memorial that was constructed honoring soldiers from the Bladensburg, Maryland area who died during World War I. The focus of the memorial is a 32-foot high Latin cross that has the emblem of the American Legion displayed at its center. The memorial rests on a pedestal containing a bronze plaque engraved with the names of fallen soldiers. Since 1961, the Maryland-National Capital Park and Planning Commission, a state entity, has owned the monument site and used public funds to maintain the monument. Plaintiffs argued that the presence of the cross on public lands and the Commission's maintenance of the memorial violated the First Amendment's Establishment Clause. The Fourth Circuit agreed and ordered the memorial removed or modified. On June 20, 2019, the Supreme Court reversed, relying on grounds advanced in the Division's amicus brief. The lead opinion, written by Justice Alito, declined to employ the so-called *Lemon* test, announced in a 1971 Supreme Court case holding that a law or practice is constitutional if it has a secular purpose, its principal effect does not advance or inhibit religion, and it does not create an "excessive entanglement with religion." Instead, the opinion articulates a "presumption of constitutionality" for certain "longstanding monuments, symbols, and practices."

Defending the United States from Climate Change Lawsuits

In *Juliana v. United States* (9th Cir.), the Division successfully won dismissal of a complex lawsuit alleging that the United States had violated plaintiffs' constitutional rights by permitting activities related to greenhouse gas emissions. Among their many novel requests, plaintiffs petitioned the Ninth Circuit for a preliminary injunction pending appeal to prevent the federal government from, among other things, approving coal mining on federal lands or oil and natural gas extraction and transportation activities that require federal approvals. The Division persuaded the Ninth Circuit to dismiss the case for lack of Article III standing because plaintiffs sought relief that no court could grant. The Ninth Circuit explained that plaintiffs must make their case to the electorate or pursue their political objectives in the executive and legislative branches.

Facilitating Responsible Ocean Fisheries Management

ENRD successfully defended various fishery management actions necessary to meet the objectives of the MSA 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 Executive Order Regarding the Ocean Policy to Advance the Economic, Security, and Environmental Interests of the United States (June 19, 2018), our fisheries resources help feed the nation and present tremendous export opportunities.

In *Conservation Law Foundation v. Ross* (D.D.C.), the Division successfully defended the essential fish habitat amendments to the Northeast Fishery Management Plans. In this case, plaintiff asserted that conservation objectives take priority over economic considerations under the MSA. The district court disagreed and favored NMFS' argument that the MSA does not permanently tilt the balance in favor of conservation. Instead, the statute requires a balance of complex factors, interests, and goals, and the district court found that NMFS had clearly articulated and supported its rationale for opening previously closed areas to certain bottom fishing activities.

Division attorneys also scored victories in two cases raising issues of first impression. In *Flaherty v. Ross* (D.D.C.), the district court affirmed that the MSA's regional fishery management councils are not Federal agencies subject to suit, and in *American Tunaboat Ass'n v. Ross* (D.D.C.), the court deferred to NMFS' interpretation of the ESA term "applicant" as applied in the fisheries context.

Successful Implementation of the Endangered Species Act

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

In fiscal year 2019, the Division achieved favorable results in several such cases, thereby allowing full and effective implementation of the Act. For example, in *CESAR v. DOI*, (D.D.C.), ENRD successfully turned back a challenge to the Fish and Wildlife Service's denial of a petition to de-list the coastal gnatcatcher. In *Center for Biological Diversity v. Zinke* (D. Alaska), the Division successfully defended the Fish and Wildlife Service's determination that listing of the Pacific walrus was not warranted.

In *WildEarth Guardians, et al. v. U.S. Department of Justice* (9th Cir.), plaintiffs brought a civil suit challenging the "McKittrick Policy"—the DOJ's legal position that a criminal, "knowing" violation of the ESA's take prohibition requires proof that the defendant knew the identity of the animal he was taking at the time. In June 2017, a district court held that the McKittrick Policy violated the Administrative Procedure Act because it amounts to an arbitrary and capricious abdication of the Department's prosecutorial responsibilities. The Ninth Circuit reversed, holding that plaintiffs lacked standing to challenge the McKittrick Policy because their theory that a favorable ruling would lead to increased prosecutions and deterrence, and a decrease in the number of illegal takes, was too speculative.

Defending Against Challenges to Indian Land 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 and to make other decisions pursuant to federal law.

In *Stand Up for California! v. DOI* (D.D.C.), the Division prevailed over several challenges to the Secretary of the Interior's decision to take land into trust for the Wilton Rancheria in California. Among the many grounds for challenge, plaintiffs argued that the 1950s era California Rancheria Act deprived the Secretary of Interior of authority to take land into trust on behalf of the Wilton Rancheria. That Act authorized the termination of the Wilton Rancheria as a federally recognized tribe. Congress later repudiated the policy of terminating recognized Indian tribes in the 1990s, and, in 2009, the Wilton Rancheria was restored as a federally recognized tribe. Thus, the district court found that the Secretary of the Interior had the authority to take land into trust on the Rancheria's behalf. The district court also upheld the Secretary of the Interior's decision to allow Wilton Rancheria to permit gaming on its trust land under the "restored lands" exception to the Indian Gaming Regulatory Act (IGRA).

In *Cherokee Nation v. Bernhardt* (10th Cir.), the Tenth Circuit upheld the Secretary of the Interior's decision to take 76 acres of land into trust for the United Keetoowah Band of Cherokee Indians in Oklahoma (UKB). The Cherokee Nation alleged that it had exclusive jurisdiction over these lands and challenged the decision because its consent was required to put the land into trust. On alternative grounds, the Cherokee Nation argued that the Secretary of the Interior could not take the parcel into trust because UKB did not meet the definition of "Indian" under the Indian Reorganization Act. The district court agreed and the Secretary of the Interior appealed. On appeal, the court reversed, holding that the Secretary of the Interior has authority to take the parcel into trust under Oklahoma Indian Welfare Act, thus obviating the need to consider whether the UKB met the definition of "Indian" under the Indian Reorganization Act. The appellate court also rejected the Cherokee Nation's argument that its consent was required before taking the land into trust.

In *Spokane County v. United States Dept. of Interior* (E.D. Wash.), the Division successfully defended the Secretary of the Interior's authorization of the Spokane Tribe's gaming operations on trust land located near Spokane, Washington. The Department of the Interior's decision-making process included ten years of review under the IGRA that thoroughly examined the project's impacts. The Secretary of the Interior found that any such impacts would be minimal and rejected a nearby tribe's claim that new competition from the Spokane Tribe had not been sufficiently investigated.

In *City of Council Bluffs, Iowa v. United States Dept. of Interior* (S.D. Iowa), the court upheld the National Indian Gaming Commission's decision approving a tribal gaming ordinance and determining that the Ponca Tribe of Nebraska is eligible to game on trust land in Carter Lake, Iowa. The court agreed with Interior's interpretation of the Ponca Restoration Act and the

Commission's application of the IGRA.

Defending Federal and Tribal Interests in Water and Land 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 generally require implementing federal legislation. These settlements bring neighbors together in an effort to share a critical common resource.

After several months of trial, the special master largely agreed with the Division's claims on behalf of the Hopi Tribe in Arizona's *In re Adjudication of Water in the Little Colorado River Basin* (Apache Sup. Ct.). The court awarded substantial water rights for a variety of past and present water uses, such as mining, irrigation, stockwater, and domestic use. A second trial regarding anticipated uses of the Hopi will be held in 2020.

In *United States v. Idaho* (Idaho), the Division succeeded in its water rights claims for the Coeur D'Alene Tribe in northern Idaho. The Idaho Supreme Court affirmed the existence of federal reserved water rights for irrigation, stockwater, domestic use, and hunting and fishing. The Idaho Supreme Court also accepted the Division's view regarding the proper standard for determining the water rights of a tribe, an issue that applies in many states.

In *United States v. Anderson* (E.D. Wash.), the Division concluded four years of negotiations with the Spokane Tribe and Washington Department of Ecology regarding the development of a mitigation program to offset the impacts of numerous third-party uses of groundwater on the flow of Chamokane Creek. The Washington Department of Ecology will pay for the program, which will improve stream flows for fish and provide water for future domestic needs in Stevens County, and on Spokane Tribal lands.

The Division also litigates directly or participates as amicus in cases involving tribal treaty rights, such as hunting and fishing, or related reservation boundaries. In *Herrera v. Wyoming* (S. Ct.), the Supreme Court reversed the conviction of a member of the Crow Tribe for hunting elk on the Bighorn National Forest. The United States filed an amicus brief supporting reversal, arguing that the tribe's treaty right to hunt off-reservation on "unoccupied lands" was not extinguished when Wyoming became a state and that the creation of the Bighorn National Forest, by itself, did not categorically exclude those lands from the treaty's terms. The Supreme Court agreed, but also ruled that on remand the state would be able to press arguments that certain areas within the national forest did become 'occupied' within the treaty's meaning due to actions other than the creation of the forest. It also held that on remand the state could pursue arguments that there was a conservation necessity for applying its laws to Indian treaty hunting and fishing.

In *Yakima Nation v. Klickitat County* (E.D. Wash.), the Division participated as amicus and persuaded the court to support the Yakima Nation's claim that a tract of land south of Mt.

Adam was included within the Yakima Reservation.

Funding the Responsible Management of Recreation Areas

In *Alpern v. Ferebee* (D. Colo.), ENRD defended the Forest Service’s authority to collect fees in heavily used recreation areas in order to maintain those areas and mitigate the environmental impacts of such use. The court granted summary judgment in the Forest Service’s favor, finding that the agency appropriately collected an amenities fee from visitors at a popular scenic area near Aspen (featuring the iconic Maroon Bells, the most photographed mountains in North America) under the Federal Lands Recreation Enhancement Act.

Defending Forestry Projects that Prevent Fires and Protect Habitat

In *Klamath-Siskiyou Wildlands Center, et al. v. Grantham, et al.* (E.D. Cal.), the plaintiffs challenged the Seiad-Horse Risk Reduction Project, a salvage harvest project, under NEPA and the National Forest Management Act. Although the court initially granted plaintiffs’ motion for a preliminary injunction, ENRD noticed an appeal of the preliminary injunction and persuaded the district court to stay the injunction pending appeal before filing our opening brief in the Ninth Circuit. The Ninth Circuit reversed and vacated the district court’s injunction, allowing the Forest Service to complete a badly needed salvage and restoration project.

Defending Forestry Projects Identified as High Priority under the Healthy Forests Restoration Act

In *Center for Biological Diversity v. Ilano* (9th Cir.), a case of first impression, the appellate court examined the Forest Service’s NEPA obligations when designating areas and conducting forest health projects under a Healthy Forest Restoration Act (HFRA) statutory categorical exclusion promulgated in 2014 to expedite Forest Service harvest in areas at greater risk of fire hazard due to insect infestation and disease. This year, the Ninth Circuit issued a favorable published decision upholding the agency’s position that the Forest Service’s designation of state-wide areas where treatments under HFRA may occur does not trigger NEPA obligations. This decision clears the way for the agency’s continued use of this valuable statutory mechanism. The court also upheld the Forest Service’s application of the HFRA categorical exclusion to the “Sunny South” project on the Tahoe National Forest.

In addition to *Ilano*, ENRD continued to successfully defend HFRA categorically excluded projects to address insect and disease concerns in other districts, extending the favorable precedents on two recurring questions raised by environmental plaintiffs, *i.e.*, whether landscape level designations require NEPA, and whether projects that qualify for the HFRA categorical exclusion nonetheless require “extraordinary circumstances” review under NEPA.

In *Wild Watershed v. Hurlocker* (D.N.M.), the plaintiffs challenged the Hyde Park Wildland Urban Interface Thinning and Prescribed Fire Project and Pacheco Canyon Forest Resiliency Project on the Santa Fe National Forest, alleging violations of NEPA, the National Forest Management Act,

the HFRA, and the Wilderness Act. The court ruled in the government's favor on all of plaintiffs' claims. The court held that the Forest Service's designation of state-wide areas where treatments under HFRA may occur does not trigger NEPA obligations. With respect to the projects themselves, the court held that the HFRA categorical exclusion from NEPA meant that the agency was not required to consider "extraordinary circumstances," as it would be for categorical exclusions under NEPA.

In *Native Ecosystems Council v. Marten* (D. Mont.), the court upheld application of the insect and disease categorical exclusion to the Moose Creek Vegetation Project, which will harvest approximately 2,200 acres of that land in the Helena-Lewis and Clark National Forest. The court ruled (1) that the landscape designation that included the area is not a final agency action; (2) that the Forest Service was not required to conduct an "extraordinary circumstances review" when using the statutory categorical exclusion in the Farm Bill; (3) that the Moose Creek Vegetation Project complies with HFRA's requirement to "maximize[] the retention of old-growth and large trees;" and (4) that the Moose Creek Vegetation Project complies with HFRA's requirement that projects be based on consideration of the best available scientific information.

Protecting the United States' Interest in Federal Lands

In *Pueblo of Jemez v. United States* (D.N.M.), the Division successfully defended the United States' title to the Valles Caldera National Preserve, a national park in northern New Mexico purchased for approximately \$100 million in 2000. The plaintiff sought to quiet title to the Preserve, alleging that it had continuously and exclusively used the land for religious and other purposes for almost 1,000 years. The United States asserted that non-tribal entities used the land since Spanish conquest, and that other tribal entities also used the land for religious and other purposes over the same thousand-year time scale. A 21-day trial was held in the last quarter of 2018. The parties examined 31 witnesses at trial, designated the deposition transcripts of another 12 witnesses, and admitted 725 exhibits. In August 2019, the district court issued a final judgment quieting title to the United States and dismissing plaintiff's claim with prejudice. The court's 500-plus-page opinion found that although plaintiff had actually and continuously used and occupied the Valles Caldera over time, plaintiff's use was not exclusive because many other Pueblos and Tribes used the land in ways that defeated plaintiff's aboriginal title claim.

Defending Land Management Planning Efforts

In *Pacific Rivers v. BLM* (D. Or.), the Division successfully defended a challenge brought by environmental groups to BLM's 2016 resource management plans for management of its lands under the Oregon and California Revested Lands Sustained Yield Management Act of 1937 (O&C Act). The plaintiffs had challenged the plans on NEPA, O&C Act, and ESA grounds, and the industry interveners also asserted cross-claims. In *Murphy Co. v. Trump* (D. Or.), ENRD successfully defended a challenge to the President's exercise of his Antiquities Act authority in designating the Cascade-Siskiyou National Monument on the O&C Act lands, and to BLM's management of its land consistent with the designation.

Defending Emergency Management Grant Decisions

In *Regents of the University of California v. FEMA, et al.* (N.D. Cal.), the University of California brought an action in 2017 challenging FEMA's 2016 termination of the portion of a grant to the California Office of Emergency Services (Cal OES) that funded subgrants to the University for tree removal to manage wildfire risk in the East Bay Hills above Berkeley. The University alleged that FEMA needed its consent, not just that of Cal OES, for the termination of this portion of grant funding. The University also claimed that FEMA needed to conduct supplemental NEPA analysis before terminating the grant. ENRD attorneys persuaded the court to dismiss the case because the University had rescinded its own approval of the original tree removal project in order to avoid a lawsuit in state court under the California Environmental Quality Act.

Protecting the Public Fisc

ENRD also defends claims seeking reimbursement of hazardous waste cleanup costs pursuant to a special statutory provision in CERCLA. In *August Mack Environmental, Inc. v. EPA* (N.D. W. Va.), the Division defeated a contractor's improper request for a \$2.7 million reimbursement from the Superfund. The district court found that EPA had correctly denied the request because the contractor had failed to comply with the Agency's reimbursement regulations.

Focusing on Our Internal Operations



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

Focusing on Our Internal Operations

ENRD also reviews its own operations to examine how we can improve, realign, or eliminate activities 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.

Banning the Use of Supplemental Environmental Projects

On March 12, 2020, Assistant Attorney General Jeffrey Clark issued a memorandum that ends the use of Supplemental Environmental Projects (SEP) in settlement agreements to resolve civil enforcement actions. In general, SEPs are intended to provide an environmental or public health benefit that could not be compelled by law in a settlement with the EPA or DOJ. Despite lacking legal authority for them, the government has permitted settling parties to perform SEPs in exchange for lower or even waived monetary penalties that would otherwise go to the U.S. Treasury. The memorandum found that SEPs are inconsistent with the law because they divert funds away from the U.S. Treasury, contravene long established Department of Justice policy, and undermine Congress' appropriations power. This determination followed an August 12, 2019 memorandum that eliminated SEPs in settlements with states and municipalities for similar reasons.

Automation of Performance Management Processes

Over the past two years, ENRD IT Specialists have been engaged in an effort to improve outdated processes associated with conducting performance reviews for the Division's employees. In fiscal year 2019, ENRD's Executive Office launched a new Performance Management web application to provide a one-stop solution for employees to receive, and for supervisors to issue, performance work plans (PWP), progress reviews, and performance evaluations. Through the use of automated workflow processes, managers and staff gained numerous time efficiencies, including receiving email notifications when an action is required. The new web-based solution improves the integrity of performance reviews and ratings, reduces the amount of time ENRD managers spend working on routine employee performance management tasks, and provides advanced reporting and workflow capabilities.

Training Our Staff

The Division provides training to its staff tailored to need. In fiscal year 2019, there were 38 unique courses sponsored by ENRD with 2,007 attendees at these courses. Trainings included skills courses, professional responsibility courses, ethics courses, managerial courses, e-discovery courses, work/life balance courses, and benefits courses. This fiscal year also marked the fourth 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 Attorney General's Honors Program attorney hires in September,

which provides CLE credit and practical advice and guidance on many topics.

Promoting Diversity

The Division's Diversity Committee sponsored trainings and events on a range of topics related to workforce diversity. 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 close to 200 law schools across the country.

Snapshots of ENRD Award Recipients



The Attorney General's Award for Distinguished Service presented to Martha C. Mann, Assistant Section Chief of the Environmental Defense Section.



The Attorney General's Award for Distinguished Service presented to Jeffrey S. Beelaert, Trial Attorney for the Appellate Section.



The Attorney General's Award for Excellence in Legal Support was presented to DeShonda L. Young, Supervisory Administrative Assistant in the Wildlife and Marine Resources Section.



The John Marshall Award for Providing Legal Advice presented to Andrew M. Goldfrank, Section Chief and Barry A. Weiner, Deputy Section Chief in the Land Acquisition Section.

Snapshots of ENRD Award Recipients



The John Marshall Award for Alternative Dispute Resolution presented to the Salt Dome Trial Team.



The John Marshall Award for Trial of Litigation presented to the St. Bernard Parish Team.