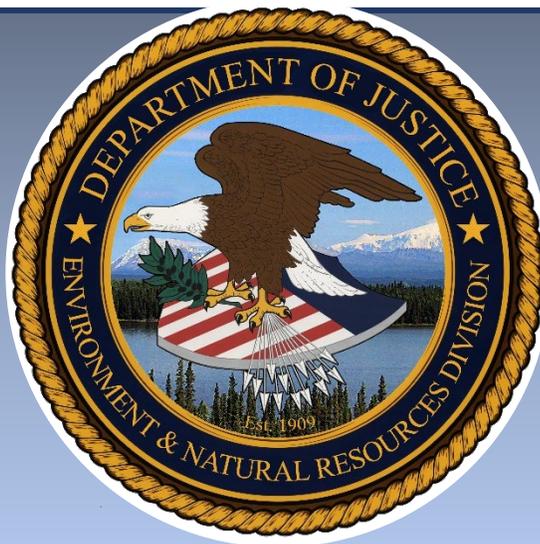


U.S. Department of Justice



Environment and Natural Resources Division



ENRD

ENRD

FY 2020

PERFORMANCE BUDGET
CONGRESSIONAL BUDGET JUSTIFICATION

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I. Overview of the Environment and Natural Resources Division

A. Introduction:

Environment and Natural Resources Division Mission: The Environment and Natural Resources Division (ENRD) is a core litigating component of the U.S. Department of Justice. Founded more than a century ago, it has built a distinguished record of legal excellence. The Division functions as the nation’s environmental and natural resources lawyer, representing virtually every federal agency in the United States, and its territories and possessions, in civil and criminal cases that arise under more than 150 federal statutes. Key client agencies of the Division include the U.S. Environmental Protection Agency (EPA), the U.S. Department of Defense, the U.S. Department of the Interior, the U.S. Army Corps of Engineers, the U.S. Department of Homeland Security, the U.S. Department of Commerce, the U.S. Department of Agriculture, and the U.S. Department of Energy, among others.

ENRD plays a vital role in the successful implementation of President Donald J. Trump’s new direction for our nation, including his call for an “America First” energy policy and his emphasis on strengthening our national security. ENRD has focused this year on several key objectives to advance the President’s key policy objectives: promoting energy independence and economic growth by defending federal agencies’ efforts to reduce regulatory burdens, particularly for agriculture and manufacturing; strengthening our national security; and supporting efforts to rebuild our nation’s infrastructure; while, at the same time, vigorously enforcing the environmental laws of the United States.

To effectively carry out its important mission in FY 2020, ENRD is requesting a total of \$110,512,000, including 547 positions (382 attorneys), and 585 Full-Time Equivalents (FTE). The request includes a program enhancement of \$960,000, including 6 attorney positions and 5 FTEs, to support the President’s January 25, 2017, Executive Order on *Border Security and Immigration Enforcement Improvements*, which also supports the Department’s focus area of Enforcing our Nation’s Immigration Laws. ENRD also has 82 reimbursable FTE.

To guide our work, ENRD leadership has emphasized certain primary goals for ENRD.

First, ENRD is committed to pursuing our core mission of protecting clean air, clean water, and clean land for all Americans, through the vigorous enforcement of statutes and the defense of the lawful actions of our client agencies. President Trump has committed to “refocus[ing] the EPA on its essential mission of protecting our air and water,” emphasizing that “[p]rotecting clean air and clean water, conserving our natural habitats, and preserving our natural reserves and resources will remain a high priority,” while recognizing that the nation has been “held back by burdensome regulations on our energy industry.”¹ The Division’s environmental and natural resources litigation will assist EPA in delivering on the President’s commitment to clean air and clean water. In this context, the Division issued a March 12, 2018, Enforcement Principles and Priorities memorandum that articulates the bedrock principles that apply to our civil and criminal enforcement work and identifies our current enforcement priorities. At the core of everything the Division does is the impartial rule of law—the principle that we must strive to uphold the law

¹ <https://www.whitehouse.gov/america-first-energy>

as written and follow the facts of a case wherever they take us. As we fulfill our primary mission, we will also keep in mind the important principle of cooperative federalism. Many of the laws entrusted to us give a primary role to the States and Indian tribes, and we will continue to work cooperatively with the States and tribes to achieve shared environmental goals.

While focusing on protecting clean air, clean water, and clean land, the Division is also advancing the new Administration's ambitious agenda of regulatory reform. The Division is supporting this effort by advising client agencies, including EPA and the U.S. Department of the Interior, on high-priority rulemakings and by ensuring the effective defense of regulatory actions in court. The Division will continue to play a key role in supporting and defending federal agencies in the implementation of numerous Executive Orders and Presidential memoranda, including:

- Presidential Memorandum Regarding Construction of the Keystone XL Pipeline (Jan. 24, 2017).
- Presidential Memorandum Regarding Construction of the Dakota Access Pipeline (Jan. 24, 2017).
- Executive Order on Enforcing Federal Law With Respect to Transnational Criminal Organizations and Preventing International Trafficking (Feb. 9, 2017).
- Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the U.S." Rule (Feb. 28, 2017).
- Executive Order on Promoting Energy Independence and Economic Growth (March 28, 2017).
- Executive Order on Implementing an America-First Offshore Energy Strategy (April 28, 2017)
- Executive Order on Environmental Reviews (August 15, 2017)

Second, the Division works closely with the U.S. Department of Defense (DoD) and the U.S. Department of Homeland Security to keep our nation safe, secure, and resilient. This work is central to our mission, and it includes land acquisition for the expansion of military bases and border security, the defense of military programs aimed at ensuring our forces are prepared as possible, and the responsible management of our natural resources impacted by DoD activities. The Division is principally responsible for acquiring real property to secure the border between the United States and Mexico, in conjunction with the President's January 25, 2017, Executive Order on Border Security and Immigration Enforcement Improvements (EO 13767), which calls upon the Executive Branch to "immediately plan, design and construct" a "physical wall" or "barrier" along the border between Mexico and the United States (EO Sec. 4), establish "detention facilities" (EO Sec. 5), "hire 5,000 additional Border Patrol agents" (EO Sec. 8), and "have access to all Federal Lands" (EO Sec. 12).

Third, ENRD also advances our nation's national security by supporting and defending our client agencies' infrastructure development decisions that will enhance our energy independence. The Division is focused on effectively supporting and defending the infrastructure development decisions of our client agencies. For example, ENRD is defending major energy infrastructure projects across the country, including the Dakota Access and Keystone XL pipelines, as well as many highway, port, and other projects of importance to communities around the nation.

In pursuing these goals, we will accomplish our work as efficiently and effectively as possible, keeping in mind that every tax dollar we are given must be put to appropriate and good use for the American people.

B. Issues, Outcomes, and Strategies:

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the nation's natural resources and public lands. The Division defends suits challenging all of the foregoing laws, and fulfills the Federal Government's responsibility to litigate on behalf of Indian tribes and individual Indians. ENRD's efforts protect the federal fisc, reduce harmful discharges into the air, water, and land, enable clean-up of contaminated waste sites, and ensure proper disposal of solid and hazardous waste.

In affirmative litigation, ENRD obtains redress for past violations harming the environment, ensures that violators of criminal statutes are appropriately punished, establishes credible deterrents against future violations of these laws, recoups federal funds spent to abate environmental contamination, and obtains money to restore or replace natural resources damaged by oil spills or the release of other hazardous substances into the environment. ENRD also ensures that the Federal Government receives appropriate royalties and income from activities on public lands and waters.

By prosecuting those who commit environmental crimes, ENRD spurs greater compliance with the law. Additionally, the Division obtains penalties and fines against violators, thereby removing the economic benefits of non-compliance and leveling the playing field so that companies complying with environmental laws do not suffer competitive disadvantages.

In defensive litigation, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including defense of agency decisions approving infrastructure development projects and permitting energy resource extraction, litigation over water quality and watersheds, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. The Division is increasingly called upon to defend the Department of Defense's training and operations necessary for military readiness and national defense.

Every day, the Division works with client agencies, U.S. Attorneys' Offices, and state, local and tribal governments, to enforce federal environmental, natural resources, and wildlife laws. It also defends federal agency actions and Administration policies when they are challenged in the courts, working to keep the nation's air, water and land free of pollution, advancing military preparedness and national security, promoting the nation's energy independence, and supporting other important missions of our agency clients.

Over the past few years, ENRD has taken deliberate steps to reduce costs and limit resource expenditures. We take our role as responsible custodians of the public fisc very seriously; and we are proud of the short and long-term cost saving measures and efficiencies we have implemented in recent years.

Electronic copies of the Department of Justice’s Congressional Budget Justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <https://www.justice.gov/doj/budget-and-performance>.

C. Current and Anticipated Workload Challenges:

ENRD Will Continue to Enforce Our Nation’s Environmental Laws, Support Administration Priorities, and Defend a Wide Array of Federal Agency Actions

The Division plays a critical role in ensuring that the environmental laws passed by Congress are faithfully executed. ENRD’s enforcement of laws such as the Clean Air Act (CAA), Clean Water Act (CWA), and Endangered Species Act (ESA) secures environmental compliance and restoration, deterrence of future violations, and the protection of American taxpayers in the form of criminal and civil penalties, which are returned to the federal treasury. In addition, ENRD litigation plays a significant role in helping to achieve the policy objectives of our nation’s Legislative and Executive Branch officials.

External Challenges

In many circumstances, Congress has afforded the American people with the right to challenge federal agency actions through statutory and administrative lawsuits. When such lawsuits are filed, ENRD has an obligation to defend its client federal agencies. Defensive cases make up approximately half of our workload, with court schedules and deadlines driving the pace of work and attorney time in this type of litigation. ENRD’s defensive caseload is expected to continue to increase in FY 2019 and FY 2020.

Here is a summary of expected defensive cases in FY 2020, which are likely to require significant ENRD resources:

- ENRD’s work advances the missions of the Department of Defense and the Department of Homeland Security to keep our nation safe, secure, and resilient. From defending environmental challenges to critical training programs that ensure military preparedness, to acquiring strategic lands needed to fulfill the government’s military and homeland security missions, ENRD makes a unique and important contribution to defense and national security while ensuring compliance with the country’s environmental laws. The Division expects its **Military Readiness Docket** – to include litigation to defend training missions and strategic initiatives, expand military infrastructure, and defend chemical weapons demilitarization – to continue in FY 2019 and FY 2020.

- The Division is responsible for defending a number of **Energy Infrastructure Development and Energy Security** cases. The Division will continue to defend agency decisions allowing the development of energy infrastructure projects, including the Presidential Permit issued for the Keystone XL Pipeline.
- ENRD is defending many cases involving federal agencies' implementation of the President's **Regulatory Reform** agenda. This includes defending EPA in numerous cases that involve the Clean Power Plan and the Clean Water Rule.
- The Division is currently defending over 200 cases alleging a taking without just compensation in violation of the Fifth Amendment stemming from the Army Corps of Engineers' management of two flood-control reservoirs near Houston during and immediately after Hurricane Harvey. Additional cases continue to be filed. The cases have been split into "upstream" and "downstream" dockets and the claims of test plaintiffs are moving forward in each docket. After these cases are tried in FY 2019, the Division expects claims involving thousands of additional plaintiffs to move forward in FY 2020 and beyond.
- The Division faces a huge influx of litigation under a 19th Century federal statute, commonly known as "**R.S. 2477**," which "recognized" the "right of way for the construction of highways over public lands, not reserved for public uses." The largest component of this docket is defensive litigation under the Quiet Title Act, 28 U.S.C. § 2409a, in which ENRD defends the Federal Government against claims, mostly by western states and counties, to R.S. 2477 rights-of-way on lands owned by the United States and managed by federal agencies. Since 2011, ENRD's R.S. 2477 caseload has grown from 12 cases covering 114 roads, to more than 45 cases – most of which are in Utah, but also involve lands in Alaska, California, Idaho, Nevada, New Mexico, North Dakota, and Washington – covering over 12,000 roads. This caseload involves extensive discovery, 'ancient' historical facts, significant motion practice, and *de novo* trials.
- The Division currently represents the United States or the Departments of the Interior and of the Treasury in 19 pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which cases 21 tribes or Indian plaintiffs demand "full and complete" historical trust accountings and damages for financial injury resulting from the government's alleged mismanagement of the plaintiffs' trust funds and non-monetary assets. The plaintiffs' damage claims exceed \$5 billion in the currently pending cases. Over the course of the next year, the Division faces trial in up to four cases. These cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts, but also extensive non-monetary tribal trust resources between 1946 and the present.
- The Division continues to deal with a dramatic expansion of its **Rails-to-Trails litigation**, in which property owners along railroad corridors allege a taking of their property interests in violation of the Fifth Amendment as a result of the operation of the

National Trails System Act (“Trails Act”). The courts have held that the Trails Act preempts the operation of state law that would otherwise allow a railroad to abandon a rail line, and results in the conversion of the railroad line into thousands of miles of recreational trails throughout the United States, which are also “railbanked” for possible future railroad reactivation. The Division presently defends over 100 such suits, involving many thousands of properties, with estimated aggregate claims in the hundreds of millions of dollars. These cases present considerable legal challenges, as well as resource challenges, since each property conveyance and each property valuation must be individually analyzed. The number of hours the Division devotes to these cases has more than tripled in the past few years and the portion of the Division’s expert witness funds being applied to these cases has increased several-fold. Given the complexity of the cases and the ongoing conversions of railroad corridors into recreational trails, we expect to see a continued increase of this litigation for many years to come.

- The Division also handles several types of litigation over **water allocation**, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. In the coming years, ENRD anticipates increasing demands on resources from a growing load of water rights cases. In particular, we expect growth in the litigation of voluminous proceedings known as "general stream adjudications," in which courts – mostly state courts in the western United States – adjudicate the rights of all the water users in a river basin. The staff dedicated to general stream adjudications across the West is generally smaller than the staff employed by each of the western states alone, and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our personnel resources.

The Division is also deeply engaged in a number of continuing and prospective affirmative cases and matters, including several “defeat device” and related mobile source Clean Air Act cases, such as the one ENRD recently concluded against Volkswagen. We are also engaged in Clean Water Act cases against a variety of corporate defendants as well as municipalities. Many of these cases are discussed in the Accomplishments section below.

Internal Challenges

With the introduction of new technologies and new requirements in the legal industry – such as e-filing, on-line document repositories, web-based privilege reviews, electronic trials, extranet docketing systems, and electronic discovery – we are in constant need of ensuring our workforce has the expertise and access to software, hardware and systems to keep pace. ENRD continues to refresh aging hardware, develop and implement required tracking systems, and comply with Federal IT security mandates.

D. Achieving Cost Savings and Efficiencies

The Division has demonstrated a commitment to achieve cost savings and has attained impressive measurable results.

ENRD has a strong record of achieving cost savings in recent years. Starting in 2011, ENRD responded to anticipated budgetary challenges by convening a committee of Division attorneys, paralegals, legal assistants, and managers from across all ten litigating sections (the \$AVE Committee). Through ENRD's multiple \$AVE efforts, the Division has cut hundreds of thousands of dollars from its budget.

In 2017, the Attorney General directed components to conduct their own internal reviews to identify opportunities to make the best use of the Justice Department's resources in alignment with Department priorities. The Attorney General's directive followed a directive from the President to review agency operations to identify activities that could be improved, realigned, or eliminated to save taxpayer money, gain efficiencies, and better serve the American people. At ENRD, we have taken this instruction seriously, beginning with our submittal and implementation of a comprehensive reorganization plan dated June 16, 2017.

At the same time, our Division is experiencing an increased workload compared to recent years. The President has issued a series of Executive Orders and presidential actions on topics ranging from border security and transportation infrastructure to energy development, environmental policy, and regulatory reform, all of which have led to increased resource demands on ENRD to aide federal agencies in implementing these directives and to defend those agency actions taken in furtherance of the President's directives when they are challenged in federal court. At the same time, we have seen a significant increase in ENRD's caseload for the Department of Defense, both in terms of land acquisition for military facilities and operations as well as defense of the military branches in lawsuits involving their activities. Other areas of the Division are increasingly busy as well. As compared to our average caseload from the past five fiscal years, we are currently litigating almost 300 more filed cases, and handling an additional 150 matters not in active litigation, many of which involve significant priorities of the Administration.

To address surging work in some areas, our Division has taken a number of interim measures to realign resources and attorneys, including detailing lawyers from areas of lower work demand to areas demanding more labor and time.

In the area of litigation support, ENRD has been innovative and forward-thinking with its cost-effective, in-house litigation support computer lab, which provides a wide range of services, such as scanning, OCR-processing, e-Discovery/data processing, email threading, and database creation and web hosting. In FY 2017, the Division recognized savings of approximately \$12 million, compared to what the in-house services provided would have cost if outsourced to a contractor/vendor.

As a leader in employing technological solutions, ENRD continues to implement cost-effective alternatives such as videoconferencing and web-based applications for meetings (which duly reduce travel costs). We continue to push the use of on-line travel reservations, as opposed to using agent assisted booking services, leading to additional cost savings. ENRD evaluates and hopes to expand its "no-desk-phone" program which transitions employees from costly traditional desktop phones to sole use of multiple-use mobile devices, with the goal of removing an unnecessary expense of traditional desktop phones in employee offices. ENRD has reduced

its fax machine inventory by over 90%, and will address whether more fax machines can be decommissioned, saving line costs as well as machine maintenance and supply cost. The \$SAVE 2020 Committee will also encourage participation in ENRD’s Gainsharing program which can save the Division from paying discretionary travel related expenses.

Finally, after a comprehensive review of our Division’s operations and closely assessing our current and anticipated resource levels in light of surging legal work in key administration priority areas, in 2018, we proposed to Department of Justice leadership several additional cost-saving operational changes that will make ENRD more efficient now and in the future.

II. Summary of Program Changes

As described in greater detail in Section V below, ENRD is requesting **\$960,000**, including **6** attorney positions and **5** FTEs, to support the President’s January 25, 2017, Executive Order on *Border Security and Immigration Enforcement Improvements*, which also supports the Department’s Focus Area of Enforcing our Nation’s Immigration Laws. (See Section V: **Securing the Southwest U.S. Border**).

Initiative	Description				Page
		Pos.	FTE	Dollars (\$000)	
Securing the Southwest U.S. Border	Land Acquisition and Related Litigation Required to Securing the Southwest U.S. Border	10	5	\$960	28

III. Appropriations Language and Analysis of Appropriations Language

ENRD is one of nine offices or divisions grouped under the General Legal Activities (GLA) appropriation of the Department of Justice. Below is the language from the 2019 President’s Budget for the GLA components:

For expenses necessary for the legal activities of the Department of Justice, not otherwise provided for, including not to exceed \$20,000 for expenses of collecting evidence, to be expended under the direction of, and to be accounted for solely under the certificate of, the Attorney General; and rent of private or Government-owned space in the District of Columbia, \$891,836,000, of which not to exceed \$20,000,000 for litigation support contracts shall remain available until expended.

The following ENRD legal activities are financed from this appropriation:

Environment and natural resource matters. The Environment and Natural Resources Division enforces the nation’s civil and criminal environmental laws and defends environmental challenges to Government action. Additionally, the Division represents the United States in

virtually all matters concerning the use and development of the nation’s natural resources and public lands, wildlife protection, Indian rights and claims, worker safety, animal welfare, and the acquisition of Federal property.

Reimbursable programs. We are reimbursed by numerous client agencies for personnel, automated litigation support, and litigation consultant services for a variety of environmental, natural resource, land acquisition, and Native American cases, including from the Environmental Protection Agency for Superfund enforcement litigation.

ENRD recommends no substantive changes to the Appropriation language in the 2020 Budget.

IV. Decision Unit Justification

Environment and Natural Resources Division	Direct Pos.	Estimate FTE	Amount
2018 Enacted	537	580	110,512
2019 Continuing Resolution	537	580	110,512
Adjustments to Base and Technical Adjustments	0	0	-960
2020 Current Services	537	580	109,552
2020 Program Increases	10	5	960
2020 Request	547	585	110,512
Total Change 2019-2020	10	5	960

Information Technology Breakout (of Decision Unit Total)	Direct Pos.	Estimate FTE	Amount
2018 Enacted	18	18	5,499
2019 Continuing Resolution	18	18	5,499
Adjustments to Base and Technical Adjustments	0	0	0
2020 Current Services	18	18	5,499
2020 Program Increases	0	0	0
2020 Request	18	18	5,499
Total Change 2019-2020	0	0	0

1. Program Description

As described above, ENRD works to:

- Defend against suits challenging federal statutes, regulations, and agency actions;
- Develop constructive partnerships with other federal agencies, state and local governments, and interested parties to maximize environmental compliance and stewardship of natural resources;
- Investigate and prosecute environmental crimes, including both pollution and wildlife violations;
- Pursue cases against those who violate the nation's environmental and natural resources laws;
- Act in accordance with United States trust responsibilities to Indian tribes and individual Indians in litigation involving the interests of Indians.

A brief description of ENRD's organizational units is provided below:

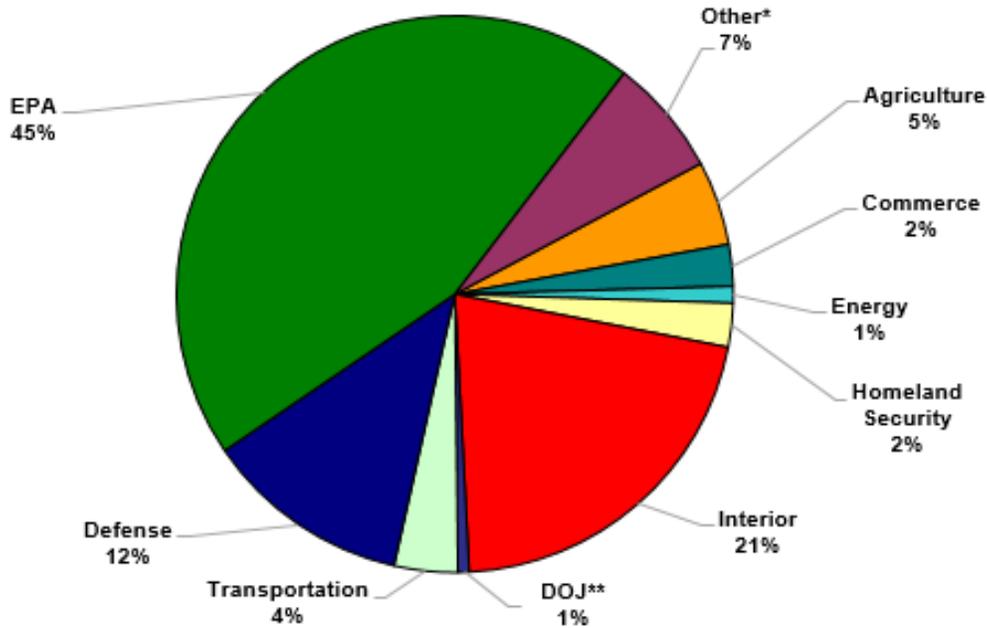
- The **Appellate Section** handles appeals in all cases tried in the lower courts by any of the sections within the Division; it also oversees or directly handles appeals in cases within the Division's jurisdiction that were tried in the lower courts by U.S. Attorneys' Offices; it further defends challenges to orders issued by the Department of Transportation and Department of Energy. The Section works closely with DOJ's Office of the Solicitor General in appeal recommendations and developing Supreme Court filings.
- The **Environmental Crimes Section** is responsible for prosecuting individuals and corporations that have violated laws designed to protect the environment and wildlife. The Section works closely with criminal investigators for EPA, the Federal Bureau of Investigation (FBI), and the Fish and Wildlife Service in dealing with criminal violations of the pollution control statutes, the Lacey Act, the Endangered Species Act, and other laws.
- The **Environmental Defense Section** represents the United States in complex civil litigation arising under a broad range of environmental statutes. The section defends rules and policies issued by federal agencies under the pollution control laws, brings enforcement actions to protect wetlands, and defends the United States against challenges to its cleanup at Superfund sites, federally owned facilities and private sites.
- The **Environmental Enforcement Section** is responsible for bringing civil judicial actions under most federal laws enacted to protect public health and the environment from the adverse effects of pollution, such as the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Oil Pollution Act, the Resource Conservation and Recovery Act, and the Superfund law (CERCLA).
- The **Indian Resources Section** represents the United States in its trust capacity for Indian tribes and their members. These suits include establishing water rights, establishing and protecting hunting and fishing rights, collecting damages for trespass on

Indian lands, and establishing reservation boundaries and rights to land. The Section also devotes approximately half of its efforts toward defending federal statutes, programs, and decisions intended to benefit individual Indians and tribes.

- The **Land Acquisition Section** is responsible for acquiring land through condemnation proceedings, for use by the Federal Government for purposes ranging from establishing public parks to creating missile sites. The Land Acquisition Section is also responsible for reviewing and approving title to lands acquired by direct purchase for the same purposes.
- The **Law and Policy Section** advises and aids the Assistant Attorney General (AAG) on environmental legal, legislative, and policy questions, particularly those that affect multiple sections in the Division. Other duties include responding to Freedom of Information Act (FOIA) requests and serving as the Division's ethics officer and counselor, alternative dispute resolution counselor, and liaison with state and local governments. Attorneys in the Section also handle amicus cases and undertake other special litigation projects.
- The **Natural Resources Section** is responsible for defending agency decisions related to natural resources, vital national security programs and border protection, Fifth Amendment takings, challenges brought by Indian tribes relating to the United States' trust responsibility, cultural resource matters, preserving federal water rights, and Supreme Court original actions.
- The **Wildlife and Marine Resources Section** handles civil cases arising under the fish and wildlife conservation laws, including suits defending agency actions under the Endangered Species Act, the Marine Mammal Protection Act, and the Magnuson-Stevens Fishery Conservation and Management Act.
- The **Executive Office** provides management and administrative support to the Division, including financial management, human resources, automation, security, and litigation support. The Executive Office takes full advantage of cutting-edge technology to provide sophisticated automation facilities for its employees, in order to help the Division's workforce achieve exceptional litigation results for the United States.
- The **Office of the Assistant Attorney General** provides overall leadership and policy direction to the Division. The Office of the AAG includes the component head or acting component head, Deputy Assistant AAGs, and Counsel(s) to the AAG.

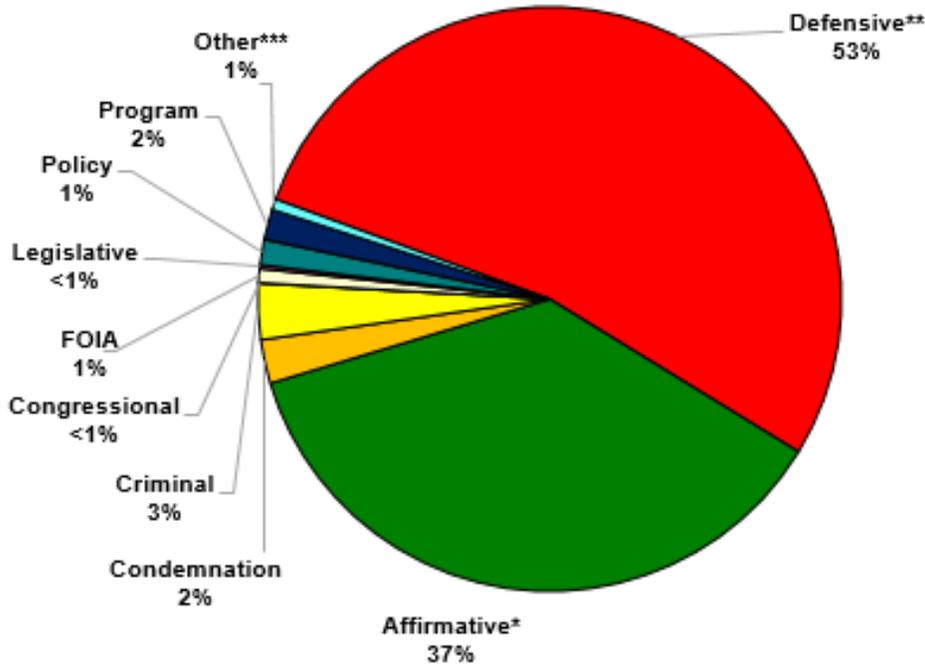
ENRD's Cases/Matters Pending by Client Agency as of September 30, 2018

Total Cases/Matters – 6,762



ENRD's Cases/Matters Pending by Case Type as of September 30, 2018

Total Cases/Matters – 6,762



*Affirmative - includes case types of Civil Affirmative, Amicus, and Citizen Suits.

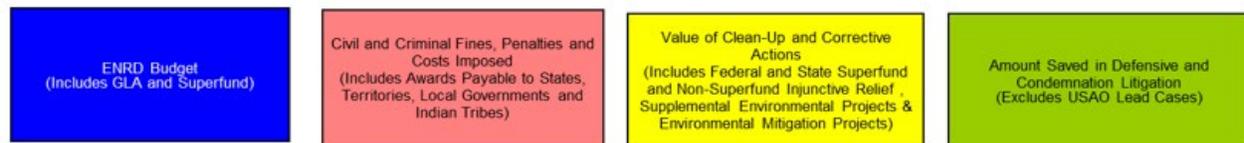
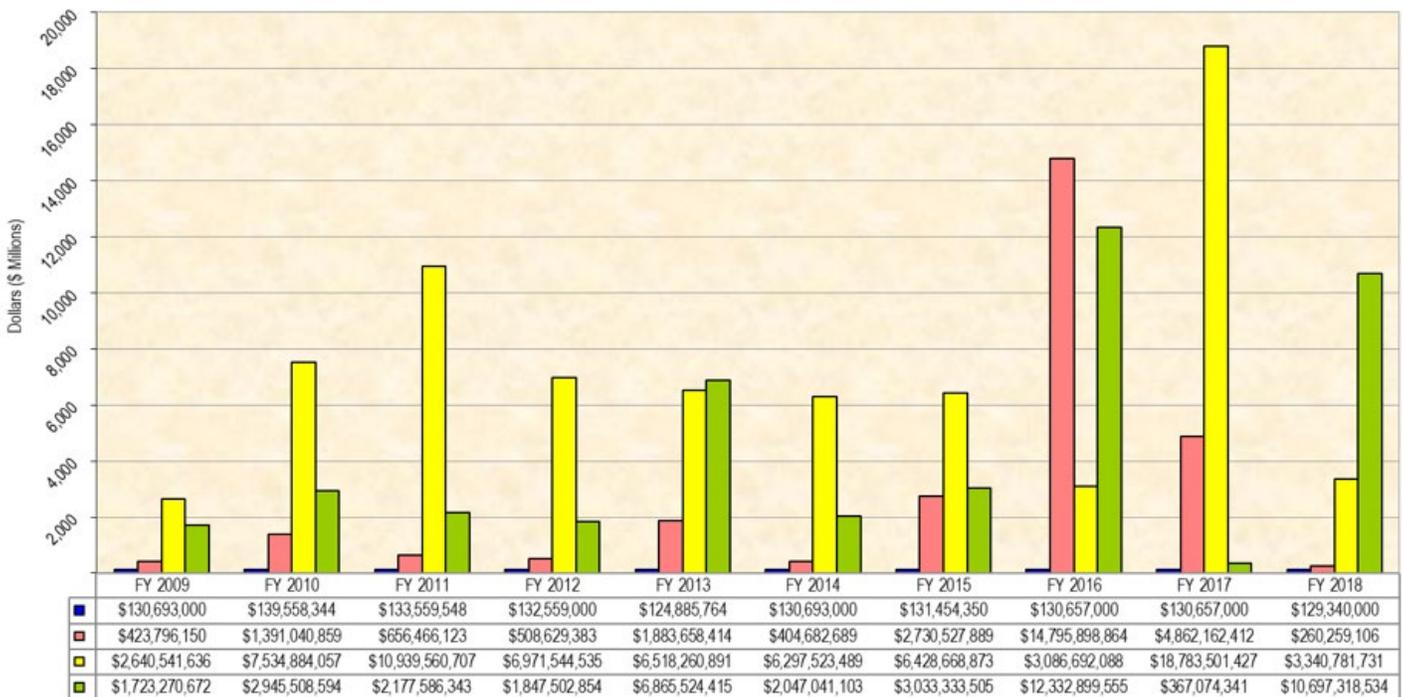
**Defensive - includes case types of Civil Defensive, Civil Contempt, Notices of Intent and Petitions for Review.

***Other represents types of work not covered by any category, such as projects, etc.

ACCOMPLISHMENTS

In **FY 2018**, ENRD successfully closed 1,102 matters and 1,063 cases while maintaining a robust docket of 6,762 cases, matters, and appeals. The Division recorded more than **\$260 million in civil and criminal fines, penalties, and costs recovered**. The **estimated value of federal injunctive relief (clean-up work and pollution prevention actions by private parties) obtained in FY 2018 exceeded \$3.34 billion**. ENRD's **defensive litigation efforts avoided costs (claims) of over \$10.7 billion million in FY 2018**. In FY 2018, the Division achieved a favorable outcome in 97.6 percent of its civil affirmative cases, 93.0 percent of its civil defensive cases, 96.7 percent of its criminal cases and 95.2 percent of its condemnation cases. **In sum, ENRD continues to be a valuable investment of taxpayer dollars as the number of dollars returned to the Treasury exceeds ENRD's annual appropriation many times over.**

**Return on Investment
FY 2009 – FY 2018**



Below are some recent notable successes from the Division's civil and criminal litigation dockets.

Civil Cases (Both Affirmative and Defensive)

- ***Volkswagen (VW) / Defeat Device Cases / Mobile Source Emissions Enforcement***

Through the Division's civil litigation against Volkswagen and a resulting three-part settlement, we obtained significant remedies for the sale of approximately 590,000 cars equipped with emissions control defeat devices that violated the Clean Air Act: (1) a requirement to buyback or repair the subject vehicles; (2) measures to address the environmental harm from the violations; (3) a civil penalty of \$1.45 billion; and (4) corporate-governance reforms. The injunctive relief was estimated to cost up to \$15.9 billion. *U.S. v. Volkswagen* (MDL N.D. Cal.).

- ***Superfund Enforcement Cases***

The Division and EPA secured, along with Navajo Nation, clean-up commitments covering 94 abandoned uranium mines on the Navajo Nation at an estimated cost of \$600 million, with the Federal Government bearing approximately half the cost. *U.S. v. Cyprus Amax Minerals Company et al.* (D. Ariz. 2017).

ENRD and EPA obtained a settlement to clean up six former waste disposal sites in the Sauget Area 1 Superfund Site in Sauget, Illinois at an estimated cost of \$14.8 million. *United States v. Pharmacia, LLC, et al.* (S.D. Ill. 2017).

- ***Clean Air Act Litigation***

The Division achieved a number of notable settlements in cases alleging violations of the Clean Air Act, including the following:

In partnership with the State of Indiana and EPA, the Division obtained a Clean Air Act settlement reducing illegal, harmful air emissions, including sulfur dioxide and lead emissions, by securing needed rebuilds of coking ovens and adherence to improved operational and testing requirements. Defendants also must partly redress past, illegal emissions through a \$250,000 lead abatement program in area schools, day care centers, and other buildings - with priority to those frequented by young children and pregnant women. Defendants also must pay a total civil penalty of \$5 million (divided equally between the U.S. and the State). *U.S. & Ind. Dept. of Env'tl. Mgmt. v. SunCoke Energy, et al* (N.D. Ind. 2018).

The Division obtained a settlement in partnership with EPA and the State of Louisiana that secured installation and operation of air pollution control equipment valued at \$10 million, thereby reducing emission of harmful air pollutants—including benzene and volatile organic compounds—from Shell's chemicals facility located in Norco, Louisiana; also secured a civil penalty from Shell of \$350,000. *U.S. & La. Dept. Env'tl. Quality v. Shell Chemical LP* (E.D. La. 2018).

ENRD and EPA secured a penalty of \$2.85 million from the largest manufacturer of handled engines and equipment in the U.S. for the erroneous methods it employed in testing its engines for compliance with air pollution limits. *U.S. v. Husqvarna AB et al.* (D.D.C. 2018).

- ***Oil Spill Enforcement***

In FY 2018, ENRD and EPA reached a settlement with Magellan Pipeline Company, L.P., for alleged violations of the Clean Water Act related to gasoline, diesel and jet fuel spills in Texas City, Texas, Nemaha, Nebraska, and El Dorado, Kansas. Magellan agreed to complete approximately \$16 million of injunctive relief across its 11,000-mile pipeline system and to pay a \$2 million civil penalty.

Criminal Cases

- ***Volkswagen / Defeat Device Cases***

In addition to the Department's civil case against Volkswagen AG (VW), on March 10, 2017, VW pleaded guilty in federal court to three felony counts arising out of the company's decade-long scheme to sell approximately 590,000 diesel vehicles containing software designed to cheat on U.S. emissions tests: (1) conspiracy to defraud the United States, engage in wire fraud, and violate the CAA; (2) obstruction of justice; and (3) importation of merchandise by means of false statements. As part of the plea, VW agreed to pay a \$2.8 billion penalty, serve a three-year term of probation, and be subject to oversight for at least three years by an independent corporate compliance monitor.

The Division also brought criminal charges against seven VW employees and one Audi employee for their roles in the conspiracy, two of whom have pleaded guilty and been sentenced. Former VW engineer James Liang was sentenced on August 25, 2017, to 40 months' incarceration and a \$200,000 fine. Former VW general manager Oliver Schmidt was sentenced on December 6, 2017, to 84 months' incarceration and a \$400,000 fine.

- ***Vessel Pollution Cases***

In *United States v. Princess Cruise Lines, Ltd.* (S.D. Fla.), Princess Cruise Lines Ltd. agreed to plead guilty to conspiracy, obstruction, and violations of the Act to Prevent Pollution from Ships Act (APPS) related to deliberate pollution of the seas and intentional acts to cover up its conduct. The case against Princess related to illegal overboard dumping of oil-contaminated waste and falsification of official logs in order to conceal the discharges, which were found to have taken place on five Princess ships. Princess is a subsidiary of Carnival Corporation, which owns and operates multiple cruise lines and collectively comprises the world's largest cruise company. On April 19, 2017, Princess was sentenced to pay a \$40 million penalty – the largest-ever fine for crimes involving deliberate vessel pollution – and was also ordered to complete a five-year term of probation.

- ***Enforcing the Laws Against Wildlife Trafficking***

Operation Crash² is an ongoing nationwide effort led by the Fish and Wildlife Service and ENRD in conjunction with U.S. Attorneys' Offices to investigate and prosecute those involved

² A "crash" is a herd of rhinoceros

in the black market trade of rhinoceros horns and other protected species, which continues to produce numerous successful prosecutions. Thus far, 50 individuals and companies have been charged as part of Operation Crash. The sentences imposed totaled more than 40 years' incarceration, over \$2.1 million in fines, and forfeiture and restitution in the amount of \$7.8 million. All rhinoceros species are protected under United States and international law, and the black rhinoceros is listed as endangered under the Endangered Species Act. Recent successes include: a 27-month sentence for illegally trafficking in rhinoceros horn; an 18-month sentence for an Irish national who was successfully extradited from Belgium and pled guilty to an indictment in Miami for his involvement in a conspiracy, smuggling of a carved rhinoceros horn and obstruction of justice; and a sentence of time served (19 months incarceration) for a defendant extradited from Australia who pled guilty to an indictment charging him with being the ringleader in a conspiracy to smuggle protected rhinoceros horn, elephant ivory and coral from the United States to China.

As part of a multi-district undertaking known as Operation Broken Glass, the Division has successfully prosecuted 19 individuals in Maine, New Jersey, South Carolina, and Virginia for poaching and exporting American eels. Combined, these defendants illegally trafficked nearly 5,000 pounds of baby eels – approximately 9.7 million individual eels – worth more than \$7 million dollars. Thus far, sentences for these defendants total at least 66 months' incarceration, \$92,500 in fines, and \$236,300 in restitution to the states whose wildlife was illegally taken.

- ***Biodiesel Fraud Prosecutions***

The Division obtained an 87-month prison sentence against a defendant who conspired to enter into false transactions to sell fraudulent biodiesel fuel credits in the amount of \$42 million. The court also entered a money judgment in the amount of \$10.5 million, the amount of proceeds of the charged criminal conduct that the defendant personally received.

In April 2017, ENRD prosecuted a case against a defendant who engaged in a scheme with other coconspirators to fraudulently claim tax credits and renewable fuels credits (RIN credits) multiple times on the same fuel. The defendant was sentenced to 60 months in prison for his role in a scheme that generated over \$7 million in fraudulent tax credits and RIN credits connected to the purported production of biodiesel fuel, as well as his subsequent attempts to obstruct a grand jury investigation into the fraud.

- ***Protecting Human Health from Unlawful Uses of Pesticides***

On March 23, 2017, Terminix International Company LP and U.S. Virgin Islands operation Terminix International USVI LLC pleaded guilty to illegally applying fumigants containing toxic methyl bromide in multiple residential locations in the U.S. Virgin Islands, in violation of the Federal Insecticide, Fungicide, and Rodenticide Act. The illegal applications included a March 2015 fumigation of a St. John condominium resort complex that caused devastating injuries to a family of four staying above a fumigated unit. As part of the plea agreement, Terminix ceased all use of methyl bromide. On November 20, 2017, Terminix was sentenced to pay a total of \$10 million in criminal fines, community service, and restitution payments. Specifically, Terminix, USVI will pay \$4 million in fines and \$1 million in restitution to the EPA

for response and clean-up costs at the St. John resort. Terminix LP will pay a fine of \$4 million and will perform community service related to training commercial pesticide applicators in fumigation practices and conduct a separate health services training program. Charges are pending against the individual pesticide applicator.

- ***Enforcing the Animal Welfare Laws***

Operation Grand Champion is an ongoing multi-jurisdictional dog fighting investigation conducted by the U.S. Department of Agriculture Office of Inspector General, Federal Bureau of Investigation, and Homeland Security Investigations. Monte Gaines and eleven other individuals were arrested, and the Division brought charges against them for their role in a large dog-fighting enterprise. Gaines pleaded guilty to two counts of conspiring to buy, sell, receive, transport, deliver, and possess dogs intended for use in an animal fighting venture and one count of unlawful possession of a dog intended for use in an animal fighting venture. In March 2018, Gaines was sentenced to 42 months' incarceration. Thus far, the Operation has resulted in 7 guilty pleas, 98 dogs rescued, and just under 11 years' incarceration.

2. Performance and Resources Table

<i>Decision Unit/Program: Environment & Natural Resources Division</i>											
		Target FY 2018		Actual FY 2018		Projected FY 2019		Current Services Adjustments and FY2020 Program Changes		FY 2020 Request	
WORKLOAD/RESOURCES 1/											
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,276		5,275		0				0	
	# of Cases Successfully Resolved/Success Rate	83%				83%				83%	
CIVIL	1. Number of cases (active & closed)	4,700		4,700							
	2. Number of matters (active & closed)	272		272							
CRIMINAL	3. Number of cases (active & closed)	265		265							
	4. Number of matters (active & closed)	39		38							
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
DIVISION RESOURCES - Total Year Costs & FTE's (Appropriated only)		580[74]	\$ 110,512	580[61]	110,512	580[41]	\$ 110,512	5[41]	0	585[82]	\$ 110,512
Program Activity PERFORMANCE/RESOURCES		Target FY 2018		Actual FY 2018		Projected FY 2019		Current Services Adjustments and FY2020 Program		FY 2020 Request	
CIVIL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$001
	TOTAL COSTS & FTE	474	\$ 99,461			488	\$ 99,461	5[41]	\$ -	474	\$ 99,461
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed										
	2. Number of matters active/closed										
	OUTCOME*	# Resolved	Success Rate			# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	no estimate	85%	no estimate		no estimate	85%			no estimate	0%
	2. Defensive cases successfully resolved	no estimate	75%	no estimate		no estimate	75%			no estimate	0%
	3. Penalties Awarded 2/*	Superfund	Non-Superfund	Superfund	Non-Superfund	Superfund	Non-Superfund			Superfund	Non-Superfund
	- Federal	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- State	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	4. Clean-up Costs Awarded 4/										
	- CERCLA Federal Cost Recovery 3/ 5/	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- Federal Injunctive Relief	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- CERCLA State Cost Recovery	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- State Injunctive Relief	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	5. Supplemental Environmental Projects (SEPs) 6/										
	- Value of Federal SEPs	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- Value of State SEPs	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	6. Environmental Mitigation Projects 7/										
	7. Costs Avoided (Saved the U.S. in Defense Cases) 8/	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate

Performance and Resources Table (Cont.)

CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000			FTE	\$001
	TOTAL COSTS & FTE	53	\$ 11,051	53	\$ 10,976	63	\$ 11,051	0	\$ -	63	\$ 11,051
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed										
	2. Number of matters active/closed										
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	no estimate	90%	no estimate	90%	no estimate	90%			no estimate	90%
	2. Dollars Aw arded										
	- Fines 9/	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- Restitution	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
	- Community Service Funds 10/										
	3. Criminal Environmental Compliance Plan 11/	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate			no estimate	no estimate
Additional Explanation for Targets, Program Changes, and Program Requests											
* In accordance with Department guidance, estimates of performance are not projected for the noted categories.											
Data Definition, Validation, Verification, and Limitations:											
1/ A matter is defined as "an issue requiring attorney time (i.e. congressional & legislative inquiries, Freedom of Information Act (FOIA) inquiries, notice of intent to sue, or policy issues)."											
Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date. Cases and matters reported here are those that had time reported.											
2/ Penalties Aw arded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars aw arded, Attorneys' Fees, and Royalties paid in cases involving the use of U.S. mineral lands.											
3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this fund.											
4/ Cost recovery is aw arded to federal & state governments for reimbursement of the clean-up of sites contaminated with hazardous substances. Injunctive relief is estimated clean-up costs for contaminated sites which are court ordered to be completed by the defendant.											
5/ Includes monies paid by the Federal Government for its share of clean-up costs of Superfund sites.											
6/ Supplemental Environmental Projects (SEP) are environmentally beneficial projects that defendants are ordered to perform by the court (i.e. a factory installing a device to reduce the release of pollutants into the environment)											
7/ A mitigation project is actions a defendant agrees to take to remedy the harm caused by its past non-compliance.											
8/ Costs Avoided is the difference between the amount for which the government is sued, and the amount actually paid to plaintiffs.											
9/ Includes Special Assessments, Reimbursement of Court Costs and Attorneys' Fees, and Asset Forfeitures.											
10/ Community Service Funds represents actions which benefit the environment and local community that defendants are ordered to complete in addition to any other sentence.											
11/ Criminal Environmental Compliance Plans are plans that may vary in detail, usually imposed on organizational defendants as conditions of probation at sentencing, that set out various actions that defendants must undertake in an effort to bring them into and keep them in compliance.											
Data Collection & Storage: The majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).											
Data Validation and Verification: The division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the division to maintain accuracy.											
Data Limitations: Timeliness of notification by the courts.											
Data does not include United States Attorney (USA) exclusive cases											

Performance Measure Table

PERFORMANCE MEASURES TABLE										
Decision Unit: Environment and Natural Resources Division										
Performance Report and Performance Plan Targets		FY 2014	FY 2015	FY 2016	FY 2017	FY 2017	FY 2018	FY 2018 Q2	FY 2019	FY 2020
		Actual	Actual	Actual	Target	Actual	Target	Actual	Target	Target
EFFICIENCY	Total dollar value awarded per \$1 of expenditures (Affirmative)	\$95	\$132	\$251	\$81	\$295	\$81	NA	\$81	\$81
EFFICIENCY	Total dollars saved the government per \$1 of expenditures (Defensive)	\$30	\$42	\$162	\$22	\$5	\$22	NA	\$22	\$22
OUTCOME	Civil affirmative cases successfully resolved	99%	99%	99%	85%	98%	85%	100%	85%	85%
OUTCOME	Civil defensive cases successfully resolved	90%	93%	93%	75%	93%	75%	95%	75%	75%
OUTCOME	Criminal cases successfully resolved	91%	95%	96%	90%	97%	90%	100%	90%	90%
OUTPUT	Number of criminal cases (active and closed) 1/	265	267	270	265	236	265	187	265	265
OUTPUT	Number of criminal matters (active and closed) 1/	47	48	47	38	42	39	40	39	39
OUTPUT	Number of civil cases (active and closed) 1/	5,138	5,059	4,766	4,700	4,948	4,700	4,058	4,700	4,700
OUTPUT	Number of civil matters (active and closed) 1/	290	328	302	272	443	272	315	272	272

1/ Measure includes cases and matters with time reported.

3. Performance, Resources, and Strategies

Criminal Litigating Activities

a. Performance Plan and Report for Outcomes

Vigorous prosecution remains the cornerstone of the Department’s integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), seriously affected public health, or inflicted economic damage on consumers or law-abiding competitors. The Department’s environmental protection efforts depend on a strong and credible criminal program to prosecute and deter future wrongdoing. Highly publicized prosecutions and tougher sentencing for environmental criminals are spurring greater environmental compliance. Working together with federal, state and local law enforcement, the Department is meeting the challenges of increased referrals and more complex criminal cases through training of agents, officers and prosecutors, outreach programs, and domestic and international cooperation.

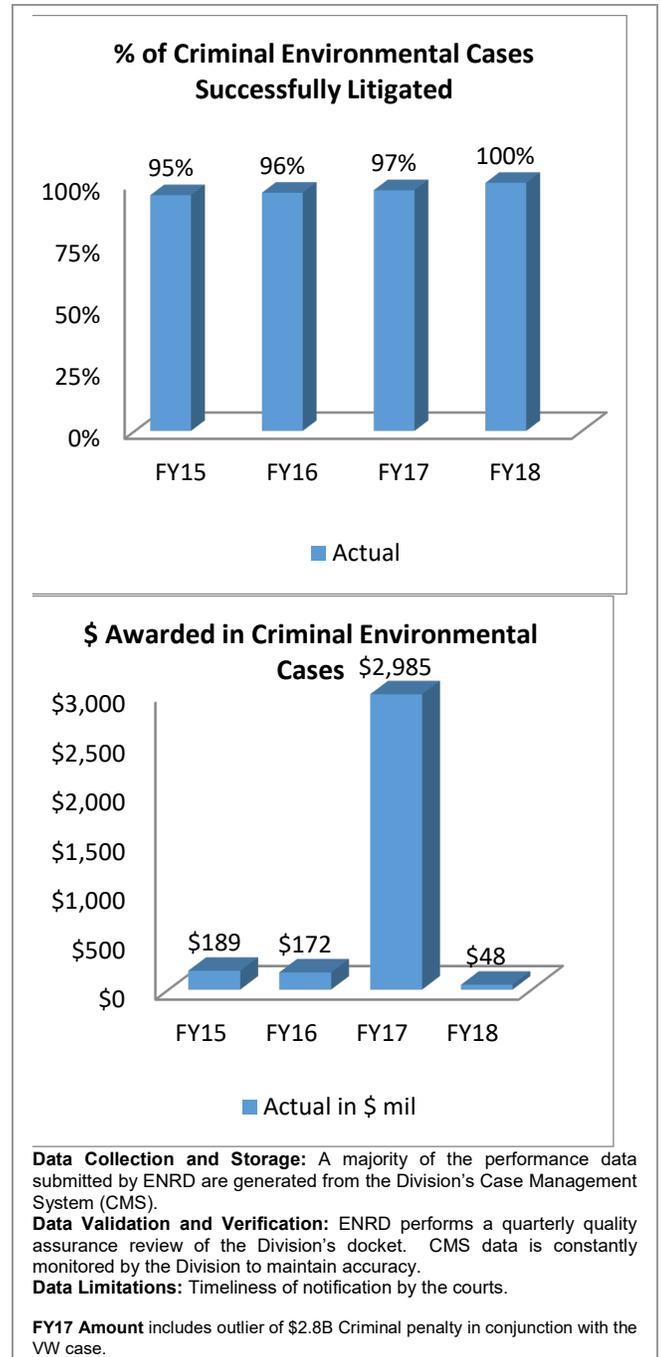
I. Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved

❖ ***FY 2018 Target: 90%***

❖ ***FY 2018 Actual: 100%***

Discussion: ENRD exceeded its FY 2018 success rate goal by +10%. As discussed in the “Accomplishments” section of this budget document, over the past year, the Division prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety and other environmental criminal cases.

FY 2020 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2020. ENRD targets are generally set at an attainable performance level so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for “easy” wins solely to meet higher targets. Such an approach would do a disservice to the public by steering



litigation away from more complicated problems facing the country's environment and natural resources.

Public Benefit: The Division continues to produce successful criminal prosecutions relating to environmental statutes. These successes ensure compliance with the law and lead to specific improvements in the quality of the environment of the United States, and the health and safety of its citizens. Additionally, ENRD has had numerous successes in prosecuting vessels for illegally disposing of hazardous materials into United States waterways. These successes have improved the quality of our waterways and promoted compliance with proper disposition of hazardous materials. Also, the Division has successfully prosecuted numerous companies for violations of environmental laws which endangered their workers. Our successes lead to safer workplaces and fewer lives lost to hazardous conditions.

II. Performance Measure - \$ Awarded in Criminal Environmental Cases

- ❖ *FY 2018 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*
- ❖ *FY 2018 Actual: \$47.8 billion*

Discussion: While ENRD does not establish monetary goals for this metric, the Division is pleased to report that in FY 2018 we imposed \$47.8 million in criminal fines and monetary impositions. As discussed in the "Accomplishments" section of this budget document, over the past year, ENRD prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety and other environmental crimes.

FY 2020 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2020 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

Public Benefit: The Division continues to obtain criminal fines from violators, thereby removing economic benefits of non-compliance and leveling the playing field for law-abiding companies. Our prosecutorial efforts deter others from committing crimes and promote adherence to environmental and natural resources laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations and improve the quality of the United States' waterways, airways, land, and wildlife, thereby enhancing public health and safety.

B. Strategies to Accomplish Outcomes

The Division establishes strategies for performance and accomplishments relating to the Department's Strategic Plan for FY 2018 – FY 2022. The Division's strategies are based off of the following priority goals and objectives:

Strategic Goal 2 – Secure the Borders and Enhance Immigration and Adjudication

Strategic Objective 2.2 – Ensure an immigration system that respects the rule of law, protects the safety of U.S. Citizens and legal aliens and serves the national interest

Strategic Goal 4 – Protect the Rule of Law, Integrity, and Good Government

Strategic Objective 4.1 – Uphold the rule of law and integrity in the proper administration of justice

Strategic Objective 4.3 – Pursue regulatory reform initiatives

The Division will continue efforts to fulfill the requirements of the Executive Order on Border Security and Immigration Enforcement Improvements through the acquisition of land (along with developing associated title and appraisal work) associated with the construction along the Southwest border.

The Division will continue to uphold the rule of law by obtaining convictions and deterring environmental crimes through initiatives focused on vessel pollution, RIN fraud, illegal timber harvesting, laboratory fraud, chlorofluorocarbon (CFC) smuggling, wildlife smuggling, transportation of hazardous materials, and worker safety. ENRD will also continue to prosecute international trafficking of protected species of fish, wildlife, and plants with a host of international treaty partners.

The Division will pursue regulatory reform initiatives through partnerships with other federal agencies, such as EPA, through litigation against criminal violators of our nation's environmental policies. Egregious offenders are being brought to justice daily. The Division has worked collaboratively to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations, ENRD is forcing compliance and discouraging continued disregard for public health.

Civil Litigating Activities

A. Performance Plan and Report for Outcomes

The Department enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

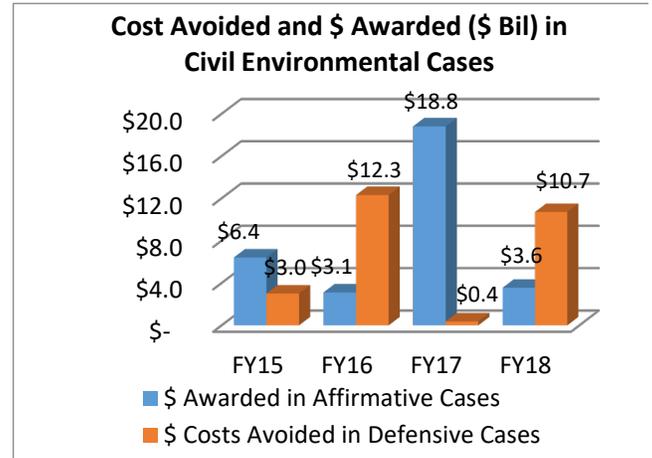
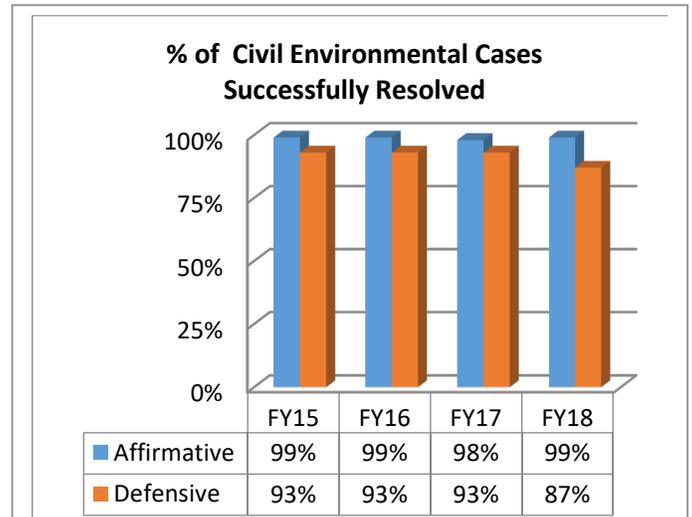
Performance Results

I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved

- ❖ **FY 2018 Targets**
85% Affirmative; 75% Defensive
- ❖ **FY 2018 Actual**
99% Affirmative; 87% Defensive

Discussion: FY 2018 was a particularly successful year for ENRD. The Division exceeded its civil affirmative success target by +14%, and its civil defensive target by +13%. As described elsewhere in this document, ENRD achieved extraordinary success enforcing the nation's core environmental statutes and defending the Administration and its federal agencies from lawsuits involving a wide variety of statutes.

FY 2018-2022 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent affirmative cases and 75 percent defensive cases (average of 80 percent overall) for FY 2018 through FY 2022. ENRD's targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against easy targets solely to meet "ambitious" goals. This sort of easy approach would do a disservice to the public by steering litigation away from more difficult problems facing the country's environment and natural resources. Our targets are set at demonstrably achievable levels and do not deter high performance.



Data Collection and Storage: A majority of the performance data submitted by ENRD is generated from the Division's Case Management System.
Data Validation and Verification: ENRD performs a quarterly quality assurance review of the Division's docket. Case data is constantly monitored by the Division to maintain accuracy.
Data Limitations: Timeliness of notification by the courts

Public Benefit: The success of the Department ensures the correction of pollution control deficiencies, reduction of harmful discharges into the air, water, and land, clean-up of chemical releases, abandoned waste, and proper disposal of solid and hazardous waste. In addition, the Department's enforcement efforts help ensure military preparedness, safeguard the quality of the environment in the United States, and protect the health and safety of its citizens.

II. Performance Measure - Costs Avoided and \$ Injunctive Relief / Environmental Clean-up Awarded in Civil Environmental Cases

- ❖ ***Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***
- ❖ ***FY 2018 Actual: \$10.697 billion avoided; \$3.553 billion awarded***

Discussion: ENRD had a remarkably successful year in FY 2018 avoiding costs in defensive cases and imposing injunctive relief on polluters. ENRD's efforts in this area protected and preserved the federal fisc and also compelled polluters – rather than federal, state and local governments – to pay for environmental clean-up and restoration efforts.

FY 2019/2020 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation and judicial calendars. The overall performance of the Division can be affected when large cases are decided, so we do not project annually.

III. Efficiency Measures

Total Dollars Saved the Government per \$1 Expenditures

- ❖ ***FY 2018 Targets: \$81 awarded; \$22 saved***
- ❖ ***FY 2018 Actual: \$33 awarded; \$97 saved***

FY 2019/2020 Performance Plan: The Division has an exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands. ENRD anticipates continued success through vigorous enforcement efforts which generally will produce settlements and significant gains for the public and the U.S. Treasury.

Public Benefit: The Division's efforts to defend federal programs, ensure compliance with environmental and natural resource statutes, win civil penalties, recoup federal funds spent to abate environmental contamination, ensure military preparedness, and ensure the safety and security of our water supply, demonstrate that the United States' environmental laws and regulations are being vigorously enforced. Polluters who violate these laws are not allowed to gain an unfair economic advantage over law-abiding companies. The deterrent effect of the Division's work encourages voluntary compliance with environmental and natural resources

laws, thereby improving the environment, the quality of our natural resources, and the safety and health of United States citizens.

B. Strategies to Accomplish Outcomes

In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our resources. For example, ENRD has adopted a policy of “porosity,” whereby cases involving the responsibilities of different sections within ENRD can be litigated by a single attorney, rather than two or three attorneys from different sections. As such, ENRD’s porosity policy allows us to litigate cases in a manner that conserves resources, without regard to structural distinctions within the Division. This policy has also resulted in more flexibility to shift workloads between attorneys.

The Division works collaboratively with client agencies towards mediations, alternative dispute resolution (ADR), and settlements. These alternative methods of resolution are less contentious and save the government expenses associated with full-blown litigation. Water rights adjudications, reclamations, and inverse takings cases are typically handled in settlement mode versus litigation mode. Settlements often result in the most favorable outcome, reach the largest number of people, and are consummated in the most economically-efficient manner.

VI. Program Increases

A. Securing the Southwest U.S. Border

Item Name:	Securing the Southwest U.S. Border
DOJ Focus Area:	(1) Enforcing our Nation’s Immigration Laws (2) Enhancing our National Security and Countering the Threat of Terrorism
Strategic Plan Support:	(1) Goal 2: Secure the Borders and Enhance Immigration Enforcement and Adjudication
Budget Decision Unit(s):	Environment and Natural Resources Division
Organizational Program(s):	<i>Land Acquisition Section (LAS)</i> <i>Natural Resources Section (NRS)</i> <i>Wildlife and Marine Resources Section (WMRS)</i>
Program Increase:	Positions 10, Atty 6, FTE 5, Dollars <u>\$960,000</u>

Description of the Item

ENRD is requesting \$960,000, including 6 attorney positions and 5 FTEs, to support the Division’s land acquisition and environmental litigation activities along the Southwest Border.

The President’s January 25, 2017 Executive Order on *Border Security and Immigration Enforcement Improvements* calls upon the Executive Branch to “immediately plan, design and construct” a “physical wall” or “barrier” along the border between Mexico and the United States (EO Sec. 4), establish “detention facilities (EO Sec. 5), “hire 5,000 additional Border Patrol agents” (EO Sec. 8), and “have access to all Federal Lands” (EO Sec. 12).

To fulfill the requirements of this Order, ENRD’s Land Acquisition Section (LAS) is charged with the acquisition of land (along with developing associated title and appraisal work) associated with the border wall; and the Division’s Natural Resources Section (NRS) and Wildlife and Marine Resources Section (WMRS) are tasked with addressing challenges under a host of environmental, procedural and inverse takings statutes (i.e., Endangered Species Act (ESA), National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Tucker Act). The enhancement will allow ENRD to hire six additional attorneys and 4 additional staff and land appraisers needed for the increase in workload due to the Order.

Justification

Construction of the Southwest U.S. border wall represents one of the largest public works projects in the Nation's history. ENRD plays a critical role in such projects with (1) the Division's Land Acquisition Section (LAS) guiding the acquisition of land (along with developing associated title and appraisal work); and (2) ENRD's Natural Resources Section (NRS) and Wildlife and Marine Resources Section (WMRS) addressing challenges under a host of environmental, procedural and inverse takings statutes, which groups have already begun using to try to challenge actions related to the border wall.

For this project in particular, LAS is performing, or will perform, the following functions:

- Because potentially hundreds or thousands of parcels of land are needed for this project, LAS consults with the land acquiring agencies as part of project planning to (1) streamline the land acquisition process (addressing, e.g., real property interests, estates to be acquired, negotiations, appraisals, title, surveys, legal filings, timing, etc.) and (2) identify litigation challenges.
- Reviewing every condemnation case package to be filed in court, whether it is to be filed by LAS or the U.S. Attorneys Offices (USAO). (For the related 2007-08 border construction effort, LAS worked with the U.S. Army Corps of Engineers ("Corps") to develop and use an electronic case review system allowing for expedited review and filing of cases; we will use a similar system for this project.)
- Providing training for Assistant U.S. Attorneys (AUSAs) and Corps realty staff, who are not familiar with federal condemnation practice.
- Preparing case pleadings, draft legal briefs, argue motions and conduct hearings for the initial surge of cases and challenges. LAS would anticipate transitioning to the USAOs the preparation of smaller cases and handling of standard briefs, motions and hearings within a year.
- Handling any cases with significant valuation disputes (usually more than \$1 million), political sensitivities, USAO recused matters, or complex legal, valuation, or title matters, either as the lead or jointly with AUSAs. We also often handle cases initially assigned to the USAOs that are later recognized to strain the resources and expertise of the USAOs.
- LAS's appraisal unit provides expert appraisal review services to the agencies, LAS trial attorneys and the AUSAs to ensure uniformity in the appraisal and valuation process, and to help achieve uniform results to satisfy the mandate of the Constitution for just compensation. Simply stated, ENRD's land acquisition attorneys provide a uniform approach to help reach a value fair to both the landowners and the citizens who must pay for the land.

To provide context, the United States-Mexico border is approximately 1,933 miles long, with 373 miles in Arizona, 140 miles in California, 180 miles in New Mexico, and 1,241 miles in

Texas. As it exists today, the Department of Homeland Security has completed 654 miles of fencing, including 300 miles of vehicle barriers and 354 miles of pedestrian fence. Of the 300 miles of vehicle barriers, 183 miles are located in Arizona, 16 miles in California, 101 miles in New Mexico, and 0.5 miles in Texas. Of the 354 miles of pedestrian fencing, 135 miles are located in Arizona, 90 miles in California, 14 miles in New Mexico, and 115 miles in Texas.

In order to secure the entirety of the U.S.-Mexico border, LAS will have to acquire substantial additional parcels of property. At this time, ENRD cannot predict the exact number of parcels we will need to acquire, nor can we predict the total number of condemnation cases we will have to litigate. The one thing we are certain of is this: the subject undertaken is massive and unprecedented, and will include:

- Hundreds of miles of existing fence will be replaced (converting antiquated or vehicular fencing to enhanced pedestrian fencing and a border wall with a security buffer zone between them). This will occur in all five affected USAO districts and could require the filing of dozens or hundreds of cases.
- Hundreds of miles of new fencing and border wall, with a corresponding security zone between them, will be constructed. At present, this will likely happen in every USAO border district and could require the filing of dozens or hundreds of cases.

In addition to acquiring the land needed to build the border wall, ENRD plays a key role in defending actions related to the border wall against legal challenges brought under environmental statutes. In the earliest iterations of border projects in the 1990s, numerous challenges were brought under a variety of environmental statutes, including the ESA and NEPA. The current laws on the books allow the Secretary of the Department of Homeland Security to waive virtually every environmental statute (including ESA and NEPA) upon publication in the Federal Register. This authority has been invoked, which has resulted in direct challenges to the waiver during the construction process on a number of grounds. There will likely be numerous and more comprehensive challenges that expand into the realm of not just construction but also future operations and maintenance as well. ENRD will vigorously defend the Federal Government when such challenges arise.

LAS has seen an increase of 36.5% in total hours in FY 2018 when compared to FY 2016, before the Executive Order was approved with no significant changes in staffing levels. The 6 new attorneys and 4 staff and appraisers will increase the size of the section by 47.6%, from 13 attorneys and 21 total FTE to 19 attorneys and 31 total FTE.

Impact on Performance

Successful ENRD performance of land acquisition and related litigation associated with the construction of the border wall is a critical part of the Justice Department's Focus Area: "Enforcing our Nation's Immigration Laws." and "Enhancing our National Security and Countering the Threat of Terrorism." This initiative also directly supports DOJ's Strategic Goal Two: "Secure the Borders and Enhance Immigration."

Funding

Base Funding

FY 2017 Enacted				FY 2018 Enacted				FY 2019 Current Services			
Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)	Pos	agt/atty	FTE	\$(000)
21	13	21	4,290	21	13	21	4,290	21	13	21	4,290

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	1 st Year Annualization	Number of Positions Requested	FY 2020 Request (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (Change from 2021) (\$00)
Attorney (905)	\$175	\$95	6	\$567	\$375	\$0
Appraiser (1171)	\$175	\$95	2	\$189	\$125	\$0
Paralegal (950)	\$90	\$52	2	\$104	\$63	\$0
Total Personnel			10	\$860	\$563	\$0

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2020 Request (\$000)	FY 2021 Net Annualization (change from 2020) (\$000)	FY 2022 Net Annualization (change from 2021) (\$000)
Automated Litigation Support			\$100	\$0	\$0
Total Non-Personnel			\$100	\$0	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non-Personnel (\$000)	Total (\$000)	FY 2021 Net Annualization (Change from 2020) (\$000)	FY 2022 Net Annualization (Change from 2021) (\$000)
Current Services	21	13	21	\$4,290	\$0	\$4,290	\$0	\$0
Increases	10	6	5	\$860	\$100	\$960	\$563	\$0
Grand Total	31	19	26	\$5,150	\$100	\$5,250	\$563	\$0

VII. Program Offsets

ENRD does not submit any Fiscal Year 2020 Program Offsets.

