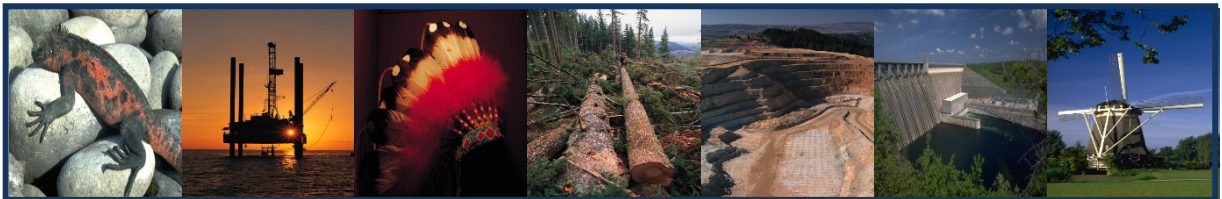


U.S. Department of Justice



Environment and Natural Resources Division



ENRD



ENRD

FY 2018
PERFORMANCE BUDGET
CONGRESSIONAL JUSTIFICATION

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Cover photo of Red Rock Lakes (Montana) National Wildlife Refuge from the Fish and Wildlife Service Digital Image Library

<http://digitalmedia.fws.gov/cdm/landingpage/collection/natdiglib>

Text boxes are from the ENRD publication ENRD Public Lands and National Treasures: The First 100 Years of the Environment and Natural Resources Division 1909-2009

I. Overview of the Environment and Natural Resources Division

A. Introduction:

Environment and Natural Resources Division (ENRD) Mission: The Environment and Natural Resources Division 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 the Interior, the U.S. Army Corps of Engineers, the U.S. Department of Commerce, the U.S. Department of Agriculture, the U.S. Department of Homeland Security, the U.S. Department of Energy and the U.S. Department of Defense, among others. The Division’s litigation docket is comprised of nearly 7,000 active cases and matters.

The Division will play a key role in supporting and defending federal agencies in the implementation of several 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 Border Security and Immigration Enforcement Provisions (Jan. 25, 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)

Of particular note, the Division is intimately engaged in, and 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. The Executive Order 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).

In addition, 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.



Congress created the position of Attorney General in 1789, but until 1870, the Attorney General was supported by no cabinet department. In 1870, Congress established the Department of Justice together with the Office of Solicitor General. U.S. Attorneys, who since the Judiciary Act of 1789 had functioned independently of the Attorney General as chief prosecutors in federal judicial districts, were directed to report to the Attorney General. Certain attorneys at other federal agencies were also instructed to report to the Attorney General. The new department was authorized to hire two Assistant Attorneys General and clerical help.

The Environment and Natural Resources Division is organized into seven core litigating sections (Environmental Crimes; Environmental Defense; Environmental Enforcement; Indian Resources; Land Acquisition; Natural Resources; and Wildlife and Marine Resources), an Appellate Section, a Law and Policy Section, and an Executive Office that provides administrative and operational support. ENRD currently has a staff of about 635 employees, approximately 440 of whom are attorneys.

The Division is guided by its core mission and goals, which include:

- Enforcing the nation’s bedrock environmental laws that protect air, land, and water for all Americans;
- Vigorously representing the United States in federal trial and appellate courts, including by defending EPA’s rulemaking authority and effectively advancing other agencies’ missions and priorities;
- Providing effective stewardship of the nation’s public lands, natural resources and animals, including fighting for the survival of the world’s most protected and iconic species and marine resources, and working across the government and the globe to end the illegal trade in wildlife.

To effectively carry out its important mission **in FY 2018, ENRD is requesting a total of \$115,598,000 including 537 positions (385 attorneys), and 527 Full-Time Equivalents (FTE).** ENRD also has 115 reimbursable FTE.

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. The Division also acquires land for purposes ranging from national parks to national security, protects tribal lands and natural resources, and works to fulfill the United States’ trust obligations to Indian tribes and their members.

Over the past few years, we have taken deliberate steps to reduce costs and limit resource expenditures. We take our role as responsible custodians of the public fisc very seriously; and

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

we are proud of the short and long-term cost saving measures and efficiencies we have implemented over the past few 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: <http://www.justice.gov/02organizations/bpp.htm>.

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 legal 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 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 Department of Defense training and operations necessary for military readiness and national defense.

C. Performance Challenges:

External Challenges

The Division has limited control over the filing of defensive cases, which make up over half of our workload. Court schedules and deadlines drive the pace of work and attorney time devoted

to these cases. ENRD's defensive caseload is expected to continue to increase in FY 2017 and FY 2018 as a result of numerous external factors.

- ENRD supports the defense and security missions of the Department of Defense and the Department of Homeland Security. 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 into FY 2017 and FY 2018.
- 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, our R.S. 2477 case load 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.
- **Flooding Takings Litigation:** The Division is currently defending a large number of suits brought by property owners who contend that actions by the United States have caused flooding of their properties for which they are entitled to just compensation under the Fifth Amendment including a 30,000 member putative class action seeking \$50 billion due to flooding in the aftermath of Hurricane Katrina, and four putative class actions involving thousands of landowners along the Mississippi and Missouri whose properties were flooded in 2011 and seek billions of dollars in compensation. The cases are tremendously complex, requiring extensive use of expert witnesses to determine the cause, extent and damages resulting from such flooding.
- 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. 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 damages sought by the plaintiffs in the cases going to trial exceed \$5 billion.

- 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 recent court precedent has been generally unfavorable to the United States. These cases also present considerable 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 year, 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 Division’s staff within the Natural Resources Section 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 section resources.

The Division is also deeply engaged in a number of continuing and prospective affirmative cases and matters, including “defeat device” Clean Air Act cases, such as the one against Volkswagen, and Clean Water Act cases against municipalities. These cases are discussed in the Accomplishments section below.



Water rights cases are a focus to this day. By 1900, the platforms of both major political parties supported federal projects to “reclaim” arid lands for agricultural use. The Reclamation Act of 1902 established the Reclamation Service to study irrigation proposals in the federal lands of 16 states, and by 1909, about 30 such projects were underway. In 1908, the Supreme Court held that agreements and treaties establishing Indian reservations contained an implied reserved right to the amount of river water necessary to support the reservation. Adjudication of water resources became a critical and controversial issue as the development of the West accelerated.

Internal Challenges

With the introduction of new technologies and new requirements in the legal industry – such as e-filing, on-line document repositories, 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. 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 2016, the Division recognized savings of over \$21 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. We continue to push the use of on-line travel reservations, as opposed to using agent assisted booking services, leading to additional cost savings.

II. Summary of Program Changes

As described in greater detail in Section V below, ENRD is requesting \$1,798,000, including 12 attorney positions and 10 FTEs, to support the President’s January 25, 2017, Executive Order on *Border Security and Immigration Enforcement Improvements*. To fulfill the requirements of the Executive Order, ENRD’s Land Acquisition Section is charged with the acquisition of land (along with developing associated title and appraisal work) in connection with the border wall; and the Division’s Natural Resources Section and Wildlife and Marine Resources Section 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).

Initiative	Description				Page
		Pos.	FTE	Dollars (\$000)	
Border Security Improvements	Land Acquisition – Southern Border Wall	20	10	\$1,798	40

IV. Decision Unit Justification

Environment and Natural Resources Division -	Direct Pos.	Estimate FTE	Amount
2016 Enacted	537	542	110,512
2017 Continuing Resolution	537	526	110,302
Adjustments to Base and Technical Adjustments	-20	-9	3,498
2018 Current Services	517	517	113,800
2018 Program Increases	20	10	1,798
2018 Request	537	527	115,598
Total Change 2017-2018	0	1	5,296

Information Technology Breakout (of Decision Unit Total)	Direct Pos.	Estimate FTE	Amount
2016 Enacted	18	18	7,756
2017 Continuing Resolution	18	18	5,268
Adjustments to Base and Technical Adjustments	0	0	8
2018 Current Services	18	18	5,276
2018 Program Increases	0	0	0
2018 Program Offsets	0	0	0
2018 Request	18	18	5,499
Total Change 2017-2018	0	0	223



Over time, each agency had its own corps of attorneys. For example, the Department of the Interior’s General Land Office, Indian Bureau, and Reclamation Bureau, and the Agriculture Department’s Bureau of Forestry each had its own law division that litigated in federal courts. The need to “properly attend to the enormous and increasing volume of business relating to the public lands of the United States, and of Indian affairs,” led Attorney General George Wickersham (1909-1913) to establish “The Public Lands Division” by order dated November 16, 1909.

1. Program Description

As described above, ENRD works to:

- Pursue cases against those who violate the nation’s environmental and natural resources laws;

- Investigate and prosecute environmental crimes, including both pollution and wildlife violations;
- 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;
- Act in accordance with United States trust responsibilities to Indian tribes and individual Indians in litigation involving the interests of Indians. The United States holds close to 60 million acres of land and associated natural resources in trust for tribes and has a duty to litigate to protect this land and resources.

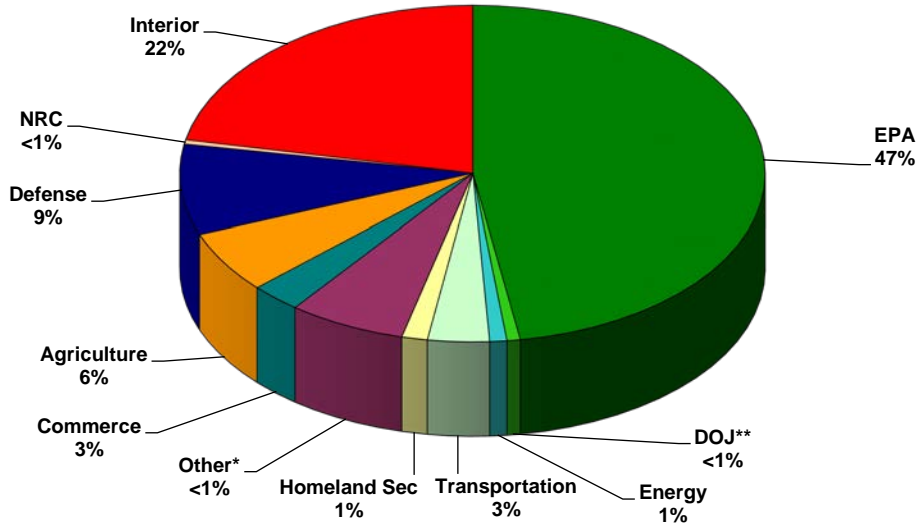
A brief description of ENRD's organizational units is provided below:

- 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 handles directly appeals in cases within the Division's jurisdiction that were tried in the lower courts by U.S. Attorneys' Offices. The Section works closely with Justice'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 FBI, and the Fish and Wildlife Service in dealing with criminal violations of the pollution control statutes, the Lacey Act, the Endangered Species, 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 against those who destroy wetlands in violation of the Clean Water Act, 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.
- 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

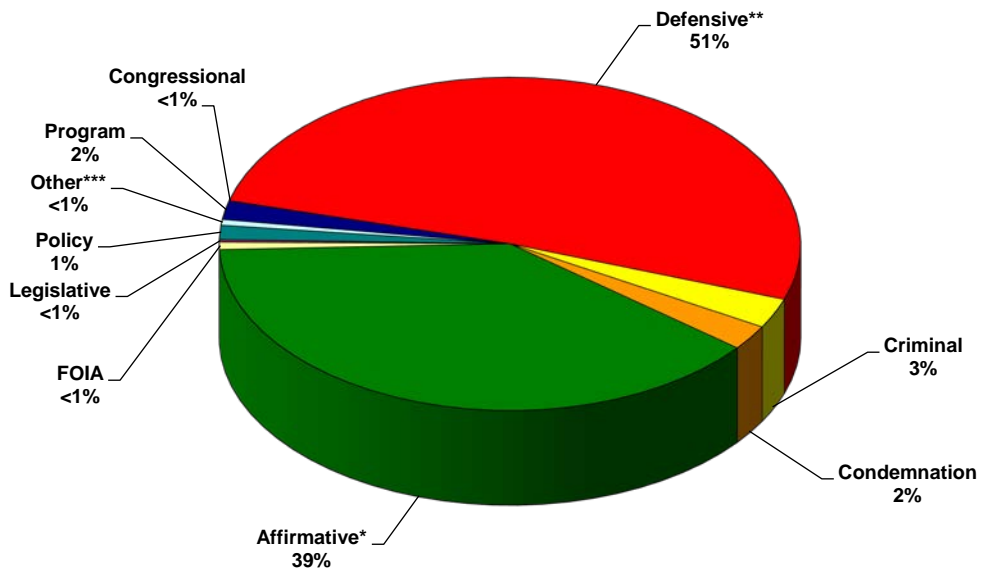
devotes approximately half of its efforts toward defending federal statutes, programs, and decisions intended to benefit individual Indians and tribes.

- 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 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 (ESA), 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 attorneys continue to 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 (FY 2016)



ENRD's Cases/Matters Pending by Case Type (FY 2016)



Civil litigating activities include cases where ENRD defends the United States in a broad range of litigation and enforces the nation's environmental and natural resources laws. Nearly one-half

of the Division's cases are defensive or non-discretionary in nature. They include claims alleging noncompliance with federal, state and local pollution control and natural resources laws. Civil litigating activities also involve the defense and enforcement of environmental statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Air Act (CAA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA).

The Division defends Fifth Amendment takings claims brought against the United States alleging that federal actions have resulted in the taking of private property without payment of just compensation, thereby requiring the United States to strike a balance between the interests of property owners, the needs of society, and the public fisc. ENRD also brings eminent domain cases to acquire land for congressionally authorized purposes ranging from national defense to conservation and preservation. Furthermore, the Division assists in fulfillment of the United States trust responsibilities to Indian Tribes. ENRD is heavily involved in defending lawsuits alleging the United States has breached trust responsibilities to Tribes by mismanaging Tribal resources and failing to properly administer accounts that receive revenues from economic activity on Tribal lands. The effectiveness of our defensive litigation is measured by the percentage of cases successfully resolved and savings to the federal fisc.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve fraud in the environmental testing industry, smuggling of protected species, exploitation and abuse of marine resources through illegal commercial fishing, and related criminal activity. ENRD enforces criminal statutes that punish those who pollute the nation's air and water; illegally store, transport and dispose of hazardous wastes; illegally transport hazardous materials; unlawfully deal in ozone-depleting substances; and lie to officials to cover up illegal conduct. The effectiveness of criminal litigation is measured by the percentage of cases successfully resolved. ENRD's case outcome performance results are included in the Performance and Resources Table contained in this submission.

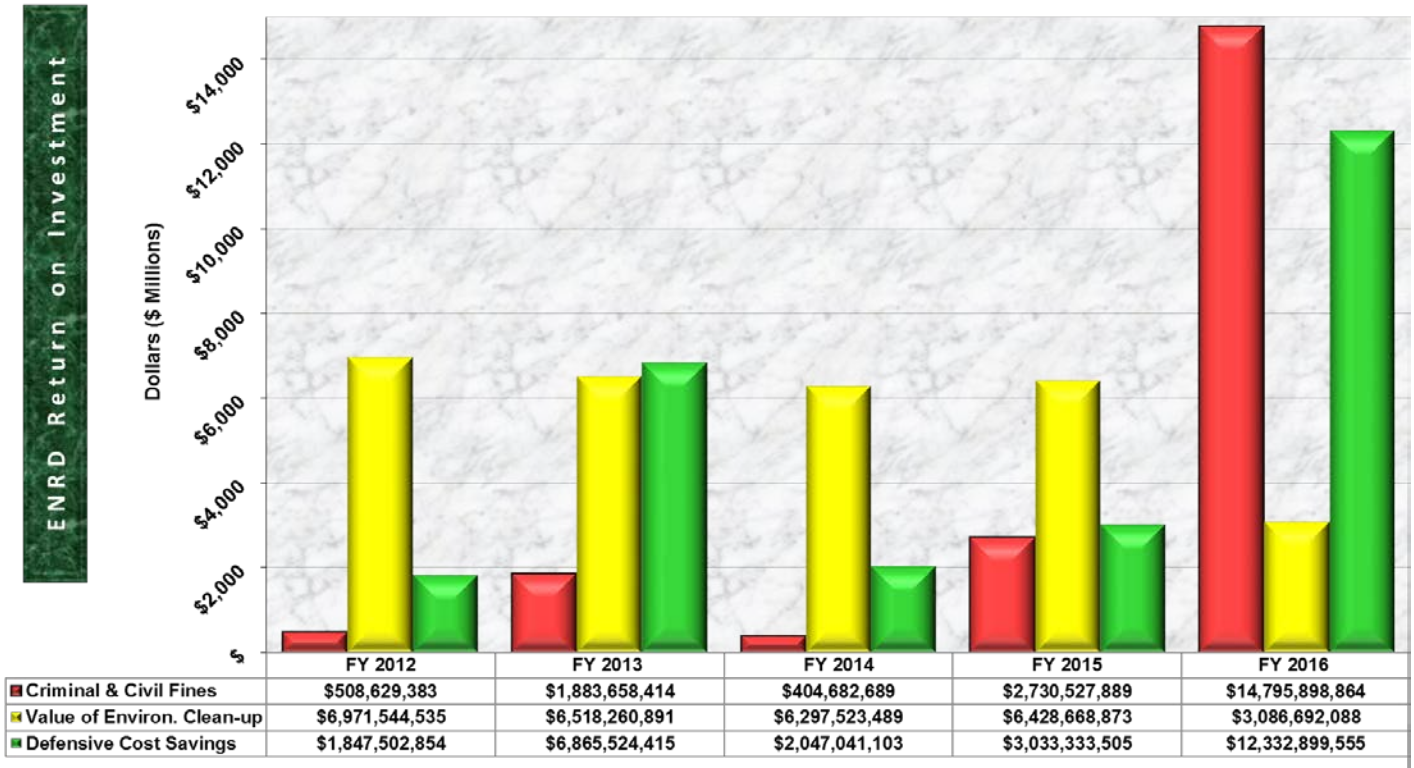


The new Division was responsible for "all suits and proceedings concerning the enforcement of the Public Land law, including suits or proceedings to set aside conveyances of allotted lands." The Division's six attorneys were responsible for all public land law (including water rights cases), both civil and criminal, and regardless of "whether the land be open to entry under the general land laws, or reserved for public purposes, or lands devoted to the uses of tribal or individual Indians, including actions to recover rents and royalties."

ACCOMPLISHMENTS

In **FY 2016**, ENRD successfully litigated 790 cases while working on a total of 6,972 cases, matters, and appeals. The Division recorded more than \$14 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) obtained in FY 2016 exceeded \$3 billion. ENRD's defensive litigation efforts avoided costs (claims) of over \$12 billion in FY 2016. The Division achieved a favorable outcome in 95 percent of cases resolved in FY 2016.

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.



Criminal and Civil Fines, Penalties and Costs Imposed
 (Includes Awards Payable to States, Territories, Local Governments and Indian Tribes)

Value of Clean-Up and Corrective Actions
 (Includes Federal and State Superfund and Non-Superfund Injunctive Relief and Supplemental Environmental Projects)

Amount Saved in Defensive Litigation
 (Excludes USAO Lead Cases)

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

Civil Cases (Both Affirmative and Defensive)

In January 2016, ENRD, on behalf of the Environmental Protection Agency (EPA), filed a civil complaint in the Eastern District of Michigan against **Volkswagen AG, Audi AG, Volkswagen Group of America Inc., Volkswagen Group of America Chattanooga Operations LLC, Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America Inc.** (collectively referred to as Volkswagen or VW). The complaint alleged that nearly 600,000 model year 2009-2016 2.0 and 3.0 liter diesel engine vehicles sold in the United States were equipped with illegal “defeat devices” that impaired their emission control systems during normal driving conditions and caused emissions to substantially exceed EPA’s standards for nitrogen oxide (NOx.)

In 2006, when VW engineers realized that they could not design a diesel engine that would both meet stricter NOx emissions standards and attract sufficient customer demand in the U.S. market, they decided to use a software function to cheat on emissions tests. The software was designed

to recognize whether a vehicle was undergoing standard emissions testing on a dynamometer or was being driven on the road under normal driving conditions. If the vehicle's software detected that it was being tested, the vehicle performed in one mode, which satisfied U.S. emissions standards. If the software detected that the vehicle was not being tested, it operated in a different mode, in which the effectiveness of the vehicle's emissions control systems was reduced substantially, causing the vehicle to emit NOx up to 40 times higher than U.S. standards. VW installed the defeat device software into the vehicles imported and sold in the United States from model years 2009 through 2016.

When EPA and California regulators began questioning Volkswagen about substantial discrepancies in NOx emissions from certain VW vehicles when tested on the road compared to standard regulatory tests, the company provided testing results, data, presentations and statements in an attempt to make it appear that there were innocent mechanical and technological explanations for the discrepancies. Ultimately, the company admitted knowing that the primary reason for the discrepancy was the software that was installed in every VW diesel vehicle sold in the United States.

Volkswagen entered into three separate settlements in the civil litigation in which it agreed to fully address the polluting cars on the road, to pay Clean Air Act, financial, and Customs penalties, and to provide redress to vehicle owners and lessees.

- VW will offer consumers a buyback and lease termination for nearly 500,000 model year 2009-2015 2.0 liter diesel vehicles sold or leased in the U.S., and spend up to \$10.03 billion to compensate consumers under the program.² In addition, the company will fund \$2.7 billion in projects across the country that will reduce emissions of NOx where the 2.0 liter vehicles were, are or will be operated. These projects are intended to fully mitigate the past and future NOx emissions from the 2.0 liter vehicles.³
- VW will recall, modify, or buy back 83,000 model year 2009 through 2016 3.0 liter diesel vehicles sold or leased in the U.S. that are alleged to be equipped with "defeat devices." The settlement requires Volkswagen to pay \$225 million to fund projects across the country that will reduce emissions of NOx where the 3.0 liter vehicles were, are or will be operated. This funding is intended to fully mitigate the past and future NOx emissions from the 3.0 liter vehicles.
- VW will pay \$1.45 billion to resolve EPA's civil penalty claims, as well as the civil fraud claim of U.S. Customs and Border Protection (CBP) against VW entities that violated criminal and civil customs laws by knowingly submitting to CBP material false statements and omitting material information, over several

³ In addition, under a consent decree approved by a federal court in October 2016, VW is required to invest \$2 billion over ten years toward zero emission vehicle programs and initiatives, with \$1.2 billion directed toward a national investment plan subject to EPA approval, and \$800 million directed toward a California-specific investment plan subject to California Air Resources Board approval.

years, with the intent of deceiving or misleading CBP concerning the admissibility of vehicles into the United States.

- VW also agreed to pay \$50 million in civil penalties for alleged violations of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA). The Justice Department alleged that a VW entity supported the sales and leasing of certain VW vehicles, including the defeat-device vehicles, by offering competitive financing terms by purchasing from dealers certain automobile retail installment contracts (i.e. loans) and leases entered into by customers that purchased or leased certain VW vehicles, as well as dealer floorplan loans. These financing arrangements were primarily collateralized by the vehicles underlying the loan and lease transactions. The department alleged that certain of these loans, leases and floorplan financings were pooled together to create asset-backed securities and that federally insured financial institutions purchased certain notes in these securities.
- Finally, to resolve EPA's remaining claim in the complaint for injunctive relief to prevent future violations under the Clean Air Act, Volkswagen agreed to undertake a number of corporate governance reforms, employ a third party monitor to oversee its compliance with these obligations, and perform in-use testing of its vehicles using a portable emissions measurement system of the same type used to catch VW's cheating in the first place.



In the Division's first years, it focused on cases involving set-asides of water resources for irrigation and reclamation, Indian water rights, unlawful incursions into national forests by power companies, unlawful enclosure of federal land, invalidation of patents granted to railroads for western land known to hold minerals, and reversal of land grants to the Territory of New Mexico. The restoration of federal land deemed to have been acquired fraudulently by private parties was an immediate priority for the Public Lands Division. The Supreme Court affirmed that railroad land grants permitted only a surface right of way and not any extraction of minerals from that land.

- ***Deepwater Horizon Oil Spill***

On April 4, 2016, a federal court in New Orleans entered a consent decree resolving civil claims against BP arising from the April 20, 2010 Macondo well blowout and the massive oil spill that followed in the Gulf of Mexico. This historic settlement resolves the U.S. government's civil penalty claims under the Clean Water Act, the governments' claims for natural resources damages under the Oil Pollution Act, and also implements a related settlement of economic damage claims of the Gulf States and local governments. Taken together this resolution of civil claims is worth more than \$20 billion and is the largest settlement with a single entity in the history of federal law enforcement.

Under the Consent Decree BP will pay a Clean Water Act civil penalty of \$5.5 billion (plus interest), \$8.1 billion in natural resource damages (this includes \$1 billion BP already committed to pay for early restoration), up to an additional \$700 million (some of which is in the form of accrued interest) for adaptive management or to address injuries to natural resources that are

presently unknown but may come to light in the future, and \$600 million for other claims, including claims under the False Claims Act, royalties, and reimbursement of natural resource damage assessment costs and other expenses due to this incident. This settlement includes both the largest civil penalty ever paid by any defendant under any environmental statute, and the largest recovery of damages for injuries to natural resources.

Under the economic damages settlement noted above, BP will pay \$4.9 billion to the Gulf States in a parallel settlement that resolves their economic damage claims arising from this incident. In other, related agreements, BP also will pay up to another \$1 billion to resolve similar claims the company faces from various local governments in the Gulf region.

Consistent with the Consent Decree, on February 19, 2016, a Trustee Council made up of four federal agencies and trustees from all five Gulf States issued a Final Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement detailing a specific proposed plan to fund and implement restoration projects across the Gulf region. On March 22, 2016, the Trustees entered a Record of Decision related to this plan. Now that the Consent Decree has been finalized, the Trustees can continue the important work of restoring spill-injured natural resources and the services they provide.

In prior years, some of the parties accountable under federal law for this disaster have resolved claims with the United States for portions of that responsibility:

- In 2012, MOEX Offshore 2007 LLC, which had a 10 percent stake in the well, agreed to settle its liability for the Deepwater Horizon oil spill in a settlement with the United States valued at \$90 million. Approximately \$45 million of the \$90 million settlement was dedicated to directly benefit the Gulf in the form of penalties, as well as coastal and habitat protection projects.
- In 2013, Transocean, which owned and operated the Deepwater Horizon, paid a penalty of \$1 billion plus interest to resolve their civil liability under the Clean Water Act and also agreed to implement comprehensive changes in how they operate their drilling vessels in the Gulf of Mexico. At the same time, Transocean resolved its criminal liability for the spill through a \$400 million plea agreement with the Department's Deepwater Horizon Task Force; that agreement included a criminal fine and remedial payments that should further both Gulf restoration and research on measures to make drilling safer both in the Gulf and around the world.
- In 2013, BP Exploration and Production, the majority owner of and an operator of the Macondo Well, pleaded guilty to illegal conduct leading to and after the disaster. It resolved Clean Water Act violations and felony manslaughter charges through a \$4 billion plea agreement comprised of criminal fines, penalties, and restitution including \$2.4 billion in remedial payments that, like Transocean companies' payments, should further both Gulf restoration and research measures relating to drilling.
- In 2015, the district court completed trial of the U.S. claim for civil penalty against Anadarko, a company that owned 25% of the Macondo well but that did not operate, as a

legal matter, either the Deepwater Horizon or the well. After considering evidence under the law applicable to such a penalty assessment, the District Court imposed a penalty of \$159.5 million.



The Division's increased land acquisition efforts of the New Deal were expanded further during World War II. The Lands Division oversaw the acquisition of more than 20 million acres of land – an area approximately the size of Massachusetts, Connecticut, Rhode Island, Delaware, and most of New Jersey. The land was used for airports, naval stations, fleet bases, bombing fields, proving grounds, and other national defense installations. The average time to acquire land, from receipt of the agency request to obtaining possession, was reported to be just over four days. The Division was involved in the acquisition of sites used for the Los Alamos Laboratory in New Mexico and the Oak Ridge Laboratory in Tennessee, integral to the highly-classified Manhattan Project.

- ***Tribal Trust Cases***

The extraordinarily complex and multifaceted Tribal Trust cases command a large portion of ENRD's time and resources. The Division represents the United States, principally the Interior and Treasury Departments, in 19 pending cases in which 21 tribes or Indian plaintiffs demand "full and complete" historical trust accountings, monetary compensation for various breaches and mismanagement of trust, and trust reform measures relating to the United States' management of the plaintiffs' trust funds and trust lands, as well as the non-monetary resources (such as timber, oil, gas, coal, agricultural, range, easements, and rights of way) on those lands. Several of the pending cases are in settlement negotiations, while others are in varying stages of trial preparation; others are conducting trial preparation and settlement discussions simultaneously. The Division has enjoyed success since Fiscal Year 2002 by negotiating and reaching settlements with 107 tribes in 74 cases, while also conducting active litigation, including several full-blown trials, in numerous cases. It has done so by balancing its duties to defend client programs with a commitment to make whole any tribe or Indian plaintiff that has suffered financial injury as a result of any trust fund or trust resource management practices.

- ***Enforcement of the Clean Water Act Through Publicly Owned Sewer Cases***

Under two settlements with the Department of Justice and the U.S. Environmental Protection Agency (EPA), three Puerto Rico government agencies agreed to upgrade portions of storm water systems they own within the Municipality of San Juan. These upgrades, which will be performed by the Department of Natural and Environmental Resources, the Department of Transportation and Public Works from the Commonwealth of Puerto Rico and the Puerto Rico Highways and Transportation Authority, are aimed at eliminating or minimizing future discharges of sewage and other pollutants into water bodies in and around San Juan, including the Condado Lagoon, the Martin Peña Channel and the Atlantic Ocean. The EPA estimates that over 6 million gallons of untreated sewage is being discharged into waterways in and around San Juan every day which amounts to more than 2.2 billion gallons discharged annually.

Stormwater runoff in San Juan is collected through separate municipal storm sewer systems and is discharged into local waterways. When rain falls on roofs, streets and parking lots, the water cannot soak into the ground and carries trash, bacteria, heavy metals and other pollutants into streams, threatening public health. In addition, property and infrastructure can be damaged by

storm water runoff due to erosion. Sanitary sewer lines or industrial discharges can also be illegally connected to the storm sewer, leading to untreated sewage or other pollutants reaching water bodies.

Between 2005 and 2013, the EPA documented that the Puerto Rico agencies were discharging untreated sewage and other pollutants from their storm sewer systems into water bodies, in violation of the Clean Water Act. The waters receiving the untreated sewage include those that are classified for activities where people may come into contact with the water, such as fishing, boating, swimming, wading and/or other recreational and commercial activities. Untreated sewage can carry bacteria, viruses and other harmful pollutants that can cause a number of illnesses. Direct and indirect human exposure to or contact with untreated sewage and contaminated waters discharged on a daily basis presents an imminent and substantial endangerment to human health and welfare.

The EPA waived the collection of any monetary civil penalties due to financial challenges currently facing the Puerto Rico government; however, the agreements will include financial penalties if the agencies fail to complete the work and meet the deadlines.

In the complaint filed in 2014, the EPA alleged that the Puerto Rico Department of Natural and Environmental Resources was discharging pollutants without a permit from its Baldorioty de Castro, De Diego and Stop 18 stormwater pump stations. These three pump stations were designed to control flooding in the San Juan area by pumping large volumes of storm water into receiving waters. These three Department of Natural and Environmental Resources pump stations have been receiving flow from various sources which contain untreated sewage. The agreement with the Department of Natural and Environmental Resources requires it to invest an estimated \$33 million to upgrade its system over the life of the settlement, including:

- Obtain a proper permit and implement a Storm Water Management Program.
- Install, inspect, maintain, monitor and replace warning signs at all pump station outfalls and replace booms at all pump stations.
- Upgrade the Baldorioty de Castro Pump Station and install electronic monitoring equipment and lighting fixtures at pump station wet wells.
- Routinely clean and maintain its pump stations and develop methods for sludge sampling, disposal and water level management.
- Develop a Spill Prevention Control and Countermeasures Plan.
- Pay \$650,000 each year into a Court Registry Account to be used by the Municipality of San Juan, Department of Transportation and Public Works and the Highways and Transportation Authority to support the implementation of work plans for work in the collection systems that flow to DNER's three pump stations.



During the Korean Conflict in the early 1950's, there was a proliferation of a new type of land condemnation case, whose purpose was to clear airspace adjacent to newly constructed military airports. The acquisition of an estate in land to ensure adequate clearance for the lower approach and takeoff patterns of modern aircraft, called an aviation easement, required evaluation and compensation for significant tracts of privately owned land. Because air traffic involves a broad range of impediments to private activity, assessment of compensation for this type of estate proved more complex than for conventional estates acquired by land condemnation. Similar problems arose at new missile sites.

- ***Clean Air Act Litigation***

ENRD and EPA reached a settlement with the J.R. Simplot Company that resolves alleged Clean Air Act violations related to modifications made at Simplot's five sulfuric acid plants near Lathrop, California, Pocatello, Idaho, and Rock Springs, Wyoming. Under the settlement, Simplot will spend an estimated \$42 million on pollution controls that will significantly cut sulfur dioxide (SO₂) emissions at all five plants and fund a wood stove replacement project in the area surrounding the Lathrop plant. Simplot's Pocatello plant will receive \$15 million in pollution control upgrades.

Once fully implemented, the settlement will reduce SO₂ emissions from Simplot's five sulfuric acid plants by more than 50 percent for approximately 2,540 tons per year of reductions. Simplot will implement a plan to monitor SO₂ emissions continuously at all five plants and pay an \$899,000 civil penalty. Additionally, Simplot will spend \$200,000 on a wood stove replacement mitigation project in the San Joaquin Valley, the location of Simplot's Lathrop facility, to reduce emissions of fine particulate matter (PM_{2.5}), as well as emissions of volatile organic compounds (VOCs), carbon monoxide (CO) and hazardous air pollutants (HAPs).

The Department of Justice and EPA alleged that Simplot made modifications at its five sulfuric acid plants without applying for or obtaining the necessary Clean Air Act permits and obtaining "best available control technology" limits for SO₂, as well as for sulfuric acid mist and PM_{2.5} at one of the sulfuric acid plants in Pocatello.

Short-term exposures to SO₂ can lead to serious respiratory problems, including constriction of airways in the lungs and increased asthma symptoms. Additionally, SO₂ is a precursor to the formation of PM_{2.5}, which causes a wide variety of health and environmental impacts, including asthma attacks, reduced lung function and aggravation of existing heart disease. Simplot's Lathrop sulfuric acid plant is located in the San Joaquin Valley in California, which is currently classified as nonattainment for the PM_{2.5} National Ambient Air Quality Standards and has some of the most difficult challenges meeting those standards in the country. Both the SO₂ emission reductions from Simplot's Lathrop plant and the wood stove replacement mitigation project will help reduce PM_{2.5} emissions in the San Joaquin Valley.

- ***Oil Spill Remediation***

In a federal-state coordinated enforcement effort against oil spills in and around the Gulf of Mexico, ORB Exploration LLC (ORB) has agreed to pay civil penalties and state response costs and to implement corrective measures to resolve alleged violations of the Clean Water Act and

state environmental laws stemming from three crude oil spills that occurred in 2013 and 2015, as well as violations of Spill Prevention, Control and Countermeasure (SPCC) regulations. ORB agreed to pay \$615,000 in federal civil penalties for the spills and other Clean Water Act violations, pay the Louisiana Department of Environmental Quality (LDEQ) \$100,000 for civil penalties and response costs and carry out injunctive relief measures to improve spill response preparedness and prevent future oil spills.

ORB is alleged to have spilled over 1,000 barrels of Louisiana crude oil into the Atchafalaya River Basin during the three spills. The largest occurred at Frog Lake in 2013, after a corroded oil transfer pipeline ruptured in a flooded wetland area. The cleanup took over a year and a half and required significant state-federal cooperation. The other two releases occurred in September and October of 2015, from ORB's Frog Lake and Crocodile Bayou oil production facilities into bayou waters surrounding the facilities.

ORB is required to take corrective measures, including improving secondary containment capability at the Frog Lake facility, increasing the frequency of facility inspections and monitoring for oil spills, providing additional advance notice to the USCG before any future oil transfer operation and installation of accurate gauges on production and transfer equipment to allow for and improve accountability and spill detection capabilities.



The Federal Aid Highway Act of 1956 allowed the Department of Commerce to acquire lands required for interstate highway projects in situations where a state could not gain access to the required land in a timely manner. As a result, private parties brought, and the Lands Division defended, litigation contesting the federal government's right to condemn land on behalf of state interests and its interpretation of the phrase "in a timely manner." By the 1960s, expenditures and time spent by the Lands Division on acquisition of land for various purposes had increased, as the Federal Highway Act required parcels throughout the United States and new federal office buildings required expensive urban property.

Criminal Cases

- ***Volkswagen Defeat Device Cases***

In the Department's case against Volkswagen AG (VW), on March 10, 2017, VW pleaded guilty in federal court to three felony counts charging: (1) conspiracy to defraud the United States, engage in wire fraud, and violate the Clean Air Act; (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 as a result of the company's decade-long scheme to sell approximately 590,000 diesel vehicles containing software designed to cheat on U.S. emissions tests.

VW pleaded guilty, first, to participating in a conspiracy to defraud the United States and VW's U.S. customers and to violate the Clean Air Act by lying and misleading the EPA and U.S. customers about whether certain VW, Audi and Porsche branded diesel vehicles complied with emissions standards, using cheating software to circumvent the U.S. testing process and concealing material facts about its cheating from U.S. regulators. Second, VW pleaded guilty to obstruction of justice for destroying documents related to the scheme. And third, VW pleaded guilty to importing these cars into the United States by means of false statements about the

vehicles' compliance with emissions limits. Under the terms of the agreement, which must be accepted by the court, VW will be on probation for three years. The company will be overseen for at least three years by an independent corporate compliance monitor. VW will fully cooperate in the Justice Department's ongoing investigation and prosecution of individuals responsible for these crimes.

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

In 2016, Lumsden W. Quan, an art dealer from San Francisco, California, was sentenced to one year and two days in prison for conspiracy to violate the Lacey and Endangered Species Acts for knowingly selling black rhinoceros horns to an undercover agent from the United States Fish and Wildlife Service (USFWS). Quan was also sentenced to three years of supervised release to follow his prison sentence, pay a \$10,000 fine and a three-year ban on work in the art and antique business.

Quan, was arrested in March 2014 as part of "Operation Crash," a nation-wide crackdown in the illegal trafficking of rhinoceros horns, for his role in a conspiracy to knowingly sell black rhinoceros horns across state lines. In pleading guilty, Quan admitted to working with his co-defendant to transport two horns from California to Nevada, where they sold them to an undercover agent from Colorado for a sum of \$55,000.

Operation Crash is a continuing investigation being conducted by USFWS in coordination with other federal and local law enforcement agencies. A "crash" is the term for a herd of rhinoceros. Operation Crash is an ongoing effort to detect, deter and prosecute those engaged in the illegal killing of rhinoceros and the unlawful trafficking of rhinoceros horns. As of November 2015, the coordinated efforts of Operation Crash have prosecuted and sentenced nearly 22 subjects and received forfeiture and restitution amounts totaling \$5.5 million.

The black rhinoceros is an herbivore species of prehistoric origin and one of the largest remaining mega-fauna on earth. They have no known predators other than humans. All species of rhinoceros are protected under U.S. and international law, including the Endangered Species Act. Since 1976, trade in rhinoceros horn has been regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty signed by over 180 countries around the world to protect fish, wildlife and plants that are or may become imperiled due to the demands of international markets.

- ***Lacey Act Enforcement***

In the first felony conviction related to the import or use of illegal timber and the largest criminal fine ever under the Lacey Act, Lumber Liquidators pleaded guilty and was charged in October 2015 in the Eastern District of Virginia with one felony count of importing goods through false statements and four misdemeanor violations of the Lacey Act, which makes it a crime to import timber that was taken in violation of the laws of a foreign country and to transport falsely-labeled timber across international borders into the United States. The charges describe Lumber Liquidators' use of timber that was illegally logged in Far East Russia, as well as false

statements on Lacey Act declarations which obfuscated the true species and source of the timber.

In total, the company will pay \$13.15 million, including \$7.8 million in criminal fines, \$969,175 in criminal forfeiture, more than \$3.15 million in civil forfeiture, and more than \$1.23 million in injunctive relief. This is the largest financial penalty for timber trafficking under the Lacey Act and one of the largest Lacey Act penalties ever. Lumber Liquidators has also agreed to a five-year term of organizational probation and mandatory implementation of a government-approved environmental compliance plan and independent audits.

According to a joint statement of facts filed with the court, from 2010 to 2013, Lumber Liquidators repeatedly failed to follow its own internal procedures and failed to take action on self-identified “red flags.” Those red flags included imports from high risk countries, imports of high risk species, imports from suppliers who were unable to provide documentation of legal harvest and imports from suppliers who provided false information about their products. Lumber Liquidators employees were aware that timber from the Russian Far East was considered, within the flooring industry and within Lumber Liquidators, to carry a high risk of being illegally sourced due to corruption and illegal harvesting in that remote region. Despite the risk of illegality, Lumber Liquidators imported Russian timber logged under a concession permit that had been utilized so many times that the defendants’ imports alone exceeded the legal harvest allowance of Mongolian oak, *Quercus mongolica*, by more than 800 percent. The investigation revealed a prevalent practice in timber smuggling enterprises, where a company uses a seemingly legitimate government permit to log trees. Corruption and criminal activity along the supply chain results in the same permit being used multiple times and in areas outside of the designated logging area, sometimes vastly exceeding its legal limits.



ENRD played a key role in formulating the federal government’s response to the Love Canal disaster. In 1978, when EPA first began investigating Love Canal, the Division worked with Congress to draft the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), known as the Superfund law. The Division, in concert with the State of New York, brought the first CERCLA cost-recovery action against Hooker Chemicals in 1979. The civil prosecution of that case helped establish liability and cost recovery standards, and recovered \$129 million in EPA cleanup costs. In the 1980’s, the Division alleged that Hooker improperly stored hazardous wastes at the Love Canal site. In 2004, EPA declared the Love Canal cleanup complete.

- ***Vessel Pollution Cases***

The Norwegian shipping company DSD Shipping (DSD), operator of the M/T Stavanger Blossom, was sentenced to pay a total corporate penalty of \$2.5 million as a result of its convictions in Mobile, Alabama, for obstructing justice, violating the Act to Prevent Pollution from Ships (APPS), tampering with witnesses and conspiring to commit these offenses. The company was ordered to pay \$500,000 of the penalty to the Dauphin Island Sea Lab Foundation to fund marine research and enhance coastal habitats in the Gulf of Mexico and Mobile Bay. In addition, DSD was placed on a three year term of probation and was ordered to implement an environmental compliance plan to ensure the company’s vessels obeyed domestic and international environmental regulations in the future.

International and U.S. law forbid the discharge of waste oil and garbage into the ocean and require that vessels use pollution prevention equipment, known as an oily-water separator, to prevent the discharge of oil-contaminated waste water. Should any overboard discharges occur, they must be documented in either an oil record book or a garbage record book, logs that are regularly inspected by the U.S. Coast Guard. Waste oil and sludge can only be disposed of using an on-board incinerator or by discharging the waste to a shore-side facility, barge or tanker truck.

The evidence demonstrated at trial that DSD operated the M/T Stavanger Blossom, a 56,000 gross ton crude oil tanker, from 2010 to 2014 without an operable oily-water separator as required by law. On Jan. 29, 2010, an internal corporate memorandum written by a vessel engineer warned DSD that the pollution prevention equipment did not work. Rather than repair or replace the oily-water separator, DSD operated the vessel illegally for the next 57 months before the conduct was identified by U.S. Coast Guard inspectors in November 2014. As the testimony at trial revealed, DSD illegally discharged approximately 20,000 gallons of oil-contaminated waste water and plastic bags containing 270 gallons of sludge into the ocean during the last two-and-a-half months of the vessel's operation. DSD maintained fictitious record books aboard the vessel, omitting the illegal discharges of oil and garbage and falsely claimed that pollution prevention equipment was used when it was not. Further, DSD's senior ship officers lied about the discharges to the U.S. Coast Guard and ordered their subordinates to do the same. Three senior engineering officers employed by DSD to operate the ship were sentenced to imprisonment and face the loss of their marine engineering licenses and exclusion from employment in the merchant marine.

- ***Biodiesel Fraud Prosecutions***

This past year, Joseph Furando, of Montvale, New Jersey, was sentenced to 20 years in prison, three years of supervised release and to pay more than \$56 million in restitution for his role in an elaborate scheme to defraud biodiesel buyers and United States taxpayers by fraudulently selling biodiesel incentives.

From 2007 through 2012, Indiana-based E-biofuels owned a biodiesel manufacturing plant in Middletown, Indiana. Biodiesel is a fuel that can be used in diesel engines and that is made from renewable resources, including soybean oil and waste grease from restaurants. Under the Energy Independence and Security Act, properly manufactured biodiesel was eligible for a dollar per gallon tax credit as well as another valuable credit, called a Renewable Identification Number (RIN) that petroleum refiners and importers could use to demonstrate compliance with federal renewable fuel obligations. These incentives can be claimed once and only once for any given volume of biodiesel.

Furando admitted that sometime in late 2009, he and his companies, New Jersey-based defendants Caravan Trading Company and CIMA Green, began supplying E-biofuels with biodiesel that was actually made by other companies and had already been used to claim tax credits and RINs. Because these incentives had already been claimed, Furando could purchase the biodiesel at much lower prices, sometimes for more than two dollars per gallon less than biodiesel that was still eligible for the credits. The conspiracy functioned as follows: Furando supplied the product to E-biofuels and his co-conspirators would claim that E-biofuels made the

fuel and then they would illegally re-certify the fuel and sell it at the much higher market price for incentivized biodiesel, known as B100 with RINs. Within the circle of those he trusted, Furando referred to this fraud scheme as “Alchemy.”

Furando, his New Jersey-based companies and his Indiana-based co-defendants realized huge per gallon profits through this scheme, sometimes in excess of \$15,000 per truckload. Furando realized his profits through the prices he charged E-biofuels. Over the course of approximately two years, the defendants fraudulently sold more than 35 million gallons of fuel for a total cost of over \$145.5 million. The defendants realized more than \$55 million in gross profits, at the expense of their customers and U.S. taxpayers.

Three corporations at the heart of the scheme were also sentenced for their joint liability in the scheme. Furando’s two companies were both sentenced to pay \$56 million in restitution and million dollar fines. The companies, which are largely defunct, must serve two years’ probation to ensure that remaining assets are properly directed toward victims. Toward that end, the court imposed, but suspended, the fines. The third company, E-biofuels LLC, was also sentenced to pay the \$56 million in restitution. E-biofuels is in bankruptcy and its few remaining assets are being distributed to creditors and victims through the bankruptcy process.



The Division was beginning to settle into its new role of enforcing environmental laws. In 1980, in response to threats to human health and the environment posed by abandoned toxic waste disposal sites, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), popularly known as Superfund. The statute taxed the petroleum and petrochemical industries to create a fund to clean up hazardous waste sites, and empowered the United States to recover cleanup costs from persons responsible for the contamination. CERCLA became an important statute for the Division, as it required civil judicial enforcement to both obtain cleanup and reimbursement for EPA’s costs, also known as “the polluter pays.”

2. Performance and Resources Table

Decision Unit/Program: Environment & Natural Resources Division											
		Target FY 2016		Actual FY 2016		Target FY 2017 (CR #2)		FY 18 Current Services and other adjustments		Requested (Total) FY 2018	
WORKLOAD/RESOURCES 1/											
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,400		5,385		5,275				5,275	
	# of Cases Successfully Resolved/Success Rate	83%		797	95%	83%				83%	
CIVIL	1. Number of cases (active & closed)	4,865		4,766		4,700				4,700	
	2. Number of matters (active & closed)	220		302		272				272	
CRIMINAL	3. Number of cases (active & closed)	280		270		265				265	
	4. Number of matters (active & closed)	35		47		38				38	
DIVISION RESOURCES - Total Year Costs & FTE's (Appropriated only)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		542 [74]	\$ 110,512	542 [74]	\$ 110,512	526 [115]	\$ 110,302	1	5,296	527[115]	\$ 115,598
Program Activity	PERFORMANCE/RESOURCES	Target FY 2016		Actual FY 2016		Target FY 2017 (CR #2)		FY 18 Current Services and other adjustments		Requested (Total) FY 2018	
CIVIL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	TOTAL COSTS & FTE	488	\$ 99,461	488	\$ 99,461	473	\$ 99,272	1	\$ 4,946	474	\$ 104,218
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed	3,235	1,630	3,583	1,183					-	-
	2. Number of matters active/closed	140	80	220	82					-	-
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	no estimate	85%	283	99%	no estimate	85%			no estimate	85%
	2. Defensive cases successfully resolved	no estimate	75%	449	93%	no estimate	75%			no estimate	75%
	3. Penalties Awarded 2/*	Superfund	Non-Superfund	Superfund	Non-Superfund	Superfund	Non-Superfund			Superfund	Non-Superfund
	- Federal	no estimate	no estimate	\$ 6,237,340	\$13,991,978,272	no estimate	no estimate			no estimate	no estimate
	- State	no estimate	no estimate	\$ 730,870	\$ 18,413,877	no estimate	no estimate			no estimate	no estimate
	4. Clean-up Costs Awarded 4/			\$ -	\$ -						
	- CERCLA Federal Cost Recovery 3/ 5/	no estimate	no estimate	\$ 57,149,680	\$ 496,445,051	no estimate	no estimate			no estimate	no estimate
	- Federal Injunctive Relief	no estimate	no estimate	\$ 334,796,214	\$ 2,702,266,062	no estimate	no estimate			no estimate	no estimate
	- CERCLA State Cost Recovery	no estimate	no estimate	\$ 2,284,925	\$ 50,567,727	no estimate	no estimate			no estimate	no estimate
	- State Injunctive Relief	no estimate	no estimate	\$ -	\$ -	no estimate	no estimate			no estimate	no estimate
	5. Supplemental Environmental Projects (SEP's) 6/			\$ -	\$ -						
	- Value of Federal SEP's	no estimate	no estimate	\$ -	\$ 16,641,562	no estimate	no estimate			no estimate	no estimate
	- Value of State SEP's	no estimate	no estimate	\$ -	\$ 12,285,250	no estimate	no estimate			no estimate	no estimate
	6. Environmental Mitigation Projects 7/	no estimate	no estimate		\$ 20,653,000	no estimate	no estimate			no estimate	no estimate
	7. Costs Avoided (Saved the U.S. in Defense Cases) 8/	no estimate	no estimate	\$ -	\$12,332,899,555	no estimate	no estimate			no estimate	no estimate

Performance and Resources Table (Cont.)

CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	TOTAL COSTS & FTE	54	\$ 11,051	54	\$ 11,051	53	\$ 11,030		\$ 350	53	\$ 11,380
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed	200	80	158	112					-	-
	2. Number of matters active/closed	27	8	43	4					-	-
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	no estimate	90%	65	96%	no estimate	90%			no estimate	90%
	2. Dollars Awarded	Superfund	Non-Superfund	Superfund	Non-Superfund	Superfund	Non-Superfund			Superfund	Non-Superfund
	- Fines 9/	no estimate	no estimate	\$ -	\$ 20,841,415	no estimate	no estimate			no estimate	no estimate
	- Restitution	no estimate	no estimate	-	149,318,581	no estimate	no estimate			no estimate	no estimate
	- Community Service Funds 10/			-	1,931,125						
	3. Criminal Environmental Compliance Plan 11/	no estimate	no estimate	\$ -	\$ 50,000	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 Awarded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars awarded, 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 awarded 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

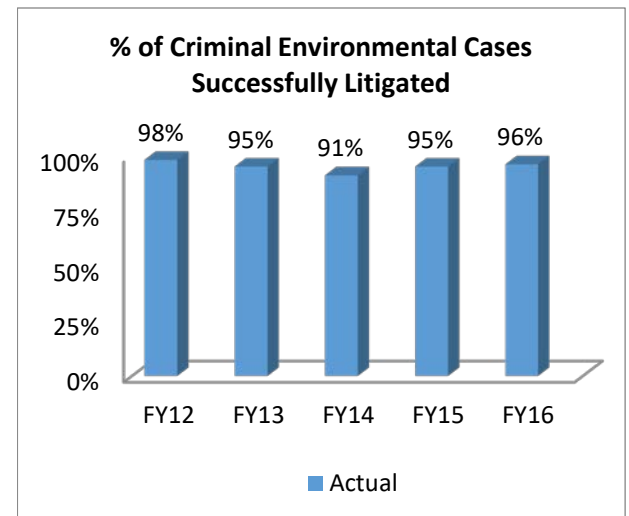
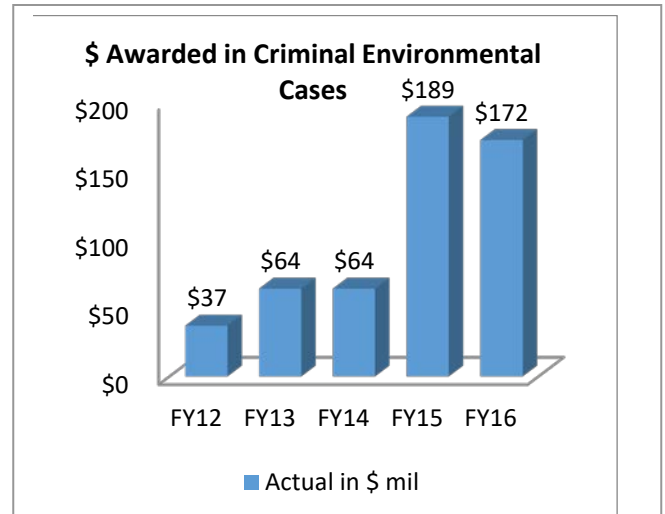
PERFORMANCE MEASURE TABLE									
Decision Unit: Environment and Natural Resources Division									
Performance Report and Performance Plan Targets		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016		FY 2017	FY 2018
		Actual	Actual	Actual	Actual	Target	Actual	Target	Target
EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)	\$109	\$117	\$95	\$132	\$81	\$251	\$81	\$81
EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)	\$26	\$107	\$30	\$42	\$22	\$162	\$22	\$22
OUTCOME Measure	Civil affirmative cases successfully resolved	98%	98%	99%	99%	85%	99%	85%	85%
OUTCOME Measure	Civil defensive cases successfully resolved	92%	87%	90%	93%	75%	93%	75%	75%
OUTCOME Measure	Criminal cases successfully resolved	98%	95%	91%	95%	90%	96%	90%	90%
OUTPUT Measure	Number of criminal cases (active and closed) 1/	313	283	265	267	280	270	265	265
OUTPUT Measure	Number of criminal matters (active and closed) 1/	13	45	47	48	35	47	38	38
OUTPUT Measure	Number of civil cases (active and closed) 1/	5,203	5,995	5,138	5,059	4,865	4,766	4,700	4,700
OUTPUT Measure	Number of civil matters (active and closed) 1/	253	379	290	328	220	302	272	272

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.



Data Collection and Storage: A majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).

Data Validation and Verification: ENRD performs a quarterly quality assurance review of the Division's docket. CMS data is constantly monitored by the Division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts.



In the early morning hours of March 24, 1989, the Exxon Valdez oil tanker ran aground on Bligh Reef in the waters of Prince William Sound in Alaska, spilling 11 million gallons of crude oil into pristine waters, fouling hundreds of miles of coast line, and killing thousands of migratory birds, fish, and other wildlife. The criminal prosecution and civil action that followed were among the Division's biggest cases. At the time, the October 1991 settlement with Exxon Corporation was the largest environmental settlement in U.S. history. The Division obtained guilty pleas from Exxon Corporation for water pollution and migratory bird crimes. The combined criminal and civil settlement of \$1.125 billion included \$250 million in criminal fines and restitution, and recovery of response costs and natural resource damages.

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

❖ *FY 2016 and FY 2017 Target: 90%*

❖ *FY 2016 Actual: 96%*

Discussion: ENRD exceeded its FY 2016 goal by +6%. 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 crimes.

FY 2017/2018 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2017 and FY 2018. 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 2016 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2016 Actual: \$172.1 million*

Discussion: While ENRD does not establish monetary goals for this metric, the Division is pleased to report that in FY 2016 we imposed nearly \$200 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 2017/2018 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2017 and FY 2018 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 will continue efforts to obtain convictions and to deter environmental crimes through initiatives focused on vessel pollution, 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.

Illegal international trade in wildlife is second in size only to the illegal drug trade, and our criminal prosecutors work directly on these cases, as well as assist United States Attorneys Offices and share ENRD expertise nationwide with state and federal prosecutors and investigators. We will focus on interstate trafficking and poaching cases on federal lands, and seek to ensure that wildlife conservation laws are applied uniformly and enforced across the country, seeking consistency in these criminal prosecutions and a vigorous enforcement program that serves as an international role model.

ENRD has partnered with other federal agencies, such as EPA, to pursue 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.



In April 1990, the Division became the Environment and Natural Resources Division. ENRD saw more complex cases that involving multiple statutes, and federal, state, local, tribal, nonprofit, and industry interests. By 1992, concern over biodiversity and endangered species such as the spotted owl yielded lawsuits and court injunctions that blocked harvesting of old-growth timber. The Northwest Forest Plan of 1994 established standards and guidelines to address the competing needs of forest habitat protection and commercial timber harvesting on 24.5 million acres managed by the Bureau of Land Management and the Forest Service. The Plan of 1994 was successfully defended by ENRD against challenges from both environmental and timber industry groups.

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

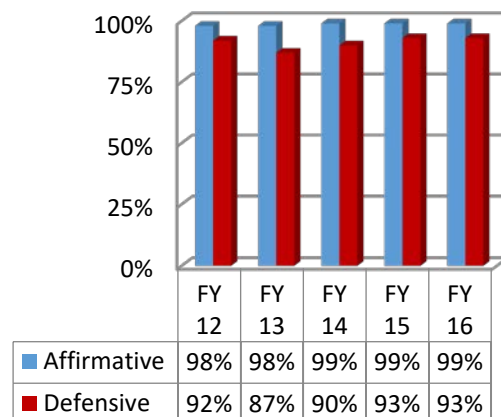
❖ *FY 2016 and FY 2017 Target:*
85% Affirmative; 75% Defensive

❖ *FY 2016 Actual*
99% Affirmative; 93% Defensive

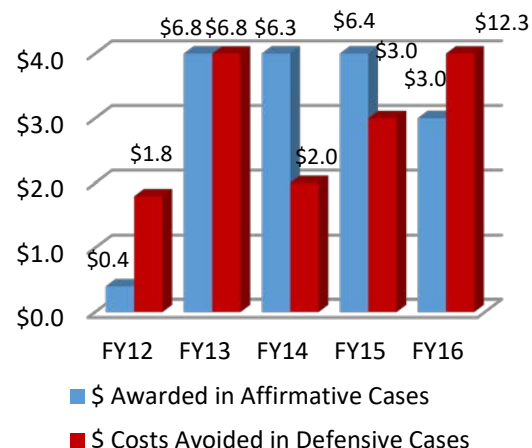
Discussion: FY 2016 was a particularly successful year for ENRD. The Division exceeded its civil affirmative success target by +14%, and its civil defensive target by +18%. As described elsewhere in this document, ENRD achieved extraordinary success enforcing the Nation's core environmental statutes and defending the Administration and its federal agencies from lawsuits from a wide variety of Plaintiffs.

FY 2017/2018 Performance Plan: Considering our past performance, we aim to achieve litigation success rates of 85 percent Affirmative and 75 percent Defensive (average of 80 percent overall) for FY 2017 and FY 2018. 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 an "ambitious" goal. 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.

% of Civil Environmental Cases Successfully Resolved



Cost Avoided and \$ Awarded (\$Bil) in Civil Environmental Cases



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.



Working principally with the Interior and Agriculture Departments and the National Oceanic and Atmospheric Administration, ENRD established favorable legal standards for natural resource damages cases under CERCLA. Four landmark cases in this area were the New Bedford Harbor case, involving releases of hazardous substances in New Bedford Harbor in Massachusetts, the Montrose Chemical case, involving damages to the marine environment from the disposal of DDT and PCBs off the coast of southern California, United States v. Exxon, involving damages from the Exxon Valdez oil spill, and United States v. Asarco, involving natural resource damages to Idaho's Coeur d'Alene Basin from the disposal of hazardous mine wastes and mill tailings.

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 2016 Actual: \$12.3 billion avoided; \$3.0 billion awarded***

Discussion: ENRD had a remarkably successful year in FY 2016 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 2017/2018 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

1) Total Dollar Value Awarded per \$1 Expenditures [Affirmative]

2) Total Dollars Saved the Government per \$1 Expenditures [Defensive]

- ❖ ***FY 2016 Targets: \$81 awarded; \$22 saved***
- ❖ ***FY 2016 Actual: \$251 awarded; \$162 saved***

FY 2017/2018 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 U.S. citizens.

B. Strategies to Accomplish Outcomes

As our environment changes, so do the actions we take to preserve the health and life of those residing within the borders of the United States. Environmental groups and other interested parties challenge Administration policies every year. ENRD is responsible for defending federal agencies carrying out Administration policies every day. The Division has realized some remarkable successes to date. In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our limited 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 bureaucratic distinctions within the Division. This policy has also resulted in more flexibility to shift workloads between attorneys when they become overburdened. Although cross-training staff grows our workforce’s skills and abilities, it does not address long-term caseload issues.

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, and reach the largest number of people.



ENRD remains committed to enforcing the nation’s environmental laws to address air pollution from the largest and most harmful sources; improve municipal wastewater and storm water treatment and collection to keep raw sewage, contaminated storm water, and other pollutants out of our nation’s rivers, streams, and lakes; compel polluters to clean up hazardous waste or repay the government for cleanup costs; and prosecute criminal violations of environmental and other federal laws. The Division continues to enforce laws that protect human health and the environment. In recent years, the Division’s work has included such high-profile cases as the Deepwater Horizon Gulf of Mexico Oil spill and the Clean Air Act case against Volkswagen.

V. Program Increases by Item

A. Land Acquisition and Related Litigation Required to Secure the Southwest U.S. Border

Item Name:	Land Acquisition and Related Litigation Required to Secure the Southwest U.S. Border
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 20, Atty 12, FTE 10, Dollars <u>\$1,798,000</u>

Description of the Item

ENRD is requesting \$1,798,000, including 12 attorney positions and 10 FTEs, to support the President’s January 25, 2017 Executive Order on *Border Security and Immigration Enforcement Improvements*.

ENRD is intimately engaged in, and principally responsible for, acquiring real property to secure the border between the United States and Mexico, pursuant to the subject Executive Order. The Executive Order 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).

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 (i.e., Endangered Species Act (ESA), National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), and Tucker Act). For this project in particular, ENRD’s Land Acquisition Section 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. (For the related 2007-08 border construction effort, LAS worked with the Army Corps of Engineers (“Corps”) to develop and use an electronic case review system allowing for expedited review and filing of cases; LAS will use a similar system for this project.)
- Providing training for Assistant U.S. Attorneys and Corps realty staff, who are not familiar with federal condemnation practice.
- Providing, for the initial surge of cases and challenges, initial case pleadings, draft legal briefs, argue motions and conduct hearings. LAS anticipates transitioning to the USAOs the preparation of smaller cases and handling of standard briefs, motions and hearings within a year.
- Handling, either as lead or jointly with AUSAs, any cases with significant valuation disputes (usually more than \$1 million), political sensitivities, USAO recused matters, or complex legal, valuation, or title matters. LAS also often handles cases initially assigned to the USAOs that are later recognized to strain the resources and expertise of the USAOs.
- Providing expert appraisal review services to the agencies, LAS trial attorneys and the AUSAs ensure uniformity in the appraisal and valuation process, and help to achieve uniform results to satisfy the mandate of the Constitution for just compensation. 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.

The United States-Mexico border is 1,933.4 miles long, with 372.5 miles in Arizona, 140.4 miles in California, 179.5 miles in New Mexico, and 1,241.0 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, 15.5 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, the government will have to acquire substantial additional parcels of property. At this time, one cannot predict the exact number of parcels or the total number of condemnation cases LAS will have to litigate -- the subject undertaken is massive and unprecedented. What follows are current, yet evolving, projections for the project construction:

- 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 the earliest iterations of border projects in the 1990s, numerous challenges were brought under a variety of environmental statutes, including the ESA and NEPA. Current laws allow the Secretary of the Department of Homeland Security (DHS) to waive virtually every environmental statute (including ESA and NEPA) upon publication in the Federal Register. This authority was invoked for the last round of border infrastructure projects from 2005 to 2008. If the authority is again invoked, it is likely that there will be direct challenges to the waiver during the construction process on a number of grounds. Numerous and more comprehensive challenges are likely to expand into future operations and maintenance. ENRD will vigorously defend the federal government when such challenges arise.

Funding

Base Funding

FY 2016 Enacted				FY 2017 Enacted				FY 2018 Current Services			
Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)	Pos	agt/ atty	FTE	\$(000)
2	2	1	\$329	2	2	1	\$329	2	2	1	\$329

Personnel Increase Cost Summary

Type of Position/Series	Modular Cost per Position (\$000)	Number of Positions Requested	FY 2018 Request (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Attorney (905)	\$175	12	\$1,155	\$996
Appraiser (1171)	\$175	3	\$288	\$249
Paralegal (950)	\$90	5	\$255	\$208
Total Personnel		20	\$1,698	\$1,453

Non-Personnel Increase Cost Summary

Non-Personnel Item	Unit Cost	Quantity	FY 2018 Request (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Automated Litigation Support			\$100	\$0
Total Non- Personnel			\$100	\$0

Total Request for this Item

	Pos	Atty	FTE	Personnel (\$000)	Non- Personnel (\$000)	Total (\$000)	FY 2019 Net Annualization (change from 2018) (\$000)
Current Services	2	2	1	\$279	\$50	\$329	
Increases	20	12	10	\$1,698	\$100	\$1,798	\$1,453
Grand Total	22	14	11	\$1,977	\$150	\$2,127	\$1,453