

# U.S. Department of Justice



## Environment and Natural Resources Division



ENRD

ENRD

**FY 2023**  
**PERFORMANCE BUDGET**  
**CONGRESSIONAL BUDGET JUSTIFICATION**

## Table of Contents

<b>I. Overview.....</b>	<b>3</b>
<b>II. Summary of Program Changes.....</b>	<b>9</b>
<b>III. Appropriations Language and Analysis of Appropriations Language.....</b>	<b>9</b>
<b>IV. Program Activity Justification.....</b>	<b>9</b>
A. Environment and Natural Resources Division	
1. Program Description.....	<b>10</b>
2. Performance Table.....	<b>20</b>
3. Performance, Resources, and Strategies.....	<b>21</b>
<b>V. Program Increases by Item.....</b>	<b>23</b>
<b>VI. Program Offsets by Item.....</b>	<b>34</b>
<b>VII. Exhibits.....</b>	<b>34</b>
A. Organizational Chart	
B. Summary of Requirements	
C. FY 2023 Program Increases/Offsets by Decision Unit	
D. Resources by DOJ Strategic Goal/Objective	
E. Justification for Technical and Base Adjustments	
F. Crosswalk of 2021 Availability	
G. Crosswalk of 2022 Availability	
H. Summary of Reimbursable Resources	
I. Detail of Permanent Positions by Category	
J. Financial Analysis of Program Changes	
K. Summary of Requirements by Object Class	
L. Status of Congressionally Requested Studies, Reports, and Evaluations	
M. Senior Executive Service Reporting ( <b>Applies only to DEA and FBI – Not applicable</b> )	
N. Modular Costs for New Positions	
O. Information on Overseas Staffing – <b>Not applicable</b>	
P. IT Investment Questionnaire ( <b>Required for all proposed IT enhancements</b> )	
Q. Non-SES Awards	

---

## **I. Overview of the Environment and Natural Resources Division (ENRD)**

In one of his first official acts upon assuming the presidency, on January 20, 2021, President Joseph R. Biden laid out the Administration’s environmental policy through Executive Order (EO) 13990, “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis,” which reads, in part:

It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. 86 *Fed. Reg.* 7037, 7037 (Jan. 25, 2021).

The Administration’s policy, as described above, implicates the core of ENRD’s mission; and the Division will be chiefly responsible for implementing the policy through litigation and counseling functions in FY 2023.

**The President further focused the environmental policy of the Administration by issuing EO 14008, “Tackling the Climate Crisis at Home and Abroad,” on January 27, 2021. Among other actions and commitments, EO 14008 establishes a “whole-of-government” approach to addressing the climate crisis and formalizes the government’s commitment to Environmental Justice (EJ). To support the Division’s leadership role in fulfilling the ambitious, historic objectives described in EO 13990 and EO 14008, ENRD is seeking a \$6,544,000 budget enhancement to support Environmental Justice and Climate Change initiatives as well as \$1,405,000 specifically to support the Department’s Office of Environmental Justice (OEJ) in FY 2023.**

**At the same time ENRD supports the new initiatives and reinvigorated efforts outlined in the President’s environmental agenda, the Division is also seeking a more durable budgetary approach to sustaining the Division’s important environmental enforcement efforts. Reliable funding of the Division’s core mission will ensure the long-term viability of ENRD, regardless of inevitable fiscal variabilities, political pressures, or other external dynamics. Recent coordination efforts between ENRD, EPA and OMB have concluded that a direct transfer of funding, from the Interior & Environment appropriations bill to the Commerce, Justice and Sciences appropriations bill, would provide necessary stability, certainty and efficiencies and should begin in FY 2023.**

ENRD’s aggregate budgetary requirements in FY 2023, including the above-referenced enhancements – described in greater detail in Section V of this Budget –total **\$141,761,000**. The requested funding will ensure that ENRD is able to support and defend the President’s priorities, enforce the Nation’s cornerstone environmental laws, and continue to secure significant victories for the Department, its client agencies, and the American people.

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

## A. Introduction:

*Environment and Natural Resources Division Mission:* The Environment and Natural Resources Division was established as the “Public Lands Division” in 1909 to handle all cases concerning “enforcement of the Public Land Law” and relating to Indian affairs. As the Nation grew and developed, so did the responsibilities of the Division. Its name changed to the “Environment and Natural Resources Division” to better reflect those responsibilities. Over 100 years after the Division’s founding, ENRD is as mindful as ever of the strong legacy it inherited and the opportunities and challenges that lie ahead. The Division has a main office in Washington, D.C., and field offices across the United States. Its staff is organized into ten specialized sections. The Division is responsible for enforcing and defending actions taken under more than 150 federal statutes and represents virtually every federal agency in cases arising in all 50 states and the United States’ territories.

ENRD’s litigation responsibilities at present are broad and include:

- Enforcing the Nation’s civil and criminal pollution-control laws;
- Defending environmental challenges to federal agency programs and activities;
- Representing the United States in matters concerning the stewardship of the Nation’s natural resources and public lands;
- Acquiring land and real property for federal interests;
- Bringing and defending cases under the wildlife protection and animal welfare statutes; and
- Litigating cases concerning the resources and rights of Indian tribes and their members.

**To effectively carry out its important mission in FY 2023, ENRD is requesting a total of \$141,761,000, including 615 positions (432 attorneys), and 590 FTEs (41 reimbursable FTEs).** Building on the increases in the FY 2022 President’s Budget for ENRD, the FY 2023 President’s Budget adds an enhancement of \$6,544,000, including 49 positions (40 attorneys), and 25 FTEs to support the Administration’s Environmental Justice and Climate Crisis priorities, and an enhancement of \$1,405,000, including 7 positions and 7 FTEs to support the Office of Environmental Justice.

## B. Issues, Outcomes, and Strategies:

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the Nation’s natural resources and public lands. The Division defends suits challenging all of the foregoing laws and fulfills the federal government’s responsibility to litigate on behalf of Indian tribes and individual Indians. ENRD’s efforts protect the federal fisc, reduce harmful discharges of hazardous chemicals and pollutants 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 relief to ensure compliance with the environmental laws, secures redress for past violations that harm the environment, ensures that violators of criminal and civil 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.

In **defensive litigation**, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the Nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including defense of agency decisions regarding conversion to clean energy policies, the overhaul of leasing and development of fossil fuels on federal land, litigation over water quality and allocation of scarce water resources, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. The Division is increasingly called upon to defend the Department of Defense's training and operations necessary for military readiness and national defense and expects to be called upon to support numerous agencies' efforts to implement the Administration's renewed focus on environmental protection, environmental justice and government action to address the causes and impacts of climate change.

### **ENRD Budgetary Restructuring**

#### **Superfund Legislative Transfer in I&E Appropriation to Eliminate Reliance on Unstable and Unpredictable Interagency Reimbursable Agreement**

ENRD seeks base funding for its Superfund work through a legislative transfer in the FY 2023 Interior, Environment and Related Agencies Appropriation Act ("I&E Bill"). ENRD has received "Superfund funding" from EPA via a reimbursable agreement for more than three decades. However, uncertainty regarding the amount of the funding to be received to support ENRD's Superfund work and delays in receiving reimbursement for work already performed have become increasingly problematic in recent years. From FY 2015 to FY 2020, EPA's transfer of funds to ENRD for Superfund work has dropped approximately 32% in real terms. Over the past decade, it has dropped by more than 50%. Reliance on unpredictable Superfund funding puts all of ENRD's environmental enforcement work at risk. In addition, the use of an interagency agreement to fund ENRD's Superfund work has imposed costly and burdensome administrative requirements and generated delays. Receiving a legislative transfer would alleviate these issues and further this successful and widely supported program. To date, EPA has provided a total of approximately \$900 million to ENRD to fund its work in support of the EPA Superfund program. With this funding, EPA and ENRD's partnership on behalf of the Superfund program has achieved noteworthy results. For example, the Division and EPA have recovered approximately \$7.1 billion in Superfund cleanup costs, which were returned to the U.S. Treasury or placed in special accounts within the Superfund Trust Fund for use at specific sites (obviating the need to use appropriated dollars at those sites). This record demonstrates a remarkably positive return-on-investment.

ENRD encourages Congress to fund ENRD's Superfund enforcement work through the legislative transfer provided in the I&E Bill of up to 11 percent from Superfund Enforcement. In practical terms, a legislative transfer in this amount is budget neutral because it would provide through transfer the amount of funding that ENRD would seek to receive under the existing reimbursable agreement for FY 2023.

### C. Current and Anticipated Workload Challenges:

ENRD will continue to enforce the Nation's environmental laws, support Administration priorities, and defend a wide array of federal agency actions. The Division plays a critical role in ensuring that the environmental laws passed by Congress are faithfully executed. ENRD's enforcement of laws such as the Clean Air Act (CAA), Clean Water Act (CWA), Oil Pollution Act (OPA), Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund) results in environmental compliance and restoration, deterrence of future violations, protection of public health and the environment, and the protection of American taxpayers in the form of criminal and civil fines and penalties, and recovery of federal funds spent to respond to oil spills or clean up hazardous waste sites which are then returned to the federal treasury. In addition, ENRD litigation plays a significant role in helping to achieve the policy objectives of our Nation's Legislative and Executive Branch officials.

The Division will also continue to defend challenges to federal environmental, energy, natural resource, and wildlife protection programs, as well as agency actions and decisions related to such programs. In FY 2023, for example, ENRD anticipates defending federal agency decisions regarding infrastructure development, renewable energy projects and energy resource extraction, litigation over water quality and an allocation of scarce water resources, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. Furthermore, ENRD performs an important bona fide national security function by defending the Department of Defense's training and operations necessary for military readiness and also acquires land and property for national defense purposes.

#### External Challenges

Environmental protection statutes and administrative law principles allow states, non-governmental organizations, and individuals to bring judicial challenges to federal agency action. This includes regulatory and deregulatory actions taken by federal agencies to implement the Administration's priorities and initiatives and to modify or repeal prior Administration rules or programs. When such lawsuits are filed, ENRD's mission is to defend its client agencies. **Defensive cases** make up approximately half of the Division's workload, with court schedules and deadlines driving the pace of work and attorney time in this type of litigation. These cases are non-discretionary – the federal government must respond to lawsuits filed against it. ENRD's defensive caseload has increased significantly in recent years and is expected to continue to increase in FY 2023. This defensive work is a specialized litigation docket that cannot effectively or efficiently be referred to the United States Attorneys' offices.

Below is a summary of some of the current and expected defensive challenges that will impact the Division through FY 2023, which in the aggregate are likely to require significant ENRD resources:

- The Administration's **climate and energy** agenda will lead to an increase in litigation over policy initiatives and the management of energy infrastructure. ENRD will defend new and updated regulations issued by EPA to reduce emissions of harmful greenhouse gases. This docket of important cases under the pollution control statutes is expected to increase significantly as new regulations are promulgated. Under Executive Order 13990, "Protecting Public Health and the Environment and Restoring Science To Tackle the

Climate Crisis,” agencies have begun processes to review and analyze potential changes in National Monument boundaries and oil and gas leasing in the Alaska National Wildlife Refuge and the Naval Petroleum Reserve-Alaska. Litigation is expected to follow the agencies’ final decisions. Executive Order 14008, “Tackling the Climate Crisis and Home and Abroad,” calls for changes to the permitting process for renewable energy projects and a comprehensive review of on- and offshore oil and gas leasing. ENRD is litigating numerous cases resulting from the implementation of EO 14008, including high-profile challenges to the Department of the Interior’s pause on oil and gas leasing pending a comprehensive review of the federal leasing program, and challenges to renewable energy projects such as the planned offshore Vineyard Wind energy project.

- The Division is currently defending hundreds of cases alleging a taking without just compensation in violation of the Fifth Amendment stemming from the Army Corps of Engineers’ management of two flood-control reservoirs near Houston during and immediately after **Hurricane Harvey**. The cases have been split into “upstream” and “downstream” dockets and the claims of test plaintiffs in the upstream docket are moving forward in the trial court, while the claims of the downstream docket are on appeal. After these upstream test cases are tried, the Division expects claims involving thousands of additional plaintiffs to move forward in FY 2023.
- The Division currently represents the United States and the Departments of the Interior and Treasury in more than a dozen pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which 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 (such as timber, mining or grazing rights). The plaintiffs’ damage claims total billions of dollars in the currently pending cases. Throughout FY 2023, the present cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts, but also extensive non-monetary tribal trust resources between 1946 and the present.
- The Division also handles several types of litigation over **water allocation**, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. In the coming years, ENRD anticipates increasing demands on resources from a growing docket of water rights cases, stemming in part from the significant impacts climate change has had on the Nation’s water resources. In particular, we expect growth in the litigation over how the government operate projects such as the Klamath Project or California’s Central Valley Project, when scarcity makes it impossible to meet the needs of Tribal water rights, species protection, agriculture, and municipal water supply. Likewise, we will see an increase in 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 ENRD staff dedicated to general stream adjudications across the entire West is generally smaller than the staff employed by each of the western states alone; and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our personnel resources.

## **Internal Challenges**

With the introduction of new technologies and new requirements in the legal industry – such as e-filing, e-discovery, on-line document repositories, web-based privilege reviews, electronic trials, and extranet docketing systems – we are in constant need of ensuring our workforce has the expertise and access to software, hardware, and systems to keep pace. Thus, maintaining institutional technological capabilities also remains an internal challenge. ENRD continues to refresh aging hardware, develop and implement required tracking systems, and comply with federal IT security mandates; and despite limited resources and a small staff, continues to achieve the highest rating among Department components in these areas.

Of particular note, there has been a pronounced shift towards cloud-based e-Litigation solutions over the past several years; and in-house, on-premises solutions – such as the server-based model currently used by ENRD – will likely be phased out and will no longer be supported in the near future. The transition to cloud-based solutions, while inevitable, will require an upfront investment of resources and time.

### **D. Achieving Cost Savings and Efficiencies**

Over the past few years, ENRD has taken steps to reduce costs and limit expenditures. We take our role as responsible custodians of the public fisc very seriously; and we are proud of the short- and long-term cost saving measures and efficiencies we have implemented. The Division has demonstrated a commitment to achieving cost savings and has attained measurable results in the recent past.

Starting in 2011, ENRD responded to anticipated budgetary challenges by convening a committee of Division attorneys, paralegals, legal assistants, and managers from across the Division (the “\$AVE Committee”). Through multiple iterations of ENRD’s \$AVE Committee, the Division has cut hundreds of thousands of dollars from its operating budget.

As a leader in employing technological solutions, ENRD continues to implement cost-effective alternatives such as video conferencing and web-based applications for meetings (which inevitably reduce travel costs). We continue to push the use of on-line travel reservations, as opposed to using agent-assisted booking services, leading to additional cost savings. ENRD has reduced its fax machine inventory by over 90%, saving line costs as well as machine maintenance and supply costs. The \$AVE Committee also encouraged participation in ENRD’s Gainsharing program, which has saved the Division from paying certain discretionary travel related expenses.

In the area of litigation support, ENRD has been innovative and forward-thinking by deploying and maintaining a highly 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, database creation and web hosting. In FY 2021, the Division’s litigation support lab recognized savings of more than \$11.7 million, compared to what the in-house services provided would have cost if outsourced to a contractor/vendor.

In the realm of process automation, ENRD has developed and deployed a number of important internal systems that have produced significant cost and time savings. For example, over the past



few years, the Division deployed an automated property appraisal management system, which has reduced the time and cost of retaining qualified appraisers. The Division also recently deployed internal electronic systems to manage ENRD’s employee performance program and transit subsidy management program. Both automated applications have saved the Division time and money, and have contributed to more efficient, accountable and reliable business processes. The Division is continuing to work on an internal accounting system, which will reduce ENRD’s reliance on outside accountants and auditors, with an expectation of launching the system in the near future. All of these systems have been developed at minimal cost by existing governmental employees (no contracts or contractors involved).

## II. Summary of Program Changes

As described in greater detail in Section V of this document, ENRD is requesting an enhancement of **\$6,544,000**, including 49 positions (40 attorneys) and 25 FTEs, to support *Securing Environmental Justice and Combating the Climate Crisis* as well as an enhancement of **\$1,405,000**, including 7 positions (3 attorneys) and 7 FTEs, to support the *Office of Environmental Justice*.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Securing Environmental Justice and Combating the Climate Crisis	Support the President’s directive to promote Environmental Justice (EJ) and combat the Climate Crisis.	49	25	6,544	23
Office of Environmental Justice	Support the President’s directive to promote Environmental Justice (EJ).	7	7	1,405	31

## III. Appropriations Language and Analysis of Appropriations Language

In FY 2023, the Division is not seeking any changes to GLA appropriations language.

## IV. Program Activity Justification

<i>Environment and Natural Resources Division</i>	Direct Pos.	Estimate FTE	Amount
2021 Enacted	541	481	113,458
2022 Annualized CR	541	517	133,738
2022 Rebaseline Adjustment	18	41	20,280
Adjustments to Base and Technical Adjustments	0	0	74
2023 Current Services	559	517	133,812
2023 Program Increases	56	32	7,949
2023 Program Offsets	0	0	0
2023 Request	615	549	141,761
<b>Total Change 2022-2023</b>	<b>56</b>	<b>32</b>	<b>8,023</b>

<b>ENRD-Information Technology Breakout (of Decision Unit Total)</b>	<b>Direct Pos.</b>	<b>Estimate FTE</b>	<b>Amount</b>
2021 Enacted	18	18	5,499
2022 President's Budget	18	18	5,499
Adjustments to Base and Technical Adjustments	0	0	0
2023 Current Services	18	18	5,499
2023 Request	18	18	5,499

## **A. Environment and Natural Resources Division**

### **1. Program Description**

As described above, ENRD works to:

- Enforce the Nation's civil and criminal pollution-control laws;
- Defend environmental challenges to federal agency programs and activities;
- Represent the United States in matters concerning the stewardship of the Nation's natural resources and public lands;
- Acquire land and real property for federal interests;
- Bring and defend cases under the wildlife protection and animal welfare statutes; and
- Litigate cases concerning the resources and rights of Indian tribes and their members.

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

The Division plays an essential role enforcing federal environmental protection laws, both criminally and civilly. These include the Clean Air Act (CAA), the Clean Water Act (CWA), the Safe Drinking Water Act (SDWA), the Act to Prevent Pollution from Ships (APPS), the Oil Pollution Act (OPA), the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), the Toxic Substance Control Act (TSCA), and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The main federal agencies that the Division represents in these areas are the Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers (Corps), the U.S. Coast Guard (USCG), and federal natural resource trustee agencies, including the U.S. Department of the Interior (Interior or DOI), the U.S. Department of Agriculture (USDA), and the National Oceanic and Atmospheric Administration (NOAA) within the Department of Commerce (DOC or Commerce). The Division's sections that carry out this work are the **Environmental Enforcement Section (EES)**, the **Environmental Defense Section (EDS)**, and the **Environmental Crimes Section (ECS)**.

The Division's defensive sections play a key role in implementing the President's environmental, natural resources, and energy agenda, which is routinely challenged in federal courts across the country by states, industry groups, corporations, non-governmental organizations and individuals. When such lawsuits against the Division's client agencies – oftentimes EPA, DOI or the Department of Energy (DOE) – are filed, ENRD's mission is to defend its client agencies. Defensive cases make up approximately half of our workload, with court schedules and deadlines driving the pace of work and attorney time in these types of cases. This work is primarily done by the Division's **Environmental Defense Section** and **Natural Resources Section (NRS)**.

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

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

The Division also has responsibility for affirmative litigation arising from the Nation's animal protection laws. Animal fighting, in particular, is a crime that causes undue suffering to animals and is often connected with violent crime and drug trafficking. The Division has built an impressive enforcement program that includes litigation, training and coordination with investigative agencies, and policy improvements. The **Environmental Crimes Section** handles criminal prosecutions under the animal welfare laws (primarily animal fighting), sometimes in partnership with U.S. Attorney's Offices. ECS works with agents from USDA's Office of Inspector General, the FBI, and the FWS on these matters. The **Wildlife and Marine Resources Section** brings civil actions to enforce animal welfare laws, including the Animal Welfare Act and the Endangered Species Act. WMRS has also developed a permanent mechanism by which the U.S. Marshals Service can provide for the seizure, relocation, veterinary care, kenneling, and disposition of dogs involved in animal fighting. This work continues to be a priority area for the Division.

Division cases frequently involve allegations that a federal program or action violates constitutional provisions or environmental statutes. Examples include Fifth Amendment takings claims, in which landowners seek compensation based on the allegation that a government action has taken an interest in real property, and suits alleging that a federal agency has failed to comply with the National Environmental Policy Act (NEPA). Both takings and NEPA cases can affect vital federal programs, such as those governing the Nation's defense capabilities (including military preparedness, weapons programs, nuclear materials management, and military research), renewable energy development,

transportation systems and food supply. In other cases, plaintiffs challenge regulations promulgated to implement the Nation's pollution control statutes, such as the CAA and CWA, or activities at federal facilities that are claimed to violate such statutes or other environmental laws. The Division's main clients in these areas include the Department of Defense (DOD), EPA, the Corps, the U.S. Department of Transportation (DOT), and DOI's various components. The **Natural Resources Section** and the **Environmental Defense Section** handle these cases.

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

The Division's **Indian Resources Section (IRS)** litigates on behalf of federal agencies to protect the lands and associated resources of federally recognized Indian tribes and their members; the United States holds the majority of these lands and resources in trust for tribes. This litigation includes defending against challenges to statutes and agency actions that protect tribal interests and bringing suit on behalf of federal agencies to protect tribal rights, lands, and natural resources. The rights, lands, and resources at issue include water rights, hunting and fishing rights, the protection of trust lands and minerals, and the government's ability to acquire reservation land, among others. In addition, the **Natural Resources Section** defends claims asserted by Indian tribes and tribal members against the United States. The main federal agency that the Division represents in connection with this work is DOI's Bureau of Indian Affairs (BIA).

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

The **Law and Policy Section (LPS)** advises and assists the Assistant Attorney General on environmental and natural resources legal and policy questions, particularly those that affect multiple sections in the Division. The Law and Policy Section reviews and analyzes legislative proposals on environmental and natural resources issues of importance to the Division, handles the Division's response to Congressional requests, provides comments on behalf of ENRD on federal agency rulemakings, and handles, with the Appellate Section, *amicus curiae* participation in cases of importance to the United States. The Law and Policy Section leads the Division's efforts on international issues, often in collaboration with the Environmental Crimes Section, and handles various special projects on behalf of Division leadership. Attorneys in the Law and Policy Section also serve as the Division's ethics and professional responsibility officer and counselor. LPS also coordinates the Division's Freedom of Information Act (FOIA) and correspondence work. LPS, along with ECS and EPA, is leading the development of the federal Environmental Crime Victim Assistance Program.

The **Executive Office (EO)** is the operational management and administrative support section for ENRD. It provides financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services to the Division's workforce. The Executive Office takes advantage of cutting-edge technology to provide sophisticated automation facilities to ENRD employees. By utilizing new technologies and innovative business processes – and by in-sourcing services traditionally provided by contractors and equipping employees to better

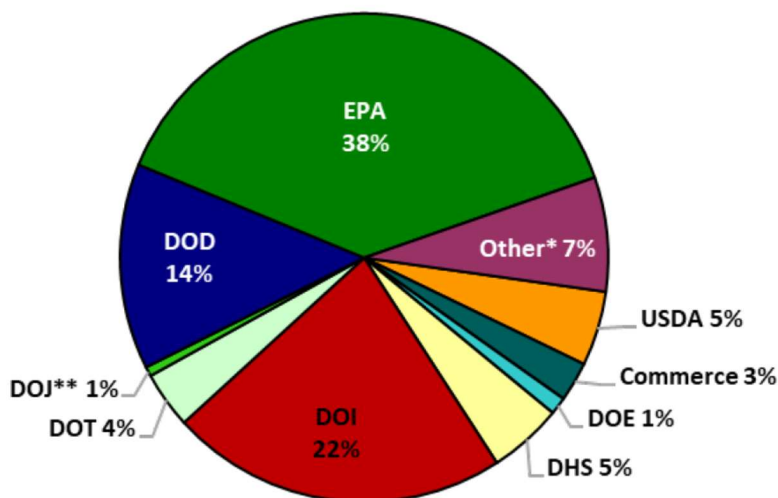
serve themselves – the Executive Office is able to achieve significant cost savings for the American public on an annual basis.

The **Office of the Assistant Attorney General (OAAG)** is responsible for overseeing all aspects of the Division’s operations and ensuring that the Division’s work is accomplished in a timely and professional manner each day.

Please see *Exhibit A* for an organization chart describing ENRD’s current structure.

**ENRD’s Cases/Matters Pending by Client Agency as of September 30, 2021**

**Total Cases/Matters – 6,627**  
**Total Cases/Matters – 6,627**



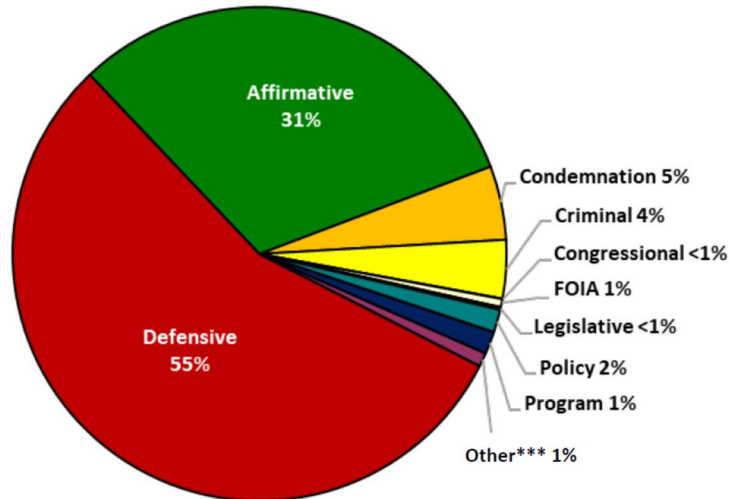
\*Other - includes many different Cabinet Departments and agencies with minimal numbers of cases.

\*\*DOJ - Most cases identified with DOJ as lead client agency are Citizen Suits.

**ENRD’s Cases/Matters Pending by Case Type as of September 30, 2021**

**Total Cases/Matters – 6,627**

### Total Cases/Matters – 6,627



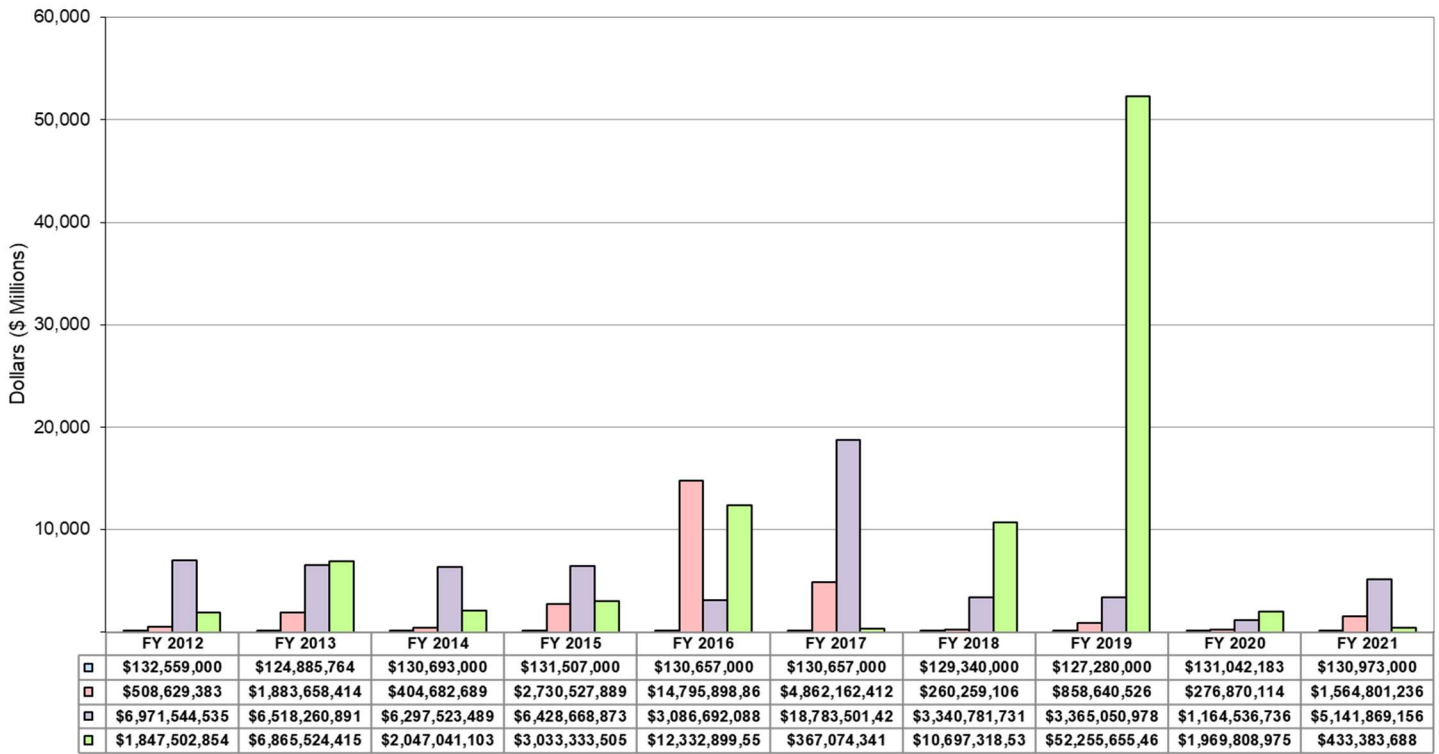
\*Affirmative - includes case types of Civil Affirmative, Amicus, and Citizen Suits.

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

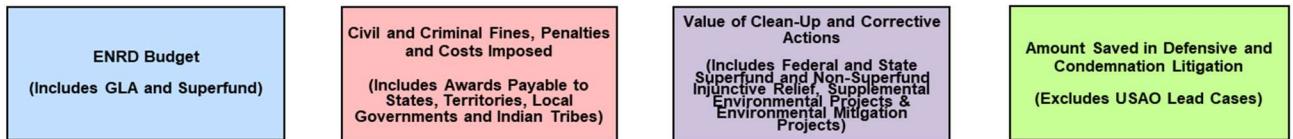
\*\*\*Other represents types of work not covered by any category, such as projects, etc.

## ACCOMPLISHMENTS

In FY 2021, ENRD successfully closed 197 matters and 1,084 cases while maintaining a robust docket of 6,627 cases, matters, and appeals. The Division recorded more than \$1.5 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (clean-up work and pollution prevention actions by private parties) obtained in FY 2021 exceeded \$5.1 billion. ENRD's defensive litigation efforts avoided costs (claims) of over \$433 million in FY 2021. In FY 2021, the Division achieved a favorable outcome in 99.4 percent of its civil affirmative cases, 90.2 percent of its civil defensive cases, 98.9 percent of its criminal cases and 100 percent of its condemnation cases. 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.



FY 2019 Defensive Savings largely composed of \$52B cost avoidance resulting from favorable decision in *St. Bernard Parish and others v. U.S.*



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

### Civil Cases

- Daimler AG / Mercedes Diesel Vehicle Emissions Cheating Settlement***

On September 14, 2020, the U.S. Department of Justice, Environmental Protection Agency (EPA), and the California Air Resources Board (CARB) announced a settlement with German automaker Daimler AG and its American subsidiary Mercedes-Benz USA, LLC (collectively, “Daimler”) resolving alleged violations of the Clean Air Act and California law associated with emissions cheating.

Under the settlement, lodged with the U.S. District Court for the District of Columbia, Daimler will recall and repair the emissions systems in Mercedes-Benz diesel vehicles sold in the United States between 2009 and 2016 and pay \$875,000,000 in civil penalties and roughly \$70,300,000 in other penalties. The company will also extend the warranty period for certain parts in the repaired vehicles, perform projects to mitigate excess ozone-creating nitrogen oxides (NOx) emitted from the

vehicles, and implement new internal audit procedures designed to prevent future emissions cheating. The recall program and federal mitigation project are expected to cost the company about \$436,000,000. The company will pay another \$110,000,000 to fund mitigation projects in California. Taken together, the settlement is valued at about \$1.5 billion.

- ***Kohler Company Clean Air Act Non-Compliance***

On January 30, 2020, the U.S. Department of Justice, U.S. Environmental Protection Agency, and the state of California announced a settlement with Kohler Co. (Kohler) resolving alleged violations of the Clean Air Act and California law. Under the terms of the settlement, Kohler will retire unlawfully generated hydrocarbon (HC) and oxides of nitrogen (NOx) emission credits. Retirement of these credits will result in approximately 3,600 tons of HC and NOx emissions reductions. In addition, the company will pay a \$20 million civil penalty.

- ***Toyota Motor Company Clean Air Act Non-Compliance***

On January 14, 2021, the U.S. Department of Justice and EPA announced that the United States had filed and settled a civil lawsuit against Toyota Motor Corporation, Toyota Motor North America Inc., Toyota Motor Sales U.S.A. Inc., and Toyota Motor Engineering & Manufacturing North America Inc. (Toyota) for systemic, longstanding violations of Clean Air Act emission-related defect reporting requirements. These requirements direct manufacturers to report potential defects and recalls affecting vehicle components designed to control emissions.

The United States filed a consent decree, agreed to by Toyota, that resolved the government's complaint through Toyota's payment of a \$180 million civil penalty and the imposition of injunctive relief. The \$180 million penalty is the largest civil penalty for violation of EPA's emission-reporting requirements. The injunctive provisions require Toyota to follow compliance and reporting practices designed to ensure timely investigation of emission-related defects and timely reporting to EPA, and include training, communication, and oversight provisions.

- ***Clean Air Act Enforcement at Six Petrochemical Plants in Iowa and Texas***

On October 15, 2021, the U.S. Department of Justice and EPA announced a settlement with Equistar Chemicals, LP; LyondellBasell Acetyls, LLC; and Lyondell Chemical Company ("Lyondell"), to eliminate thousands of tons of air pollution from six of Lyondell's petrochemical manufacturing facilities in Clinton, Iowa, and Channelview, Corpus Christi, and La Porte, Texas. This pollution (including volatile organic compounds and hazardous air pollutants including benzene) not only poses public health risks but also contributes to climate change. The companies must implement injunctive relief to assure proper functioning of flares at these facilities, as well as flare gas recovery at two facilities. The companies will also pay \$3.4 million in civil penalties.

- ***Home Depot Lead Paint Violations***

On December 17, 2020, the U.S. Department of Justice and EPA announced a proposed nationwide settlement with Home Depot U.S.A. Inc. resolving alleged violations of the EPA's Lead Renovation, Repair and Painting (RRP) Rule at home renovations performed by Home Depot's contractors across the country. The States of Utah, Massachusetts, and Rhode Island, which have EPA-authorized RRP programs, joined the United States in this action. The settlement, in a consent decree lodged with



the District Court for the Northern District of Georgia, requires Home Depot to implement a comprehensive, corporate-wide program to ensure that the firms and contractors it hires to perform work are certified and trained to use lead-safe work practices to avoid spreading lead dust and paint chips during home renovation activities. Home Depot will also pay a \$20.75 million penalty, the highest civil penalty obtained to date for a settlement under the Toxic Substances Control Act. Of the \$20.75 million penalty, \$750,000 will be paid to Utah, \$732,000 to Massachusetts, and \$50,000 to Rhode Island.

- ***Superfund Enforcement Cases***

On September 30, 2021, the U.S. District Court for the Central District of California approved settlement agreements under which Montrose Chemical Corporation of California, Bayer CropScience Inc., TFCF America Inc., and Stauffer Management Company LLC will pay \$77.6 million for cleanup of contaminated groundwater at Superfund Sites in Los Angeles County, California. The companies will also investigate potential contamination of the historic stormwater pathway leading from the Montrose Superfund Site. From 1947 to 1982, Montrose operated the U.S.'s largest manufacturing plant for the pesticide DDT (dichloro-diphenyl-trichloroethane). The settlements not only provide for cleanup and investigation, but also collectively resolve active litigation in a case that has spanned three decades.

On February 13, 2020, ENRD and EPA announced the release of the Butte Priority Soils Operable Unit (BPSOU) consent decree. This document provides the framework for the continued cleanup of mining-related contamination to protect public health and the environment in Butte and Walkerville, Montana. The consent decree requires Atlantic Richfield to undertake or finance over \$150 million in cleanup actions, provide financial assurances for future cleanup actions, and provide enhanced community benefits through the implementation of end land use plans along the Silver Bow Creek Corridor.

- ***Taylor Energy Oil Pollution Act Violations for Record-Setting Oil Spill***

On December 22, 2022, the United States Department of Justice lodged a settlement with Taylor Energy Company, LLC (Taylor Energy), to resolve the Louisiana-based company's liability for the longest-running oil spill in the U.S. history. The oil spill began in 2004 when Taylor Energy's Gulf of Mexico offshore oil production facility was damaged in Hurricane Ivan. Under the terms of the judicial settlement, Taylor Energy will pay a \$43 million civil penalties, cleanup costs, and natural resources damages (NRD). Moreover, Taylor Energy has agreed that upon liquidation, the company will transfer all of its remaining assets (\$432 million) to a trust fund to be held by the Department of the Interior. The fund will be dedicated to plugging the subsea oil wells, permanently decommissioning the facility, and remediating contaminated soil. The State of Louisiana is a co-trustee for natural resources impacted by the spill and the NRD portion of the funds is a joint recovery by the federal and state natural resource trustees.

- ***Jeffrey Lowe and Tiger King Animal Welfare Case***

On January 15, 2021, a federal court issued a preliminary injunction in favor of the United States and against Jeffrey and Lauren Lowe, Greater Wynnewood Exotic Animal Park LLC, and Tiger King LLC based on claimed violations of the Endangered Species Act and the Animal Welfare Act. U.S. District Court Judge John F. Heil III ordered the Lowes to immediately surrender all Big Cat

cubs under the age of one year and their mothers to the government for the pendency of the injunction. The court also ordered the defendants to retain an attending veterinarian and to provide records accounting for all animals acquired and disposed of since June 2020. The court further ordered the defendants and anyone acting on their behalf, including Eric Yano and Stephens Lane LLC, to cease exhibiting animals without a valid U.S. Department of Agriculture (USDA) license.

## **Criminal Cases**

---

- ***Summit Pipeline***

On December 6, 2021, in *United States v. Summit Midstream Partners (D.N.D.)*, the U.S. Department of Justice completed critical work establishing that criminal liability attaches for spills where the most basic efforts to account for lost material in a pipeline were willfully ignored. The case involved a discharge from Summit's North Dakota pipeline of 29 million gallons of "produced water" – a waste product of hydraulic fracturing – over a five month period. The spill contaminated land, groundwater, and over 30 miles of tributaries of the Missouri River. This matter and a parallel civil matter resulted in a \$15 million criminal fine, a \$20 million civil penalty, and \$1.25 million in natural resource damage compensation.

- ***Vessel Pollution Cases***

A court sentenced Pacific International Lines (Private) Limited (PIL), on February 18, 2021, to pay a \$3 million fine and complete a four-year term of probation, during which all vessels operated by the company that call on U.S. ports must implement an environmental compliance plan. The company pleaded guilty to violating the Act to Prevent Pollution from Ships (APPS) and the Clean Water Act for the actions of a crew in intentionally and routinely discharging oily bilge water into a Guam harbor.

On December 1, 2020, a court sentenced Pacific Carriers Limited (PCL) to pay a \$12 million fine, complete a four-year term of probation, and implement a comprehensive environmental compliance plan in a case involving violations of the Act to Prevent Pollution from Ships. The crew, at the direction of senior engineers, discharged oily bilge water and waste oil through numerous means including a sink in the crew laundry room that emptied into the vessel's sewage system and directly overboard.

- ***Criminal Enforcement of Core Environmental Laws***

On December 1, 2021, two defendants were sent to prison for knowing and willful violations of the Clean Air Act's asbestos requirements. In *United States v. Kristofer Landell et al. (N.D.N.Y.)*, the U.S. Department of Justice made sure the court had what it needed to hold high level managers responsible for this effort to deceive EPA and the state of New York about a roughshod asbestos removal effort at an old industrial site. The owner's representative pleaded guilty to a criminal negligence charge and two subordinates also pleaded guilty to felonies.

On October 6, 2021, a court sentenced Kang Juntao to 38 months' incarceration, followed by one year of supervised release, for criminal activity related to a wildlife smuggling operation. Kang pleaded guilty to money laundering, following his extradition from Malaysia in December 2020.

While in his native China, Kang organized a network of suppliers and shippers in at least eight states to smuggle approximately 1,500 protected box turtles, wood turtles, and spotted turtles worth \$2,250,000 from the United States to Hong Kong.

In *United States v. Kizzy Solomon et al.* (M.D. Ga.), the Division secured a record term of incarceration for animal fighting. Defendant Leslie Meyers, previously convicted of a felony, brought a handgun to the dogfight where he was caught. On September 24, 2021, the court sentenced him to 123 months' imprisonment for the animal fighting and prohibited firearms crimes. The sentences in this multi-defendant case totaled 272 months' incarceration across a dozen defendants. All told, ENRD has prosecuted some fifty-three defendants for animal welfare crimes since 2016, leading to more than 1250 months' of total incarceration. The Division's efforts have led to the rescue of more than 500 dogs from brutal circumstances.

- ***Criminal Enforcement of Worker Safety Laws***

The court in *United States v. Nebraska Railcar Cleaning Services LLC et al.* (D. Neb.) held a company and its owners accountable for gross safety and environmental violations that led to worker deaths. Workers under time pressure routinely entered railway tank cars when toxic and flammable gases were at deadly levels. The company's plan for preventing such entries was a known sham. Tragically, in 2015, a spark caused an explosion that killed two. The defendants hid facts and falsified documents during the subsequent investigation. On January 14, 2022, the president and vice-president of the company were sentenced to 30 months' and one year and a day incarceration, respectively. The company must pay a \$21,000 fine, and all three defendants are liable for \$100,000 in restitution.

## 2. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit:												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			481	113,458	481	113,458	517	133,738	32	8,023	549	141,761
			[41]		[41]		[41]			[41]		
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2021		FY 2021		FY 2022		Current Services Adjustments and FY 2023 Program Changes		FY 2023 Request	
Program Activity	3.5	Advance Environmental Justice and Tackle the Climate Crisis	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			481	113,458	481	113,458	517	133,738	32	8,023	549	141,761
			[41]		[41]		[41]			[41]		
APG Measure <sub>1</sub> :	N/A	N/A										
KPI <sub>2</sub> : Output	3.5	Percent of environmental matters in or substantially affecting overburdened and underserved communities that favorably resolved										
Performance Measure <sub>3</sub> :	3.5	N/A										

1 / Strategic Objective 3.5 is not currently recognized as one of the Agency Priority Goals. Performance Data is not applicable under this APG.  
2 / Data is not available  
3 / Data is not available

PERFORMANCE MEASURE TABLE					
Decision Unit: Environment and Natural Resources Division					
Strategic Objective	Type	Performance Measures	FY 2021	FY 2022	FY 2023
			Actual	Target	Target
3.5	<b>Program Activity</b>	Advance Environmental Justice and Tackle the Climate Crisis			
3.5	<b>Agency Priority Goal<sub>1</sub></b>	Strategic Objective 3.5 is not currently recognized as one of the Agency Priority Goals			
3.5	<b>Key Performance Indicator<sub>2</sub></b>	Percentage of environmental enforcement matters in or substantially affecting overburdened and underserved communities that are favorably resolved.			
3.5	<b>Performance Measure</b>	N/A			
1 / Data is not available 2 / Data is not available [N/A= Data Unavailable]					

### **3. Performance, Resources, and Strategies**

#### **Environmental Justice Activities**

---

##### ***A. Performance Plan and Report for Outcomes (Strategic Goal 3.5)***

➤ **Performance Measure** – N/A

❖ ***FY 2023 Target: N/A***

❖ ***FY 2021 Actual: N/A***

##### **B. Strategies to Accomplish Outcomes**

The Division establishes strategies for performance and accomplishments relating to the Department's Strategic Plan for FY 2022 – FY 2026. The Division's strategies are based off of the following strategic goal and objectives:

**Strategic Goal 3** – Protect Civil Rights

**Strategic Objective 3.5** – Advance Environmental Justice and Tackle the Climate Crisis

## V. Program Increases by Item

### A. Securing Environmental Justice and Combating the Climate Crisis

Item Name:	<b>Securing Environmental Justice and Combating the Climate Crisis</b>
Budget Decision Unit(s):	Environment and Natural Resources Division (“ENRD”)
Organizational Program:	<i>Appellate Section (“APP”)</i> <i>Environmental Crimes Section (“ECS”)</i> <i>Environmental Defense Section (“EDS”)</i> <i>Environmental Enforcement Section (“EES”)</i> <i>Executive Office (“EO”)</i> <i>Indian Resources Section (“IRS”)</i> <i>Land Acquisition Section (“LAS”)</i> <i>Law and Policy Section (“LPS”)</i> <i>Natural Resources Section (“NRS”)</i> <i>Wildlife and Marine Resources Section (“WMRS”)</i>
Program Increase:	<b>Positions <u>49</u>, Atty <u>40</u>, FTE <u>25</u>, Dollars <u>\$6,544,000</u></b>

#### 1. Description of the Item

**ENRD is requesting \$6,544,000, including 49 Positions, 40 Attorneys, and 25 FTEs, to support the President’s directive to promote Environmental Justice (EJ) and combat the Climate Crisis. ENRD will carry out its important EJ responsibilities by addressing the disproportionately high and adverse human health, environmental, and other impacts borne by disadvantaged communities, through, among other means, the use of existing affirmative enforcement authorities and the implementation of a comprehensive environmental justice enforcement strategy. ENRD will also leverage existing authorities in affirmative cases to reduce greenhouse gas (GHG) emissions and alleviate the impacts of climate change, and will continue to defend federal programs and actions designed to address the causes and impacts of climate change.**

**This request is directly in support of two of the Administration’s top priorities.**

#### **(a) Environmental Justice.**

Executive Order 14008, Section 219, directs federal agencies to ensure that EJ is a key consideration in their actions:

To secure an equitable economic future, the United States must ensure that environmental and economic justice are key considerations in how we govern

. . . . Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care. *86 Fed. Reg. at 7629.*

DOJ is one of many agencies directed to carry out this important policy objective, and has a key role, stemming from the Department's mission to enforce the law while ensuring the fair and impartial administration of justice. The Attorney General is a member of the White House Environmental Justice Interagency Council, which is chaired by the Council on Environmental Quality. *See* Executive Order 14008, Section 220. As among DOJ components, the Executive Order makes clear that the White House considers ENRD central to achieving its EJ goals. The Executive Order directs ENRD, specifically, to develop a comprehensive EJ enforcement strategy. *See* Section 222(c)(ii).

ENRD needs an increase in resources to achieve these priorities. ENRD will need to hire additional enforcement attorneys, along with professional staff and contractors to provide litigation support, to implement the comprehensive EJ enforcement strategy that ENRD has been tasked with developing. At the same time, the demands on our defensive sections will increase, as they take on a more robust client-counseling role in addition to managing their defensive litigation dockets, which we do not expect to subside. Finally, ENRD anticipates providing significant support to other DOJ components and other federal agencies in furtherance of the EJ enforcement strategy and the other mandates of Executive Order 14008. All of these activities are resource-intensive.

### **(b) Climate Change.**

Section 201 of Executive Order 14008 directs a whole-of-the-government approach to tackling the crisis brought on by climate change:

It is the policy of my Administration to organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure. *86 Fed. Reg. at 7622.*

For decades, ENRD has significantly reduced pollution across the nation and protected the country's natural resources through its civil and criminal affirmative and defensive litigation and other work. Our annual accomplishments reports demonstrate the breadth of the Division's actions. <https://www.justice.gov/enrd/selected-documents>. Alongside a more intensive focus in our affirmative cases to seek reduction of greenhouse gases, the Division will also face increased workload responding to the effects of climate change. For instance, many of our natural resources and water allocation cases will be made more complicated by drought, wildfire, and ecosystem shifts.



Moreover, Division attorneys will have to expend additional time and resources identifying how remedies sought – ecosystem protection, wetlands mitigation, upgrades in water infrastructure – can also increase resilience to the impacts of climate change.

As with EJ, the Division will make actions to address the climate crisis a central feature of its work. Again, ENRD will need to hire additional enforcement attorneys, along with professional staff and contractors to provide litigation support, and again, the demands on our defensive sections will increase. ENRD cannot provide the resources needed without jeopardizing the Division’s work in other core environmental and natural resources areas that are critical to the health and welfare of the nation, consistent with Executive Order 13990:

It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals. *86 Fed. Reg. 7037, 7037 (Jan. 25, 2021).*

## **2. Justification**

President Biden’s Executive Order 14008 clearly articulates the need to promote the principles of environmental justice and combat climate change. ENRD is well-equipped to accommodate this need and expects to play a central role in carrying out these Administration priorities.

### **(i) Environmental Justice.**

ENRD expects that its primary EJ responsibilities in FY 2023 will be in three key areas: implementing a comprehensive EJ enforcement strategy, counseling our client agencies, and supporting DOJ and interagency efforts.

#### **A. Implementation of a Comprehensive EJ Enforcement Strategy**

Section 222 of the Executive Order directs ENRD to coordinate with EPA, through the agency’s Office of Enforcement and Compliance Assurance, and with other client agencies as appropriate, to develop a Comprehensive Environmental Justice Enforcement Strategy that seeks to provide timely remedies for systemic environmental violations and contaminations and injury to natural resources.

We anticipate that the Comprehensive Environmental Justice Enforcement Strategy (Strategy) will be transformative and far-reaching, addressing both civil and criminal environmental enforcement and having several key components. The Administration, the Department, and our clients have all identified this undertaking as a high priority. The Strategy is expected to include enhanced enforcement efforts to address environmental justice concerns, increased engagement with EJ communities to ensure environmental justice issues are understood and addressed, and incorporation of EJ considerations in formulating relief in enforcement actions. The Strategy is also expected

address ongoing coordination with client agencies, and the unique enforcement issues that arise with respect to Tribes and Indian country.

In FY 2023, ENRD will be implementing the Strategy. In addition to continuing the Division's FY 2022 civil and criminal EJ enforcement casework in FY 2023, ENRD anticipates that coordination with key client agencies will result in expansion of referrals from agency partners that implicate overburdened and disadvantaged communities. ENRD's efforts on those referred enforcement matters will involve engagement as appropriate with those communities to ensure that environmental justice issues are understood, and that those considerations are incorporated into pursuing relief in the enforcement actions. The pursuit of appropriate and meaningful relief, considering the full range of remedies, will also involve coordination and collaboration with agency partners to employ those authorities and resources that are most likely to achieve meaningful results for impacted communities. Such community engagement and internal collaboration, necessitating increased efforts on the part of ENRD, are effective tools and utilize resources that can help the Department maximize its environmental justice impact.

#### B. Counseling Client Agencies in Defending Litigation and in Developing Regulatory Actions and other Policy Decisions

Executive Order 14008 broadly calls upon agencies in the Executive Branch to develop programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related, and other cumulative impacts on disadvantaged communities. When these regulations or policy documents are challenged, ENRD attorneys will defend these actions in federal court. We have a variety of strategies to identify and better manage cases with EJ implications, but implementing these strategies can be resource-intensive. ENRD attorneys can play a valuable role in evaluating and providing counsel to agencies on EJ claims and issues, particularly where an agency may have failed to adequately consider the EJ implications of its decision or seek public input. This work often requires additional research and information-gathering, as well as sensitive client counseling, all while simultaneously managing the usual pressures of defensive litigation.

By providing client counseling and expert advice, ENRD can help ensure that the policy-making agency has considered EJ issues before taking action, is aware of both the flexibilities and constraints within its statutory authorities, and is otherwise complying with the executive orders addressing EJ. We have found that agencies benefit from ENRD's environmental enforcement experience in designing rules with strong and effective enforcement mechanisms, and that it can make a meaningful difference in policy outcomes. By counseling agencies on the requirements of the law, ENRD also can make a difference in legal outcomes, by helping agencies take actions that will stand up in court.

In addition to one-on-one client counseling, ENRD anticipates leading efforts to educate and provide direction to agency policy-makers throughout the government. For example, ENRD, under the Obama Administration, created a "Law Leaders on Environmental Justice" group to facilitate client counseling and the dissemination of legal knowledge within federal agencies on the topic of EJ. This group, co-led by EPA's Office of General Counsel, included career attorneys from a wide range of agencies, and was effective at ensuring that agency lawyers were well-informed and prepared to support policy decisions in this area. The group served as an important forum for open dialogue, continuing education, and informal counseling among the federal agencies on EJ issues. ENRD is

well positioned to lead such efforts. Doing so, however, will require resources and a high-level commitment from multiple agencies.

### C. Support for DOJ and Interagency EJ Efforts

The Executive Order also directs an all-of-government approach to EJ and elevates and revitalizes the federal EJ interagency workgroup on which ENRD serves in a number of leadership capacities. ENRD has substantial expertise with interagency EJ efforts and anticipates an increased workload in this area as well.

#### **(ii) Climate Change.**

The Division has taken, and can support, a wide variety of actions to mitigate the impacts of climate change and to facilitate adaptation to the changing climate. This work – which will both continue and accelerate in FY 2023 – falls into four broad categories, each of which is discussed below: affirmative civil and criminal enforcement to reduce GHG emissions and address the impacts of climate change; affirmative civil and criminal litigation to protect the environment and natural resources from climate change and its effects; regulatory and administrative climate litigation; and support for legislative, rulemaking, and international efforts to combat climate change.

#### A. Affirmative Civil and Criminal Enforcement to Reduce GHG Emissions and Address Climate Change Impacts

ENRD's docket includes a wide variety of cases related to oil and gas production, refineries and chemical plants, the refrigerant industry, landfills, and concentrated animal feeding operations, as well as various types of mobile source cases, all of which address pollution contributing to climate change. The key factors in such cases are the presence of combustion generally, the presence of GHGs specifically, or the accompaniment of other illegal emissions or discharges of GHGs.

The Division has brought a number of civil and criminal cases to combat fraud in the handling of Renewable Identification Numbers under the Renewable Fuel Standard Program created by Section 211 of the Clean Air Act (CAA). Similarly, we have brought major cases relating to fraud in mobile source emissions control systems which have also served to reduce emissions of GHGs.

ENRD has tailored relief in civil settlements to address climate change, for instance by securing significant reductions in GHG emissions as mitigation for past violations or requiring infrastructure improvements that are resilient to climate change. The Division has also participated as amicus in cases raising important issues pertaining to the climate crisis.

#### B. Affirmative Civil and Criminal Litigation to Protect the Environment and Natural Resources

ENRD litigates to protect tribal resources subject to impact by climate change, including protection of treaty hunting and fishing rights and tribal reserved water rights. The Division enforces emission standards from ships under MARPOL Annex VI, which addresses illegal air emissions from ships, including emission of GHGs. Air pollution from ships is a significant contributor to ocean acidification. ENRD's affirmative litigation also addresses the unlawful filling of wetlands and

deforestation, two activities that contribute to the adverse impacts of climate change. The Division also prosecutes illegal timber trafficking under the Lacey Act, as well as other criminal statutes.

### C. Regulatory and Administrative Climate Litigation

The Division is currently defending a wide range of cases that have substantial climate implications, and we expect this docket to grow significantly as agencies implement Executive Order 14008. Our work in this area includes: (1) ENRD defense of GHG emission regulations and controls; (2) litigation in support of agency policies and actions to promote conversion to clean energy; and (3) defense of policy and management actions to protect sensitive resources.

For example, ENRD defends a wide variety of Environmental Protection Agency (EPA) rules and permits under the CAA and other statutes that directly restrict the emission of harmful GHGs or that address the ill effects of climate change. This litigation includes defending EPA rules under CAA Section 111 limiting GHG emissions from significant new and existing stationary sources, such as power plants and oil-and-gas operations. It further includes defending EPA rules under CAA Sections 202 and 231 limiting emissions from new mobile sources, such as automobiles, trucks and aircraft, as well as defending EPA actions under CAA Section 209 waiving preemption for more stringent state law vehicle emission requirements. ENRD is also responsible for defending forthcoming EPA rules phasing down the use of potent hydrofluorocarbons in refrigeration and air conditioning equipment, as required by the 2020 American Innovation and Manufacturing Act.

In addition, the Division is also defending the Department of the Interior's regulations to reduce waste methane emissions associated with natural gas development on public lands, and Federal Aviation Administration regulations designed to increase air traffic efficiency and reduce GHGs from aircraft idling. Further, the National Environmental Policy Act (NEPA) requires all government agencies to assess the environmental impacts of major federal actions, including impacts to climate. The Administration has indicated an intent to re-evaluate the prior Administration's 2020 revision to the NEPA regulations, and individual agencies will be issuing new NEPA regulations tailored to their statutes and programs. ENRD will be called upon to defend those new regulations.

Sections 207 and 208 of Executive Order 14008 direct the Secretary of the Interior to pause entering into new oil and natural gas leases on public lands or in offshore waters to the extent possible, and launch a rigorous review of all existing leasing and permitting practices related to fossil fuel development on public lands and waters. ENRD is already defending several challenges to Interior's pause on oil and gas leasing. Challenges to any future decisions to amend or withdraw leases as a result of this review will likely ensue. Section 207 of Executive Order 14008 also directs Interior to identify steps that can be taken to double renewable energy production from offshore wind by 2030. The Division will handle any ensuing litigation over the permitting and siting of renewable energy infrastructure. ENRD will likewise defend permit denials or restrictions associated with oil and gas pipelines and liquid natural gas terminals that must be approved by various federal agencies.

Climate change-induced drought and severe weather patterns have already affected the reliability of water supplies for domestic and agricultural uses – particularly in the western United States. ENRD plays a critical role in securing water rights for federal agencies, in addition to Indian tribes. The Division is handling litigation related to federal and Indian water rights in numerous water rights adjudications and Administrative Procedure Act challenges to the management of federal water delivery projects.

The Division handles Endangered Species Act litigation relating to climate change effects on species, as well as similar litigation under the Magnuson-Stevens Fisheries Conservation and Management Act and the Marine Mammal Protection Act.

ENRD defends challenges to agency policies and plans for the management of public lands, National Parks, National Forests, and National Monuments. Updates of these policies and plans to more directly address the impacts of climate change are likely to evoke challenges that ENRD will be called on to defend.

**D. Support for Legislative, Rulemaking, Policy Making, and International Efforts to Combat Climate Change**

In addition to its extensive litigation responsibilities, ENRD provides advice to other federal agencies on numerous legislative, rulemaking, and policy matters related to its environmental and natural resources portfolio. These activities are likely to expand under Executive Order 14008.

The Division handles a variety of international work as part of its mission, including capacity-building relating to timber trafficking and other topics. ENRD is also actively engaged in international criminal justice activities related to climate change. Division staff hold leadership positions within INTERPOL’s environmental program that address crimes that involve climate change (e.g., INTERPOL’s Pollution Crime Working Group and the Forest Crime Working Group).

**3. Impact on Performance**

The Administration has articulated two things: ENRD must (1) address the disproportionately high and adverse human health, environmental, and other impacts on disadvantaged communities, through, among other means, development and implementation of a comprehensive environmental justice enforcement strategy, and (2) make combating climate change a central part of its work. The requested program increase is necessary to support performance on these two Administration priorities.

**Funding**

**1. Base Funding**

FY 2021 Enacted				FY 2022 President’s Budget				FY 2023 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
0	0	0	\$0	18	16	10	\$5,000	18	16	10	\$5,054

**2. Personnel Increase Cost Summary**

Type of Position/Series	FY 2023 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1st Year	2nd Year	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	\$5,125	40	\$241	\$153	\$0	\$6,133	\$16
Paralegals (0950)	\$356	6	\$111	\$71	\$41	\$429	\$244
Clerical/Admin (0301)	\$137	3	\$83	\$48	\$7	\$144	\$21
<b>Total Personnel</b>	<b>\$5,617</b>	<b>49</b>	<b>\$435</b>	<b>\$273</b>	<b>\$48</b>	<b>\$6,705</b>	<b>\$282</b>

**3. Non-Personnel Increase/Reduction Cost Summary**

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Contractual Services and Supplies	\$927	\$927	1	\$0	\$0
<b>Total Non-Personnel</b>	<b>\$927</b>	<b>\$927</b>	<b>1</b>	<b>\$0</b>	<b>\$0</b>

Litigation support personnel to assist attorneys with an increased workload of complex environmental justice and climate related cases. Some services provided may include, but are not limited to, building and maintaining databases, reviewing documents, retrieving records, and developing trial presentation materials.

**4. Total Request for this Item**

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	18	16	10	\$3,923	\$1,131	\$5,054	\$74	\$0
Increases	49	40	25	\$5,617	\$927	\$6,544	\$6,705	\$282
<b>Grand Total</b>	<b>67</b>	<b>56</b>	<b>35</b>	<b>\$9,540</b>	<b>\$2,058</b>	<b>\$11,598</b>	<b>\$6,779</b>	<b>\$282</b>

**Affected Crosscuts – Not applicable.**

## B. Office of Environmental Justice

Item Name:	<b>Office of Environmental Justice</b>
Budget Decision Unit(s):	Environment and Natural Resources Division (“ENRD”)
Organizational Program:	New program
Program Increase:	<b>Positions <u>7</u>, Atty <u>3</u>, FTE <u>7</u>, Dollars <u>\$1,405,000</u></b>

### 1. Description of the Item

**ENRD is requesting \$1,405,000, including 7 Positions, 3 Attorneys, and 7 FTEs, to support the President’s directive to consider creating an Office of Environmental Justice in the Department of Justice, and the Attorney General’s subsequent decision to do so within ENRD. In its initial manifestation, OEJ will evolve into a several-employee office, comprised of a Director, two attorneys, a paralegal, an information management specialist, a community outreach specialist, and a clerical assistant. The composition of the office may change, and likely will expand over time, depending on operational needs and resource availability.**

**This request is directly in support of one of the Administration’s top priorities.**

### 1. Justification

Executive Order 14008, “Executive Order on Tackling the Climate Crisis at Home and Abroad,” (Sec. 222(c)(iii)) directs the Attorney General to consider “creating an Office of Environmental Justice within the Department to coordinate environmental justice activities among Department of Justice components and United States Attorneys’ Offices nationwide.” The Attorney General has directed that DOJ’s Office of Environmental Justice be established in ENRD.

The Office of Environmental Justice (OEJ) will be responsible to the Assistant Attorney General (AAG), and the Office Director will report directly to the AAG, or a designee. The Director will be supported by two full-time attorneys, an information management and program specialist, a community relations/outreach specialist, a paralegal, and an administrative support employee.

Because the Administration’s initiatives require new, more concentrated, and longer-term focus on EJ issues, rather than simply a shift in objectives, OEJ will be a key organizational unit providing sustained intra-departmental coordination, as well as necessary interagency coordination, in carrying out the EJ enforcement strategy and the other EJ mandates of EO 14008. Many DOJ components must play a significant role in order to make effective change in this area. OEJ will help ensure comprehensive attention to EJ throughout DOJ. The Department’s EJ efforts, led by ENRD working

with the Civil Rights Division, will promote and facilitate engagement by the USAOs, the Civil Division, and other components, including the Bureau of Prisons (BOP), FBI, Community Relations Service (CRS), Access to Justice (ATJ), and Office of Justice Programs (OJP). OEJ will also work closely and collaboratively with external stakeholders, such as EPA and the White House Council on Environmental Quality (CEQ), as well as other federal entities.

Among other functions, OEJ is expected to: (1) provide recommendations to leadership on EJ and help facilitate implementation as appropriate; (2) work Department-wide to assess available resources and authorities to support EJ work and seek commitment of resources towards EJ; (3) serve as a repository for resources that support investigation, outreach, and litigation related to EJ; (4) facilitate greater outreach by the Department to communities with EJ concerns and EJ organizations (in coordination with USAOs, CRS, other DOJ components, and other federal agencies, such as EPA); (5) coordinate general community outreach and engagement on environmental justice issues and receive input from external stakeholders; (6) support relationships among DOJ offices and other governmental (local, tribal, state, and federal) and nongovernmental actors engaged in EJ work; (7) participate in interagency coordination related to environmental justice; (8) in conjunction with the Executive Office of United States Attorneys and the National Advocacy Center, coordinate an education and training program within DOJ; (9) make information available to external stakeholders and the public, including through a public DOJ EJ website; and (10) assist with DOJ reporting relating to EJ.

It is important that the new office make effective use of the Department's existing cadre of lawyers and staff that have been engaged in EJ issues for many years and have both expertise and the respect of those in and outside the federal government. The office will also need to hire additional permanent staff, as described above. The personnel costs are expected to total \$1,155,000 in FY 2023.

In addition to government personnel, in order to effectively carry out the responsibilities of the OEJ, ENRD will require interpreters, translators, accommodation services, and other contractor services, which are collectively expected to cost approximately \$250,000 per year.

Given the Administration's prioritization of Environmental Justice and the ambitious and historic objectives laid out in E.O. 14008, it is imperative that FY 2023 funding be provided to ENRD to support the Office of Environmental Justice.

## **2. Impact on Performance**

The creation of the Office of Environmental Justice is necessary to address one of the President's key policy priorities, and also to ensure proper focus on a long-term issue of paramount importance. The objective of the OEJ is to coordinate the Department's efforts to provide all Americans – regardless of their race, ethnicity, or income status – full protection under the nation's environmental, civil rights, and health laws and to make sure communities are not unfairly burdened with pollution, contaminated water or toxic chemicals.



### 3. Base Funding

FY 2021 Enacted				FY 2022 President's Budget				FY 2023 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

### 4. Personnel Increase Cost Summary

Type of Position/Series	FY 2023 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1st Year	2nd Year	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Attorneys (0905)	\$731	3	\$241	\$121	\$0	\$363	\$1
Paralegals (0950)	\$338	3	\$111	\$55	\$54	\$166	\$163
Clerical/Admin (0301)	\$86	1	\$83	\$36	\$14	\$36	\$14
<b>Total Personnel</b>	<b>\$1,155</b>	<b>7</b>	<b>\$435</b>	<b>\$212</b>	<b>\$68</b>	<b>\$565</b>	<b>\$178</b>

### 5. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2023 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Contractual Services and Supplies	\$250	\$0	1	\$0	\$0
<b>Total Non-Personnel</b>	<b>\$250</b>	<b>\$0</b>	<b>1</b>	<b>\$0</b>	<b>\$0</b>

Interpretation, translation, accommodation and other contractor services to assist OEJ staff with intra-departmental coordination and interagency coordination in carrying out the mission of the Office of Environmental Justice.

**6. Total Request for this Item**

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2024 (net change from 2023)	FY 2025 (net change from 2024)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	7	3	4	\$1,155	\$250	\$1,405	\$565	\$178
<b>Grand Total</b>	<b>7</b>	<b>3</b>	<b>4</b>	<b>\$1,155</b>	<b>\$250</b>	<b>\$1,405</b>	<b>\$565</b>	<b>\$178</b>

Affected Crosscuts – Not applicable.

**VI. Program Offsets by Item**

(None)

**VII. Exhibits**