

# ENRD

## ACCOMPLISHMENTS REPORT FISCAL YEAR 2021



United States Department of Justice  
Environment & Natural Resources Division

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## Foreword by the Assistant Attorney General



As my first year as the Assistant Attorney General for the Environment and Natural Resources Division draws to a close, I am proud to present this Accomplishments Report for fiscal year 2021, and proud to serve alongside the remarkable attorneys and staff who dedicate their professional lives to advancing the interests of the American people in environmental and natural resources matters.

This mission is incredibly important. We protect public health and welfare by enforcing the Nation’s environmental laws; safeguard our breathtaking landscapes and precious natural resources; defend federal agency actions and enable critical infrastructural projects; preserve the rights and resources of federally recognized Indian tribes; and much more.

The Division has come far since its creation in 1909. Back then, we had a staff of nine—six attorneys and three stenographers. Now, due to the complexity and importance of our modern work, we are roughly 600 employees strong, including more than 400 attorneys.

We added to our storied legacy last year.

In 2021, taking President Biden’s lead, we laid a foundation to support our ambition on environmental justice. We went to court and won meaningful remedies from polluters who imperiled overburdened communities in the Nation’s heartland, in a heavily industrialized part of Louisiana, in downtown New York City, and in the shadow of a refinery in the Virgin Islands. And looking ahead, we worked to develop a comprehensive environmental justice enforcement strategy that will coordinate future efforts throughout the entire Department of Justice. In this Administration and beyond, the Division will engage with communities across the country that are disproportionately afflicted by environmental problems, and will strive to right the wrongs of environmental injustice. We will do our best to ensure that all Americans—regardless of race, color, national origin, or income—are treated fairly and can engage in the decisions that affect them.

The Division in 2021 also prioritized efforts to combat climate change, as part of the President’s whole-of-government response to this crisis. We used our civil and criminal enforcement authorities to limit damaging pollution from sources like petroleum and petrochemical facilities, cars modified to defeat emissions controls, industries handling climate-

damaging refrigerants, and oceangoing vessels. We protected natural resources from the effects of climate change by defending flood control projects, cracking down on those who unlawfully fill wetlands, prosecuting traffickers in illegally harvested timber, and more. And we robustly defended our client agencies' ability to take steps to address the climate crisis, such as the authority of the Environmental Protection Agency to limit greenhouse gas emissions from power plants and the Federal Aviation Administration to institute more efficient and climate-friendly air traffic systems. Our client agencies are at the forefront of finding government-wide solutions to climate change, and we are with them every step of the way.

By the metrics, last year was a stunning success. In fiscal year 2021, the Division's attorneys worked on more than 4,000 matters. We obtained over \$1.5 billion in civil and criminal fines, penalties, and costs recovered. We secured federal injunctive relief valued at over \$5.1 billion. And, through our defensive and condemnation litigation, we saved the United States more than \$443 million. We achieved a favorable outcome in 99.4 percent of our civil enforcement cases, 90.2 percent of our civil defensive cases, 98.9 percent of our criminal cases, and 100 percent of our condemnation cases.

Of course, the numbers do not tell the full story. Let me highlight some examples from the chapters that follow, starting with our civil enforcement docket. We started 2021 with an announcement of a settlement with Dow Chemical Company and two subsidiaries. That settlement, which resolves allegations that the companies violated the Clean Air Act by failing to properly operate and monitor industrial flares at their petrochemical facilities, will eliminate thousands of tons of air pollution at four facilities in Texas and Louisiana. The companies will spend about \$294 million to install and operate air pollution control and monitoring technology to reduce flaring and the resulting pollution.

Our enforcement cases are not focused solely on redressing past wrongs—they are also meant to prevent future violations. We acted on that principle in a suit against Formosa Plastics Corporation, brought after a series of fires, explosions, and accidental releases of extremely hazardous substances at a Texas facility. Ultimately, the company agreed to pay a \$2.85 million civil penalty and spend an estimated \$1.4 million more to improve its management of hazardous substances at all its plants, thus minimizing the risk that those types of incidents would recur.

The Division also has an active docket prosecuting environmental crimes. These crimes include the knowing violation of America's pollution control laws. In 2021, for example, the Division prosecuted multiple defendants in New York State for violating the Clean Air Act's asbestos requirements; two went to prison for helping deceive EPA and the State about a haphazard asbestos removal effort. Another of our criminal program's core missions is to protect American workers from safety threats on the job. In a Nebraska case, the Division worked to hold a company and its owners accountable for gross safety and environmental violations related to cleaning out railway tank cars between uses, which led to an explosion that killed two workers—and then to prison for the company's president and vice president.

We also brought numerous civil and criminal cases against smugglers and traffickers of wildlife, fish, and plants, as well as cases to enforce federal laws that provide for the humane treatment of captive, farmed, and companion animals across the country. We continued our concerted efforts to prosecute those who organize and participate in illegal animal fighting ventures. Through our work in 2021, numerous perpetrators received stiff prison sentences, and more than 50 dogs were seized from suspected dogfighting operations around the country and given the humane treatment they deserve. And the Division filed and won the first federal civil enforcement actions ever filed in court for the unlicensed exhibition of animals (in Oklahoma), and for placing animals in serious danger at a puppy mill (in Iowa).

There were many notable successes in our defensive litigation as well. In 2021, the Division worked closely with our client agencies as they determined whether to reconsider regulatory and other decisions made in the previous Administration and, where appropriate, to seek relief in pending litigation in order to facilitate such reconsideration. We also won numerous court decisions upholding significant pollution-control regulatory actions, such as to: ban consumer uses of methylene chloride, a dangerous chemical used for paint stripping; grant a Clean Air Act waiver allowing the State of California to regulate off-road diesel engines; and implement substantial portions of the Nation's ozone standards. These defensive victories were key in our client agencies' efforts to control pollution and combat climate change.

The Division likewise secured several victories defending agencies implementing federal laws governing the protection and stewardship of our wildlife and marine resources. For instance, in two cases last year, courts upheld the Fish and Wildlife Service's designation of specific geographic areas of New Mexico as a critical habitat for the New Mexico meadow jumping mouse, an endangered species under the Endangered Species Act, and a National Marine Fisheries Service regulation requiring herring fishermen along the Atlantic seaboard to carry at-sea monitors on their vessels under the Magnuson-Stevens Fishery Conservation and Management Act to ensure effective enforcement and conservation of the fishery.

We also represent the interests of the United States and federally recognized Indian tribes in complex water rights adjudications across the western United States. In a general stream adjudication of all 90 basins in Montana, for instance, we resolved long-pending objections to water rights for the Bureau of Reclamation's Milk River Project through negotiated stipulations with Indian tribes, private ranchers, and irrigation districts. In another case last year, one of our trial teams won an issue of first impression on behalf of the Walker River Paiute Tribe, such that a 1935 decree governing the Walker River's surface water rights was reopened in order to quantify the Tribe's groundwater and storage water rights.

Additionally, the Division defends federal land management agencies facing increasingly difficult challenges in accommodating multiple uses while climate change alters the American West's ecosystems—like in one case involving the Forest Service's efforts to repair a drainage tunnel in the Mount Saint Helens National Volcanic Monument so as to prevent the breach of a natural dam that could have flooded downstream communities. The Division successfully defended the agency against a challenge, as it did when a trade association disputed the

National Park Service's authority to regulate commercial fishing within the waters of the Golden Gate National Recreation Area.

No matter the context, these achievements would be exemplary. But they are all the more impressive when considered against the backdrop of the COVID-19 pandemic. With little warning, the Division, like much of the country, was suddenly forced to switch its operations to remote work. With the exceptional and unflagging support of the Division's Executive Office, the Division was able to keep operations running smoothly despite such trying circumstances. Through it all, I am proud to say that Division employees have shown up every day—virtually, if not in person—and practiced their craft without the slightest diminishment in the quality of work. The pandemic may have kept us home, but it never stopped the dedicated staff and attorneys of the Division from faithfully serving the United States.

We made tremendous strides in 2021, but there is still much work to be done and new challenges to face. And we will have to face them without Deputy Assistant Attorneys General Jean Williams and Bruce Gelber, who have earned their retirements many times over with their decades of extraordinary service to the Division and the Nation. I want to thank Jean and Bruce for their leadership and grace, as well as their wise counsel, which was invaluable to me in my earliest days as Assistant Attorney General. I will miss them, a lot.

I am confident in the future, however, knowing this team: people of uncommon skill, professionalism, dedication, integrity, and public-mindedness. As proud as I am of what we accomplished in 2021, I am even more eager and excited to continue our important work. This is a pivotal moment in our Nation's history, with many environmental and natural resources concerns to address. Challenges lie ahead, but so do opportunities to advance the interests of the American people. Together, the exemplary public servants of the Division are ready to meet the moment.

**Todd Kim**  
**Assistant Attorney General**  
**Environment and Natural Resources Division**  
**U.S. Department of Justice**  
**April 22, 2022**

# Overview of the Environment and Natural Resources Division



Grand Canyon

## Overview of the Environment and Natural Resources Division

The Environment and Natural Resources Division is a core litigating component of the U.S. Department of Justice. We go to court to enforce the Nation's civil and criminal environmental laws, including the Clean Air Act, Clean Water Act, and hazardous waste laws. We also protect the Nation's natural resources, defend federal agencies' decisionmaking, and handle cases relating to tribal rights and resources. Our efforts directly and significantly promote the health and welfare of the American people.

Founded more than a century ago, the Environment and Natural Resources Division has built a distinguished record of legal excellence on a wide range of issues, from the management of public lands to the implementation, enforcement, and defense of landmark environmental statutes. ENRD has offices in Washington, D.C., Denver, Sacramento, San Francisco, and Seattle, and has ten sections.

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### **Appellate Section**

- Handles appeals and petitions for review in the Division's cases in courts of appeals across the Nation.
- Assists the Office of the Solicitor General in U.S. Supreme Court matters.

### **Environmental Crimes Section**

- Prosecutes individuals and corporations who violate federal environmental protection laws, including the Clean Water Act and the Clean Air Act.
- Brings criminal actions to protect wildlife and marine species under the Endangered Species Act and the Lacey Act, including wildlife trafficking cases.
- Prosecutes worker safety and animal cruelty cases.

### **Environmental Defense Section**

- Litigates district court challenges to agency actions under federal pollution control laws, and federal facility and cleanup contribution claims against federal agencies.
- Handles the defense of U.S. Environmental Protection Agency rules and other actions challenged directly in the courts of appeals.
- Brings Clean Water Act enforcement cases to protect wetlands.



### **Environmental Enforcement Section**

- Brings civil enforcement actions under federal pollution control laws such as the Clean Air Act, Clean Water Act, and Safe Drinking Water Act.
- Handles cases to secure cleanup, cost recovery, and damages for injury to natural resources resulting from hazardous waste sites and oil spills under the Comprehensive Environmental Response, Compensation, and Liability Act (the Superfund law) and the Oil Pollution Act.

### **Executive Office**

- Provides operational management and administrative support for the Division, including financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services.

### **Indian Resources Section**

- Represents the United States in litigation to protect tribal lands, resources, jurisdiction, and treaty rights.
- Handles suits safeguarding water rights and hunting and fishing rights, and establishing reservation boundaries and rights to land.
- Defends federal statutes, regulations, programs, and actions benefitting Indian tribes and their members.

### **Land Acquisition Section**

- Acquires real estate through eminent domain for Congressionally-authorized public uses.
- Enables development of flood protection projects, military training sites, park sites, and federal buildings such as courthouses.

### **Law and Policy Section**

- Addresses cross-cutting issues, including by reviewing policies, regulations, legislation, and international matters affecting the Division.
- Assists with amicus filings and certain other litigation.

### **Natural Resources Section**

- Defends suits relating to public lands and federal land management, as well as associated natural and cultural resources, under dozens of statutes such as the National Environmental Policy Act, the Outer Continental Shelf Lands Act, and the National Historic Preservation Act.
- Handles original actions in the U.S. Supreme Court to resolve boundary and water allocation disputes.
- Defends suits brought under the Just Compensation Clause of the Fifth Amendment regarding real property claims.
- Represents agencies ranging from the Forest Service and National Park Service to the Department of Transportation and Department of Defense.

### **Wildlife and Marine Resources Section**

- Defends cases brought under federal wildlife and marine species conservation laws, including the Endangered Species Act, the Migratory Bird Treaty Act, Magnuson-Stevens Fishery Conservation and Management Act, and Marine Mammal Protection Act.
- Brings affirmative civil cases under these laws and laws relating to animal welfare.

# Advancing Environmental Justice



Facility and Playground, EPA

## Advancing Environmental Justice

On January 27, 2021, President Biden issued Executive Order 14,008, which establishes a government-wide policy to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment. Federal agencies are directed to make achieving environmental justice part of their mission. This means agencies must work to address disproportionately high and adverse human health, environmental, climate, and other cumulative impacts on disadvantaged communities, as well as the economic challenges accompanying those impacts.

The Environment and Natural Resources Division (ENRD) works diligently to ensure the fair and impartial administration of justice for all Americans, including communities of color and low-income communities. ENRD plays a critical role in the whole-of-government approach to delivering environmental justice to all communities across the Nation. Notably, Executive Order 14,008 instructed ENRD to work with the Environmental Protection Agency (EPA) and other appropriate federal agencies to develop “a comprehensive environmental justice enforcement strategy to provide timely remedies for systemic environmental violations and contaminations, and injury to natural resources.” In 2021, ENRD worked with EPA and other agencies to this end. ENRD also held listening sessions jointly with the Department’s Civil Rights Division to solicit input from environmental justice stakeholders on the role of environmental enforcement in achieving environmental justice. National organizations, grassroots organizations, and organizations representing tribal concerns participated to provide valuable input regarding the development of an environmental justice enforcement strategy and the Department’s environmental justice efforts more broadly. ENRD looks forward to discussing the issuance and implementation of the comprehensive environmental justice enforcement strategy in its Accomplishments Report for fiscal year 2022.

All the while, the Division has continued to advance environmental justice through its enforcement work. In 2021, ENRD resolved many enforcement actions that helped communities with environmental justice concerns. Examples include:

- The Sulfur Firestone facility in Calcasieu Parish is Louisiana’s highest emitter of two types of hazardous air pollutants. The United States and co-plaintiff Louisiana Department of Environment Quality filed a consent decree in *United States v. Firestone Polymers, LLC* (W.D. La.) to resolve alleged violations of the Clean Air Act and several other federal and state environmental laws at this synthetic rubber manufacturing facility. The settlement held the company accountable for reducing emissions, and funded upgraded air monitoring systems for neighboring communities in southwest Louisiana disproportionately affected by air pollution, and facing health risks as a result. The company also agreed to pay a total of \$3.35 million in civil penalties.
- ENRD filed a complaint against Limetree Bay Terminals LLC and Limetree Bay Refining LLC in *United States v. Limetree Bay Ref., LLC* (D.V.I.), alleging that the companies’ St.

Croix petroleum refinery presented an imminent and substantial danger to public health and the environment. The refinery experienced multiple major incidents resulting in significant air pollutant and oil releases. Many residents in the surrounding St. Croix community reported becoming sickened by some of the releases. In a stipulation filed simultaneously with the complaint, Limetree Bay agreed to a number of requirements to protect communities near the refinery, including a requirement to complete all corrective measures to eliminate any imminent and substantial endangerment to public health or welfare, or the environment, posed by the refinery before any restart of operations; and a binding commitment to seek EPA's approval before any restart of operations or initiation of long-term shutdown activities.

- The Division filed a settlement with LyondellBasell Industries in *United States v. Equistar Chemicals, LP* (S.D. Tex.) to reduce harmful air pollution from unnecessary and improper flaring at the company's six petrochemical manufacturing facilities in Texas and Iowa. That pollution presented environmental justice concerns for exposure to particulate matter (2.5 micron), ozone, toxic cancer risk, and respiratory hazard. EPA estimates that full implementation of the settlement will reduce emission of more than 90,000 tons per year of carbon dioxide, methane, and ethane. The pollution controls, along with fence line emissions monitoring equipment to detect benzene, will have significant benefits for the local communities.

ENRD's commitment to environmental justice is also evident in other aspects of the Division's work. For example, the Division advances environmental justice when it brings cases to protect natural resources and the environment from the effects of climate change, as discussed in the next chapter.

# Responding to the Climate Crisis



Space, NASA

## Responding to the Climate Crisis

In Executive Order 14,008, President Biden also articulated a “whole-of-government” approach to tackling the crisis of climate change. The Division is prioritizing actions to address greenhouse gas (GHG) emissions and the impacts of climate change through its civil and criminal enforcement authorities. ENRD is also working closely with client agencies to defend Administration programs and policies aimed at alleviating the causes and consequences of climate change.

### **Civil and Criminal Enforcement to Reduce GHG Emissions and Address Climate Change Impacts**

A number of sources generate significant amounts of GHGs contributing to climate change, including the refrigerant industry, large institutions operating fossil-fuel-fired boilers, oil and gas production, natural gas processing, refineries, chemical plants, and landfills. In FY 2021, actions to stop GHG emissions that violate the Nation’s pollution laws included:

- ENRD announced a settlement in *United States v. Derichebourg Recycling USA* (S.D. Tex.), addressing the failure of scrap metal recycling facilities in Oklahoma and Texas to capture climate-damaging refrigerants (including R-12, a substance that has a global warming potential much greater than carbon dioxide) from their operations.
- In *United States v. City of New York* (E.D.N.Y.), handled by the U.S. Attorney’s Office for the Eastern District of New York, the Department filed a consent decree with the City of New York and its Department of Education for their failure to conduct regular tune-ups of over 1,300 oil-fired burners at more than 550 school facilities. This failure resulted in the excess emission of GHGs and local air pollutants from school facilities, many in disadvantaged communities. The settlement requires the defendants to conduct regular and proper tune-ups of regulated boilers, and by March 2023 to replace seven large boilers or convert them to burn cleaner natural gas.

The Division’s work also addresses the importance of planning for the impacts of climate change when implementing long-term capital improvements in consent decrees. For example:

- A recent modification of a consent decree in *United States v. Jersey City Municipal Utilities Auth.* (D.N.J.) took into account a proposal to allow for higher minimum design thresholds for required pump stations to allow the utility to adapt to climate change.

In addition, ENRD is committed to working with enforcement partners on a range of climate-change related initiatives. Among these:

- ENRD announced its participation in a multi-agency enforcement and prosecution initiative to prevent the illegal trade, production, use, and sale of climate-damaging

hydrofluorocarbons (HFCs). This effort complements EPA’s promulgation of a final rule phasing down the use of potent HFCs in refrigeration and air conditioning equipment, as required by the 2020 American Innovation and Manufacturing Act.

ENRD also continued to pursue opportunities to bring criminal cases to enforce the emission standards under Annex VI of the International Convention for the Prevention of Pollution from Ships. Air pollution from ships is a key contributor to climate change in the form of ocean acidification.

## **Civil and Criminal Enforcement to Protect Natural Resources and the Environment**

The Division brings cases to protect a wide range of natural resources and the environment from climate change and its effects.

This work includes litigating on behalf of tribes to ensure safe, sustainable homelands through the protection of reserved water rights and treaty hunting, fishing, and gathering rights. Such resources are particularly vulnerable to increasing temperatures and drought. For example:

- ENRD conducted a months-long virtual trial addressing water rights claims on behalf of the Hopi Tribe in the Little Colorado River Water Rights Adjudication. The trial will help ensure the availability of this critical resource to the Tribe and support the Tribe’s homeland.

The Division also enforces laws that protect critical carbon “sinks” such as forests, soils, prairies, and wetlands. These natural resources serve additional beneficial purposes as well; for instance, wetlands protect and improve water quality, provide fish and wildlife habitats, store rising floodwaters, and maintain surface water flow during dry periods. Similarly, when the Division’s prosecutors enforce laws designed to stop the illegal flow of timber imports, they are protecting carbon sinks, fighting deforestation, and supporting legal, sustainable forest crops in other parts of the world.

- The unlawful filling of wetlands contributes to the adverse impacts of climate change. The Department routinely takes action against such activities around the country. For example, in *United States v. Sharfi* (S.D. Fla.), we brought an enforcement action seeking relief for deposits of fill material into wetlands on a ten-acre property.
- *United States v. Quintana* (S.D. Fla.) was a timber trafficking case brought under the Lacey Act and other criminal statutes. Here, Department prosecutors charged that plywood wholesalers in Florida used shell companies and fraud techniques to avoid high tariffs on timber imports from China.



- In *United States v. Global Plywood and Lumber Trading, LLC* (S.D. Tex.), the United States laid bare practices that a timber importer used to avoid knowledge of how its suppliers obtained Peruvian hardwood, and so to try to avoid culpability. The investigation revealed that approximately 92% of the wood that Global Plywood imported had been unlawfully harvested or transported. In pleading guilty, Global Plywood acknowledged that it failed to exercise due care in its import practices.

The Division also brings cases to punish criminals who fraudulently claim to make renewable fuel as a ruse to obtain subsidies and tax credits. This ensures that subsidies and tax credits for renewable fuel, particularly biodiesel, are in fact used to replace carbon-dense fossil fuels.

- In *United States v. Ralph Tommaso* (E.D. Pa.), a court sentenced a cooperating defendant to a year in prison for his part in a renewable fuel fraud scheme. His testimony had helped convict his co-conspirator, who was previously sentenced to 84 months in prison.
- In *United States v. Keystone Biofuels, Inc.* (M.D. Pa.), the court handed down 66- and 70-month sentences to two individuals convicted of tax fraud and selling off-spec biodiesel.

## **Regulatory and Administrative Climate-Related Defensive Litigation and Counseling**

ENRD defends agency regulations, resource management plans, and executive branch policy documents challenged in courts nationwide. Examples in 2021 included:

- The Division defended a number of issued Clean Air Act rules and actions to limit GHG emissions, especially from significant new and existing stationary sources (such as power plants and oil-and-gas operations) and from new mobile sources (such as automobiles, trucks, and aircraft).
- Section 208 of Executive Order 14,008 directs the Department of the Interior to pause oil and natural gas lease sales on public lands or in offshore waters to the extent consistent with applicable law, and to review existing leasing and permitting practices related to fossil fuel development on public lands and waters. In 2021, ENRD defended multiple challenges alleging that section 208 and related actions violate various federal laws, including in *Louisiana v. Biden* (W.D. La.).
- Section 207 of Executive Order 14,008 directs Interior to identify steps to double, consistent with applicable law, renewable energy production from offshore wind by 2030. The Division handles litigation relating to the permitting and siting of such renewable energy infrastructure. In 2021, ENRD defended against several lawsuits challenging the approval of construction and operation of Vineyard Wind, the country's

first utility-scale offshore wind project, located 12 nautical miles offshore of Martha's Vineyard and Nantucket, Massachusetts.

- ENRD's Appellate Section handled multiple challenges to the Federal Aviation Administration's NextGen and metroplex air traffic systems in *City of North Miami v. Federal Aviation Administration* (11th Cir.). The agency expects the NextGen system to result in considerable system efficiency and climate benefits from reducing aircraft emissions.
- ENRD plays a variety of counseling and technical assistance roles in the international realm as part of its mission, including capacity-building relating to timber trafficking and other work on international criminal justice through INTERPOL. Division staff supported the development of the *Plan to Conserve Global Forests: Critical Carbon Sinks*, which the United States announced in November 2021 at the United Nations Climate Conference (COP26) in Glasgow, Scotland.

# Civil Litigation to Protect Our Air, Land, Water, and Wildlife



Limetree Bay Refinery flare, EPA



Workers Collecting Soil Samples, USS Lead Superfund Site, EPA

## Civil Litigation to Protect Our Air, Land, Water, and Wildlife

The Division brings civil actions to enforce pollution control statutes, compel and obtain costs for cleanups of contaminated land and water, and recover damages for injuries to natural resources harmed by pollution. The Environmental Enforcement Section is responsible for most of ENRD's affirmative civil docket, bringing cases on behalf of numerous client agencies, but primarily EPA. The Environmental Defense Section brings enforcement actions related to wetlands and other waters of the United States. In many cases, the Division partners with states, tribes, and non-governmental organizations, coordinates with criminal prosecutors handling related criminal proceedings, and works collaboratively with U.S. Attorneys' Offices.

While dollar figures do not capture the emission reductions, environmental restoration, and deterrence value of our work, they do provide some measure of its magnitude and import. In FY 2021, ENRD secured:

- \$5+ billion—in value of injunctive relief, both in orders for environmental cleanup and for securing compliance with pollution control laws and mitigation of harm from past violations;
- \$1+ billion—in civil penalty payments that will deter defendants and others similarly situated from committing similar violations and level the playing field for those that complied;
- \$174 million—in cost recovery of U.S. expenditures on environmental cleanups; and
- \$80 million—in recoveries for damages to natural resources.

### Protecting the Air We Breathe

The Division enforces the Clean Air Act. Our actions reach all types of stationary facilities and mobile sources of air pollution, reducing emissions of conventional and hazardous pollutants that contribute to adverse health and environmental effects, including climate change.

The Clean Air Act generally regulates air pollution from categories of stationary facilities: for instance, power plants, cement kilns, chemical factories, and oil refineries. Some of these facilities produce, process, handle, or store extremely hazardous substances. ENRD pursues companies when they violate their obligation to operate these facilities safely and avoid accidental releases. In 2021, for example:

- The Division brought an action against Formosa Plastics Corporation following a series of fires, explosions, and accidental releases at a Texas facility. The case resulted in a settlement requiring the company to pay a \$2.85 million civil penalty and spend an

estimated \$1.4 million to improve management of hazardous substances at its petrochemical plant. *United States v. Formosa Plastics Corp.* (S.D. Tex.).

ENRD also pursues companies that fail to adequately control certain air pollutants such as particulate matter, sulfur dioxide, and ozone, or hazardous air emissions such as mercury and lead.

- Partnering with Louisiana, ENRD obtained a settlement in *United States v. Dow Chemical Co.* (E.D. La.) that resolves alleged violations at four olefin manufacturing plants. The settlement requires Dow to invest an estimated \$294 million to eliminate more than 5,600 tons of ozone-forming volatile organic compounds and nearly 500 tons of hazardous air pollutants each year. The company also had to pay a \$3 million civil penalty, and perform three projects under state law to benefit the environment.
- In *United States v. Ameren Missouri*, the Division had previously won a district court judgment for Clean Air Act violations against the Rush Island coal-fired power plant, one of the largest sources of sulfur dioxide in the United States. In 2021, the Eighth Circuit affirmed the district court's finding that Ameren violated the Clean Air Act by failing to install modern pollution controls when it upgraded the power plant. The court upheld the district court's order requiring Ameren to bring the plant into compliance with the Clean Air Act.

ENRD also enforces the Clean Air Act to address pollution from mobile sources.

- In 2021, the Division concluded a number of cases against manufacturers and sellers of illegal aftermarket hardware parts and software (referred to as "defeat devices") that allow vehicle owners to remove or disable factory-installed emission controls, resulting in excess emission of nitrogen oxide and other pollutants. The cases include *United States v. Gear Box Z, Inc.* (D. Ariz.); *United States v. Advanced Flow Eng'g, Inc.* (C.D. Cal.); and *United States v. Xtreme Diesel Performance, LLC* (D.N.J.). In *Gear Box-Z* we obtained a preliminary injunction to halt that company's illegal defeat device sales. In all three settlements those companies agreed to stop selling the prohibited products.
- ENRD held automaker Daimler accountable for installing defeat devices in more than 250,000 vehicles sold, obtaining a settlement that includes an \$875 million civil penalty, a recall and repair of affected vehicles, and a project to offset excess emissions. *United States v. Daimler AG and Mercedes-Benz USA, LLC* (consolidated with *California v. Daimler AG and Mercedes-Benz USA, LLC*) (D.D.C).
- In *United States v. Toyota Motor Corp.* (S.D.N.Y.), a case brought by the U.S. Attorney's Office for the Southern District of New York, the Department obtained the largest civil penalty ever in a defect-reporting case—\$180 million—for Toyota's failure to report emission-related defects in millions of vehicles over a ten-year period, depriving EPA of the ability to determine if a recall was necessary.

- The Division settled litigation against Navistar for selling over 7,700 heavy-duty diesel engines not certified to meet then-current emission standards, requiring the company to pay a \$52 million civil penalty and implement a program to mitigate 10,000 tons of oxides of nitrogen. *United States v. Navistar, Inc.* (N.D. Ill.).

## Protecting Our Nation’s Waters

In enforcing the Clean Water Act, the Division brings actions to address discharges of untreated sewage from municipal wastewater systems, uncontrolled stormwater runoff from municipal and commercial facilities, oil spills from pipelines and storage facilities, vessel discharges of oily bilge water, and discharges of harmful chemicals and other pollutants from many different types of facilities. The Division’s 2021 actions included:

- An agreement with the City of Peoria and the Greater Peoria Sanitary District, when fully implemented, is expected to reduce approximately 696,000 pounds of pollutants each year from combined sewage overflows from its collection into the Illinois River and Peoria Lake. The settlement also requires the payment of \$250,000 in civil penalties and the performance of a state-law supplemental environmental project. *United States v. City of Peoria, Illinois* (C.D. Ill.).
- Under a settlement in *United States v. City of Colorado Springs* (D. Colo.), the City will improve its stormwater management program, capture greater stormwater volume, and mitigate damage from past violations through stream restoration projects. The City will also pay a \$1 million federal civil penalty and perform a state-law supplemental environmental project.
- A settlement with Summit Midstream Partners, LLC, and related entities resolved claims stemming from a discharge from Summit’s North Dakota pipeline of 29 million gallons of “produced water” (a waste product of hydraulic fracturing) that contaminated land, groundwater, and over 30 miles of tributaries of the Missouri River. In the civil component of companion civil and criminal settlements, the company agreed to pay a \$20 million penalty. *United States v. Summit Midstream Partners, LLC* (D.N.D.)
- A settlement in *United States v. Noble Energy, Inc.* (D. Colo.) resolving violations at two oil and gas facilities in Colorado, including a 173-barrel oil spill, required a \$1 million civil penalty and measures to enhance secondary containment and training.

## Enforcing Solid and Hazardous Waste Handling Requirements

The Resource Conservation and Recovery Act (RCRA) establishes a cradle-to-grave system for management of solid and hazardous waste.

- A settlement with US Magnesium, LLC (USM), and its parent entities resolved alleged violations of RCRA at its magnesium production facility in Rowley, Utah. As a result of the settlement, USM has agreed to extensive process modifications to remove dioxins, furans, hexachlorobenzene and PCBs from its operations, and will implement new protocols to ensure greater protection to workers at the plant, at a total cost of approximately \$37 million. The settlement also requires USM to obtain an additional \$10 million in financial assurance to ensure remediation and closure of the facility, and it requires USM to pay a civil penalty of \$250,000. The decree also requires USM, at an estimated cost of \$5.9 million, to perform certain response actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) to construct a barrier wall to stop uncontrolled releases of hazardous substances from waste ponds, which might threaten the Great Salt Lake. *United States v. Magnesium Corp. of America* (D. Utah).

## Protecting the Public from Toxic Substances

Among the provisions of the Toxic Substances Control Act that the Division enforces are those regarding lead-based-paint hazards in pre-1978 housing.

- Under a settlement in *United States v. Home Depot, U.S.A., Inc.* (N.D. Ga.), the company agreed to pay a \$20.75 million penalty for violations in connection with renovations across the country and implement a comprehensive, corporate-wide program to ensure that the contractors it hires are certified and trained to use lead-safe work practices.

## Cleaning Up Contaminated Sites for Reuse

Under CERCLA, the Division requires responsible parties to clean up hazardous substances and reimburse the government for cleanup costs it has incurred, ensuring that polluters, not taxpayers, pay for contamination and that abandoned sites can be put to productive use.

- Montrose Chemical Corp. of California and other responsible companies will pay \$77.6 million to clean up a plume of contamination in groundwater at the Montrose Superfund site in Los Angeles County, California, reimburse government response costs, and investigate potential contamination in a stormwater pathway leading away from the Superfund site. The settlements resolve active litigation in a case that has been pending for over 30 years, addressing Montrose's historic operation of the United States' largest manufacturing plant for the pesticide DDT. *United States v. Montrose Chemical Corp.* (C.D. Cal.).
- In *Emhart Indus. v. U.S. Dep't of the Air Force*, the First Circuit affirmed the district court's entry of a consent decree between the United States and Emhart Industries and its parent company, Black & Decker. The settlement required Emhart to clean up dioxin

in the Woonasquatucket River in Rhode Island, ensuring the protection of nearby residents and the local fishing community.

## Restoring Natural Resources

On behalf of federal natural resource trustees, such as Interior's Fish and Wildlife Service and the Department of Commerce's National Oceanic and Atmospheric Administration, the Division pursues parties for damages arising from releases of oil or other substances that harm federal resources, wildlife, and their habitat and deprive the public of the use and enjoyment of those resources.

- Citgo Petroleum Corp. agreed by settlement to pay \$19.6 million to resolve claims that a discharge of millions of gallons of waste oil from tanks at its Lake Charles refinery polluted 150 miles of shoreline, including residential and marsh areas, killing birds, fish, and other aquatic life; contaminating shoreline habitat; forcing the closure of the ship channel; and disrupting recreational use. *United States v. Citgo Petroleum Corp.* (W.D. La.).
- The Division pursued an action against E. I. du Pont de Nemours and Co. and The Chemours Company FC, LLC, for a release of hazardous substances at the Beaumont Works Industrial Park Complex. Under a settlement, the defendants purchased and will record a conservation easement on a 500-acre tract of unprotected habitat near the injured area. They will also reimburse the trustees' assessment costs and future costs associated with oversight of the restoration project. *United States v. E. I. du Pont de Nemours and Co.* (E.D. Tex.).

## Protecting the Government When Polluters Seek Bankruptcy

Companies that pollute may seek bankruptcy protection. Our work ensures that, to the maximum extent possible given the limitations of bankruptcy law, the re-organized company does not shed its environmental responsibilities and the public does not foot the bill for the company's conduct.

- In the case of *In re Exide Holdings, Inc.* (Bankr. D. Del.), the Division secured court approval of a contested mediated settlement with liquidating debtors, noteholders, a creditors' committee, ten states, and two sureties. Under the settlement, 17 contaminated sites were placed into two environmental response trusts, rather than abandoned, and the trusts were funded with over \$60 million.
- ENRD successfully obtained language protecting EPA's future rights against reorganized debtors and purchasers of potentially contaminated property in scores of bankruptcy cases.



## Wetlands Enforcement

The Environmental Defense Section brings civil enforcement actions under the Clean Water Act to respond to illegal filling of wetlands and other waters of the United States without a required section 404 permit. These cases often present difficult and fact-intensive questions regarding the nature of the illegal actions taken by the defendants, the presence of ecological indications of wetlands on the subject property, and the connection between those wetlands and adjacent and downstream waterways. Significant civil penalties and injunctive relief not only help to restore the damage from these illegal activities, but also serve to deter future violations.

During FY 2021, the Division completed numerous favorable settlements in a wide variety of Clean Water Act section 404 cases from coast to coast. Examples include:

- The United States concluded a consent decree imposing a \$1.9 million civil penalty as well as corresponding restoration and mitigation requirements in *United States v. Chesapeake Appalachia* (M.D. Pa.), involving violations at 76 separate areas relating to oil and natural gas development in the Marcellus Shale formation in Pennsylvania.
- In *United States v. LaPant* (E.D. Cal.), involving illegal filling of streams and wetlands upstream of the Sacramento River in California, the United States secured a consent decree requiring a \$250,000 civil penalty and approximately \$1 million in mitigation credits.

The Division also concluded important settlements in other cases involving lakes, rivers, streams, wetlands, and other waters nationwide, including in Colorado, Iowa, Maine, Mississippi, Montana, New York, Texas, and Washington.

## Enforcing the Nation's Criminal Pollution, Worker Safety, and Wildlife Laws

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Drums Of Flammable Waste – Exhibit From *United States v. Martin Eldridge*



Galapagos Turtle – Exhibit From *United States v. Joshua Lucas*

## Enforcing the Nation's Criminal Pollution, Worker Safety, and Wildlife Laws

The Division's team of federal prosecutors and specialized litigation support personnel in the Environmental Crimes Section work closely with Assistant United States Attorneys and criminal investigators across federal, state, and local law enforcement to enforce pollution, wildlife, and worker safety laws. This work is diverse and addresses crimes such as renewable fuel fraud, transport of illegal pesticides at international boundaries, illegal asbestos removal, vessel pollution, worker safety violations, wildlife and timber trafficking, and knowing violation of the Nation's pollution laws.

### Prosecuting Those Who Put American Workers' Lives at Risk

Nearly a decade ago, the Department placed primary responsibility for prosecuting worker endangerment crimes with the Division. In FY 2021, ENRD achieved important results in several high-impact cases.

- The Division obtained felony guilty pleas in *United States v. Nebraska Railcar Cleaning Services, LLC* (D. Neb.). This case held a company and its owners accountable for gross safety and environmental violations when cleaning out railway tank cars between uses. Workers under time pressure routinely entered tank cars when toxic and flammable gases were at deadly levels. Tragically, a spark caused an explosion that killed two people. The defendants hid facts and falsified documents during the subsequent investigation. The president of the company was sentenced to serve 30 months in prison, and the vice president to serve a year and a day. The defendants also agreed to pay \$100,000 in restitution and a \$21,000 fine.
- In *United States v. Joon, LLC* (M.D. Ala.), an auto parts worker died when a stuck robotic arm suddenly energized and crushed her. Her on-the-job training had included ways to skirt safety procedures in order to increase production. The guilty plea by the company resulted in the statutory maximum penalty (\$500,000) and \$1,500,000 in restitution for the victim's family.

The Division also brought worker endangerment cases that addressed illegal efforts to hide unsafe conditions from the Occupational Safety and Health Administration. These cases, which support the integrity of inspections and investigations, are key bulwarks in preventing future injuries and deaths. In 2021, these included:

- *United States v. Stephan T. Reisinger* (D.N.D.) addressed lies to federal officials about the contents of tanks that were undergoing welding.

- In *United States v. Loren K. Jacobson* (D. Idaho), another tank welding case, the defendant claimed a badly burned employee was an “observer” to avoid liability.
- In *United States v. Alcir DeSouza* (M.D. Fla.), an employer claimed his employees were subcontractors to avoid liability for not providing fall-protection equipment.

## Stopping Environmental and Wildlife Crime at Our Borders

*Vessel pollution detected during port calls.* Every year, the U.S. Coast Guard and ENRD track down and punish those who wantonly dump at sea and lie in their records to cover up what they have done. Since 1989, the Division has brought criminal cases against nearly 400 defendants (corporate and individual) for vessel pollution crimes. With this year’s fines, the total monetary penalties exceed three-quarters of a billion dollars. Between imprisonment and probation, defendants spent more than 800 years under court-ordered supervision.

- The Division obtained a \$12 million fine against Pacific Carriers Limited for crimes in three districts. In *United States v. Pacific Carriers Ltd.* (E.D.N.C., S.D. Tex., E.D. La.), the PACIFIC BREEZE was caught using its duct keel as a waste storage tank, discharging oily waste through its sewage processing system, and discarding oily rags and plastic directly into the ocean.
- In *United States v. Pacific Int’l Lines (Private), Ltd.* (D. Guam), the Division obtained \$3 million fines for wanton violations, including maintaining false oil record books and discharging oily waste from the KOTA HARUM into Guam’s Apra Harbor.

*Pesticide smuggling at land-based ports of entry.* In coordination with EPA, the Department of Homeland Security, and the U.S. Attorney’s Office for the Southern District of California, ENRD uncovered and charged more than forty acts of pesticide smuggling at California’s border with Mexico. Generally, these cases involved bringing banned pesticides into the United States for use on illegal marijuana crops. Through these cases, training, and inspection procedures, the United States was able to interdict a flow of dangerous, banned pesticides that violated the Federal Insecticide, Fungicide, and Rodenticide Act. For example:

- In *United States v. Felix Rafael Gutierrez-Valencia* (S.D. Cal.), the defendant tried to sneak some twenty containers of illegal pesticides across the border. He was sentenced to ninety days in prison.
- In *United States v. EcoShield* (S.D. Cal.), the Division obtained a guilty plea from a company that imported bogus, unregistered, anti-COVID “badges” that were delivered to customers through U.S. mail and contained sodium chlorite, which can ignite.

*International wildlife trafficking.* The United States is a net importer of illegally trafficked wildlife, but has a number of exporting smugglers, too. The Division addressed both types of crimes this fiscal year.

- Working with law enforcement officers from the U.S. Fish and Wildlife Service, ENRD continued to get results from Operation Bale Out, which punishes smuggling to and from Mexico at the Juarez-El Paso border crossing. In *United States v. Alejandro Carrillo* (W.D. Tex.) and *United States v. Jorge A. Gutierrez* (W.D. Tex.), the Division obtained 20-month and 34-month sentences, respectively, for two defendants involved in a scheme to drive rare birds, turtles, and other reptiles across the border and then ship them domestically within the United States to avoid scrutiny applied to international packages.
- The Division obtained a guilty plea against Hamada Suisan Co., Ltd., for aiding and abetting shark finning, in which shark “bycatch” is killed only for its fin (which has high black market value). When 10 fishing crewmembers tried to leave Hawaii with more than 950 shark fins in their luggage, the Division held them criminally accountable for the attempt to cash in on the fins. *United States v. Hamada Suisan Co., Ltd.* (D. Hawaii). The \$240,000 criminal penalty against the corporate defendant in this case is the largest-ever shark finning penalty.
- *United States v. Aristides Sanchez* (D.P.R.) resulted in a year-long prison sentence for illegal harvest and trade in coral reef polyps. Collecting polyps damages critical coral ecosystems.
- The Division saw a trafficker brought to justice in *United States v. Christopher Casacci* (W.D.N.Y.), in which the court sentenced the defendant to 18 months’ incarceration for importing and trading in wild “big cats” for use as pets.
- Throughout its practice, ENRD seeks to hold those in positions of trust to an appropriately high standard. Thus, the Division prosecuted veterinarians who facilitated parrot smuggling, *United States v. William McGinness* (E.D. La.), and a lead zoo caretaker involved in Galapagos tortoise trafficking, *United States v. Joshua Lucas* (W.D. Okla.).

## **Working with States to Protect Natural Resources from Illegal Harvest**

The Division works with states to take action when wildlife resources are taken in violation of state law. The Lacey Act makes trafficking in these wildlife resources a felony, and it is a powerful tool when state and federal investigators cooperate.

- Paddlefish roe brings high prices as a caviar substitute. ENRD thwarted illegal efforts to obtain and deal in paddlefish roe in *United States v. Joseph Schigur* (S.D. Ohio).

- In the last of the Operation Green Gold prosecutions, the Division ended a scheme to hide illegal ginseng sales in *United States v. Michael K. Turner* (E.D. Tenn.). Like paddlefish, ginseng is a state wildlife resource subject to poaching and overharvesting due to price pressure from international markets.

## Prosecuting Knowing and Willful Polluters

The Division's criminal program was built around pollution crimes: knowing violations of the Clean Air Act, the Resource Conservation and Recovery Act, and the Clean Water Act.

- Two defendants were sent to prison for knowing and willful violations of the Clean Air Act's asbestos-handling requirements. In *United States v. Kristofer Landell* (N.D.N.Y.), high-level managers were held accountable for deceiving 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. Landell was a notable defendant because, while in the role of independent project monitor tasked with ensuring compliance, he helped facilitate the illegal acts. He will spend eight months in prison for that dereliction of duty.
- The Division also issued indictments in asbestos cases in Nevada and Idaho. ENRD brought charges against an apartment building owner, the operators of a marijuana-growing facility, and the owners of historic theater and hotel that burned down under suspicious circumstances.
- In *United States v. Martin Eldridge* (S.D. Ohio), one defendant hired another to drive around the City of Columbus leaving drums of flammable waste—ranging in size from ten to fifty-five gallons—at dumpsters at apartment complexes. Both defendants were charged with felonies. One was sentenced to four months of prison time and the other to 18 months of home detention.
- In *United States v. Summit Midstream Partners, LLC* (D.N.D.), ENRD completed critical work establishing that criminal liability attaches for spills where the most basic efforts to account for lost material in a pipeline are willfully ignored. This matter, brought in parallel with a Division civil matter, resulted in a \$15 million criminal fine, a \$20 million civil penalty, and \$1.25 million in natural resource damage compensation.

# Enforcing the Nation's Animal Cruelty Laws

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Tiger King Cat (The Wild Animal Sanctuary)



Rescued Dog, One Month Following Seizure From Multi-State Dog Fighting Venture  
(*US v Powe, et al.*)

## Enforcing the Nation's Animal Cruelty Laws

Together with the U.S. Attorneys' Offices, ENRD lawyers are working to ensure that full effect is given to the federal statutes and enforcement regimes that provide for the humane treatment of captive, farmed, and companion animals across the United States. The Wildlife and Marine Resources Section brings actions for civil enforcement of the Animal Welfare Act (AWA) and for civil forfeiture under the Animal Fighting Venture Prohibition Act. The Environmental Crimes Section brings criminal prosecutions under these laws against, for example, people who are involved in the illegal blood sport of dog fighting.

This year was a groundbreaking year for the Division's civil enforcement and forfeiture work:

- ENRD filed the first-ever judicial civil enforcement action for the unlicensed exhibition of animals and placement of the health of animals in serious danger in violation of the Animal Welfare Act in *United States v. Jeffrey Lowe* (E.D. Okla.). The defendants were among the subjects made famous in the Netflix Tiger King documentary. ENRD attorneys successfully obtained a temporary restraining order and two preliminary injunction orders against the defendants including orders to relinquish possession of some animals to the U.S. Department of Agriculture. Subsequently, ENRD with the assistance of the Department's Criminal Division obtained a civil seizure order and thereafter coordinated and oversaw more than 50 U.S. marshals, U.S. Fish and Wildlife Service agents, and U.S. Department of Agriculture inspectors and veterinarians in effectuating the safe removal of more than 68 lions and tigers from the defendants' facility. Thereafter, ENRD procured the surrender of the more than 130 remaining animals at the facility and a court order barring the defendants from engaging in AWA-regulated activities.
- ENRD also filed the first-ever judicial civil enforcement action against a puppy mill for placement of dogs in serious danger in violation of the AWA in *United States v. Gingerich* (S.D. Iowa). ENRD attorneys obtained a temporary restraining order that resulted in the removal of 30 dogs by the U.S. Department of Agriculture found to be in acute distress.
- ENRD continued to pursue civil forfeiture claims of dogs seized from criminal dogfighting ventures in violation of the AWA. In FY 2021, either through action of U.S. Attorneys or Division attorneys and staff, more than 50 dogs from suspected dog fighting operations around the country were seized and forfeited, resulting in significant taxpayer savings and more humane treatment for the dogs.

The criminal cases driving such forfeitures also continue to be a Division priority. In FY 2021, the Division pursued criminal charges against organizers and participants in animal fighting ventures cases across the country. At sentencing, the Division advocates for prison sentences that deter anyone from participating in or facilitating such blood sports.



- In *United States v. Kizzy Solomon* (M.D. Ga.), the Division achieved what is believed to be 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. The court sentenced him to 123 months in prison for the animal fighting and the prohibited firearms crimes. All told, the sentences in this case totaled 272 months of incarceration across a dozen defendants.
- The Division worked to stop the generational cycle of violence against animals in *United States v. Odell S. Anderson, Sr.* (E.D. Va.). Anderson was sentenced to 18 months in prison, stemming from his participation in dogfights, and for the separate crime of bringing a minor to a dogfight as a spectator. Other defendants in this multi-jurisdictional case covering the mid-Atlantic have received similar sentences.

With these cases included, ENRD has prosecuted some fifty-three defendants for animal welfare crimes since 2016, leading to more than 1,250 months (or more than 100 years) of total incarceration. The Division's efforts, in cooperation with non-governmental organizations and the U.S. Marshals Service, have led to the rescue of more than 500 dogs from brutal circumstances.

## Promoting Tribal Rights and Resources



Tribal Drum (Alex Berger)

## Promoting Tribal Rights and Resources

The Indian Resources Section dates back to 1974, when the Attorney General created the section and gave it primary “responsibility for trial court litigation of suits in which the United States is asserting rights to water, title to property, hunting and fishing rights and other natural resource interests of Indians and Indian Tribes.” Since then, the Indian Resources Section has litigated to fulfill and uphold the United States’ responsibilities to the Nation’s 574 federally recognized Indian tribes as well as defend the decisions of the Department of the Interior and other federal agencies in the furtherance of tribal interests. The section’s work is as diverse as the tribal interests it defends, encompassing issues of both regional and national importance.

### Affirmative Actions to Protect Tribal Sovereignty and Treaty Resources

The Division brings affirmative actions to protect the almost 60 million acres of lands held in trust for Indian tribes and individual Indians as well as the rights and resources associated with those lands. These cases are central to preserving sustainable tribal homelands, assuring cultural and economic hunting, fishing, and gathering, and defending tribal sovereignty as manifested through governance over resource management and land use. In 2021:

- ENRD litigated to protect treaty fishing rights in the Pacific Northwest and elsewhere. Through *United States v. Washington* (W.D. Wash.) and *United States v. Oregon* (D. Or.), the Division litigated, alongside Tribes, to establish and quantify the tribal share of the fisheries. The Division has participated in annual negotiations to ensure adequate salmon harvests while implementing the requirements of the Endangered Species Act and working to ensure sustainability.
- The Division also litigated in conjunction with the Great Lakes Tribes in Michigan to preserve treaty fishing and hunting rights in the Tribes’ aboriginal territory. Since the first case securing these rights in the 1970s, ENRD has been centrally involved in negotiating consent decrees between the Tribes and the State of Michigan to promote cooperative management of the resources, quantify take, and ensure the sustainability of the fish and game populations.
- Trespass on reservation land is a pervasive problem throughout Indian Country, manifesting through non-Indians living on, developing, and otherwise impinging upon trust land without the permission of the tribe or damaging such lands. Through trespass actions, the Division promotes tribal sovereignty over land and prevents unauthorized use of such lands, while guarding against adverse impacts. In *United States v. Thweatt* (C.D. Cal.), the United States successfully ejected a trespasser from the Colorado River Indian Tribes’ Reservation and acquired a quarter-million dollar judgment against him to compensate the Tribes for the trespass and concurrent illegal operation of a commercial business on the property.

- In *United States v. Howell* (D. Idaho), ENRD negotiated a settlement with trespassing defendants for their illegal use, occupation of, and harm to land and resources held by the United States in trust for the Nez Perce Tribe and a group of Indian allottees. In addition to clarifying the boundaries of Tribal trust land, the settlement required the defendants to remediate all property damage and return the land to the Tribe upon completion.

## **Tribal Water Rights Adjudications and Settlements**

Division attorneys have long been involved in water rights adjudications throughout the arid West, asserting federal reserved water rights held by the United States for the benefit of tribes to ensure that reservations provide viable permanent homelands. The claims generally require expert testimony and can involve unique questions involving riparian flow, lake levels, and water quality necessary for fish habitat; the projected reservation population and water use more than a century in the future; and the economic viability and water use of projected on-reservation commercial ventures.

- In *United States v. Walker River Irrig. Dist.* (D. Nev.), the Division worked with the Walker River Paiute Tribe to quantify its rights to groundwater and storage water that were not initially quantified in the 1935 decree governing Walker River surface water rights. In 2021, the trial team successfully argued that the decree may be reopened to quantify such rights with senior priority over other users under a first-of-its-kind reading of the Supreme Court's precedential water rights case *Arizona v. California*.
- In *Hawkins v. Haaland* (D.C. Cir.), farmers in the Upper Klamath Basin in Oregon challenged an agreement between Interior and the Klamath Tribes under which the Tribes could exercise instream water rights to support tribal fisheries. The Court of Appeals agreed with Interior (represented by ENRD's Appellate Section) that the plaintiffs lacked standing to challenge the agreement because the Tribes would be free to seek priority enforcement of their instream rights without the agreement.

Division attorneys also routinely negotiate tribal water rights settlements and assist in the development of legislation that codifies the federal reserved water rights of Indian tribes. These settlements resolve longstanding water conflicts among parties that are often bitter adversaries, provide much needed certainty to the tribes and their neighbors, and secure water, infrastructure, and economic development that allow these tribes to maintain a viable homeland.

- ENRD attorneys helped finalize legislation ratifying the Confederated Salish and Kootenai Tribes (CSKT) settlement; the Secretary of the Interior signed the settlement in September 2021. The settlement resolved water rights claims that had been in litigation in the federal and state courts for over three decades. The settlement recognizes substantial water rights for the CSKT on the Flathead Reservation for domestic,

commercial, and municipal water uses; for crop irrigation; and for habitat for fish, wildlife and plants. Constituting the largest settlement of its kind, the Act includes \$1.9 billion for remediation of environmental problems, renovation of the irrigation project to make it more safe, efficient, and compatible with fish propagation, rejuvenation of tribal lands, and drinking water and wastewater systems. Centrally, the settlement provides the Tribes with extensive control over the projects and their implementation.

## **Defensive Actions to Support Pro-Tribal Agency Decisionmaking**

The Indian Resources Section also carries an extensive docket of defensive cases, primarily under the Administrative Procedure Act, in defense of Interior decisions that promote tribal interests. The Division also defends against challenges to the constitutionality of statutes relating to tribes and tribal resources. In recent years, ENRD has undertaken extensive litigation defending the constitutionality of the Indian Child Welfare Act, the Indian Gaming Regulatory Act (IGRA), provisions of the Indian Reorganization Act, and various tribal water rights settlement acts.

- The Division frequently litigates in defense of Interior's decisions to take land into trust for tribes to expand reservation land bases for housing, economic development, and environmental stewardship. In *Kansas v. Bernhardt* (D. Kan.), ENRD successfully defended Interior's decision that a settlement statute enacted for the benefit of the Wyandotte Nation mandated that Interior acquire certain land in trust for the Tribe.
- The Division also defends Interior's decisions to allow gaming operations on trust lands under IGRA, providing tribes with important financial resources that support tribal government programs, economic development, and reservation employment. In *Cal-Pac Rancho Cordova v. U.S. Dep't of Interior* (E.D. Cal.), ENRD successfully defended the issuance of Secretarial Procedures to the Estom Yumeka Maidu Tribe of the Enterprise Rancheria to allow it to engage in gaming on lands the Secretary acquired in trust for its benefit. The decision confirmed the Tribe's jurisdictional authority over its trust lands, and rejected the argument that the trust acquisition violated the Tenth Amendment.
- In *United States v. Public Utility Dist. No. 1 of Klickitat County* (E.D. Wash), a suit to recover damages to trust resources from a fire sparked by a utility line on the Yakama Indian Reservation, the United States defeated counterclaims by the utility seeking an injunction against Interior administrative proceedings under the National Indian Forest Management Act.

# Defending Pollution-Control Measures



Refinery, EPA

## Defending Pollution-Control Measures

The Environmental Defense Section defends petitions for review of certain EPA actions brought in the courts of appeals pursuant to statutory judicial review provisions of the environmental statutes, as well as claims for judicial review of a wide variety of other federal agency actions. The substance ranges from complex, multi-party challenges to major national EPA rules (such as Clean Air Act rules regulating greenhouse gas emissions and rules defining the scope of “waters of the United States” subject to federal regulation under the Clean Water Act) to more site-specific wetlands permit decisions made by the U.S. Army Corps of Engineers.

The Division secured numerous favorable courts of appeals decisions during FY 2021 upholding a wide range of significant pollution-control regulatory decisions. These include, for example, decisions that:

- Upheld a Toxic Substances Control Act ban on consumer uses of methylene chloride, a dangerous chemical used for paint-stripping (*Labor Council for Latin American Advancement v. EPA* (2d Cir.)).
- Upheld Clean Air Act emission standards for wood heaters (*Hearth, Patio & Barbecue Ass’n v. EPA* (D.C. Cir.)).
- Upheld a Clean Air Act waiver allowing California’s regulation of off-road diesel engines (*Dalton Trucking v. EPA* (9th Cir.)).
- Upheld a complex National Priorities List site listing determination under CERCLA (*Troy Chemical Corp. v. EPA* (D.C. Cir.)).
- Rejected challenges to ozone air quality designations for the San Antonio, Texas, area (*Texas v. EPA* (5th Cir.)) as well as to 2008 ozone air quality standard determinations for the Phoenix, Arizona, and Imperial County, California, areas (*Bahr v. EPA* (9th Cir.), and *Center for Biological Diversity v. EPA* (9th Cir.), respectively).
- Upheld an EPA rule establishing recordkeeping requirements for certain Clean Air Act new source review determinations (*New Jersey v. EPA* (D.C. Cir.)).
- Upheld substantial portions of EPA’s 2018 implementation rule for the national Clean Air Act ozone standards (*Sierra Club v. EPA* (D.C. Cir.)).

In federal district court, ENRD handled another diverse array of challenges to important EPA regulatory actions. For instance, the Division handled dozens of complex and controversial nationwide district court cases involving challenges to EPA and the U.S. Army Corps of Engineers’ Clean Water Act regulations defining “waters of the United States,” including filing motions to facilitate reconsideration of these rules following the Presidential transition. The

Division also secured similar relief to allow for agency reconsideration in a number of pending cases challenging EPA's rule governing state water quality certifications under section 401 of the Clean Water Act. The Division obtained favorable judicial decisions in cases involving a variety of agency pollution-control actions. For example:

- A court upheld EPA's Clean Water Act actions regarding listing of impaired waters in Alabama (*Black Warrior Riverkeeper v. EPA* (N.D. Ala.)).
- The court issued a favorable decision on remedy to assure adequate time for EPA to revise its National Contingency Plan regulations (*Earth Island Institute v. EPA* (N.D. Cal.)).
- The Division successfully defended the government's environmental analysis for the Obama Presidential Library (*Protect Our Parks v. The Obama Foundation* (N.D. Ill.)).

The Division also handles "deadline suit" litigation involving the schedule for allegedly overdue agency actions. During this fiscal year, examples include:

- Favorable Clean Air Act settlements assuring completion of overdue agency decisions regarding nonattainment of the 2010 sulfur dioxide ambient air quality standards in multiple states (*Center for Biological Diversity v. EPA* (N.D. Cal.)) and other nonattainment deadlines in California and Colorado (*Center for Biological Diversity v. Wheeler* (N.D. Cal.)).
- A favorable settlement assuring completion of specified actions relating to state Clean Air Act plans to control emissions of volatile organic compounds from certain oil and gas facilities (*Center for Biological Diversity v. Regan* (N.D. Cal.)).
- A favorable Clean Air Act settlement assuring timely action on interstate air pollution plans in 31 states (*Downwinders at Risk v. Regan* (N.D. Cal.)).

In other cases, the Division has been able to secure favorable settlements that address alleged substantive deficiencies in agency activities. Examples include:

- A favorable settlement in a major case assuring appropriate reporting, under the Toxic Substances Control Act, for asbestos-containing products (*Asbestos Disease Awareness Organization v. Regan; California v. EPA* (N.D. Cal.)).
- An interim agreement allowing the United States International Boundary and Water Commission to better address cross-border flows of polluted water from Tijuana, Mexico, into southwestern San Diego County, California (*People of the State of California; Surfrider Foundation; City of Imperial Beach v. IBWC* (S.D. Cal.)).



# Supporting Infrastructure Development and Strengthening National Security

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Wind Farm



Marines Facility in Twentynine Palms, California (Ben McMurtray)

## Supporting Infrastructure Development and Strengthening National Security

ENRD strengthens America's national security in numerous important ways.

### Representation of the Department of Energy, the National Nuclear Security Administration, and Department of Defense

These cases are primarily handled by the Natural Resources Section and the Land Acquisition Section, by defending the critical programs administered by these agencies, protecting water rights necessary for national security purposes, and allowing development and maintenance of the agencies' infrastructure. For example:

- In *Oak Ridge Env'tl. Peace Alliance v. Perry* (E.D. Tenn.), the Division prevailed against challenges to the National Environmental Policy Act (NEPA) analysis for a \$6.5 billion project for a new uranium processing facility and upgrades to existing buildings at the National Nuclear Security Administration's Y-12 Complex in Oak Ridge, Tennessee. This success allowed those construction improvements, which are critical to the Nation's nuclear arsenal, to proceed.

### Challenges to Alternative Energy Projects

The Division has also defeated challenges to alternative energy projects, thus strengthening our Nation's energy security.

- In *Backcountry Against Dumps v. Bureau of Indian Affairs* (S.D. Cal.), ENRD attorneys obtained dismissal of a challenge to the U.S. Bureau of Indian Affairs' approval of a lease for construction and operation of the Terra-Gen Wind Energy Facility on Campo Band of Diegueno Mission trust lands in southern California.
- In *Mattwaoshshe v. United States* (D.D.C.), ENRD attorneys obtained dismissal of a challenge to Federal Aviation Administration, Federal Energy Regulatory Commission, and U.S. Army Corps of Engineers approvals related to the construction of the Soldier Creek Wind Energy Project in Nehama County, Kansas.

### Addressing Border Security

ENRD also works closely with the Departments of Defense and Homeland Security to address environmental aspects of border security.

- In *Center for Biological Diversity v. U.S. Forest Serv.* (D. Idaho), the Division successfully defended a joint project by the Forest Service and Department of Homeland Security to

improve border security by reopening a patrol road along the northern border of the United States, while closing other roads in the area to avoid impacts to Grizzly Bear habitat.

- In 2021, the Division successfully navigated the transition between the differing priorities of the Trump and Biden Administrations at the border with Mexico, including by dismissing or closing 21 eminent-domain cases and returning land that was acquired in almost 40 cases. ENRD also worked closely with the client agency to ensure landowners' concerns about aspects of the projects were addressed—from roads to gates to irrigation.

## **Assisting the U.S. Armed Forces**

ENRD's national security work extends to the U.S. Armed Forces and included the following acquisitions in 2021:

- In *United States v. 188.7 Acres of Land* (C.D. Cal.), ENRD acquired a large iron-ore mineral deposit, to allow the Marine Corps to expand its Air Ground Combat Center located in Twentynine Palms, California, and conduct critical large-scale military exercises. The landowners demanded \$20 million in compensation premised on the speculative use of the property as an iron ore mine. After extensive discovery and the development of well-supported expert reports, ENRD attained a fair settlement of less than \$500,000.
- The Division obtained a favorable jury verdict on behalf of the Air Force to acquire buffer lands and to build a new entrance at Shaw Air Force Base in *United States v. 8.59 Acres of Land* (D.S.C.). Although the landowner sought as much as \$5,000,000, the jury determined just compensation to be \$480,000.

## **Acquisition of Land for Federal Infrastructure Projects**

The Division also acquired land for federal infrastructure projects:

- As part of a dam safety project at Lake Isabella in Kern County, California, ENRD appropriated Southern California Edison's water intake easement, which fed a mothballed hydroelectric plant. The power company claimed damages approaching \$100 million, in both the condemnation action and a breach-of-contract suit filed in the Court of Federal Claims. After extensive litigation, ENRD achieved a global settlement with a savings of tens of millions of dollars in *United States v. 10.7 Acres of Land* (E.D. Cal.).
- In *United States v. 80,794 Square Feet of Land* (M.D. Pa.), after a week-long virtual bench trial for an acquisition to build a new federal courthouse for the Middle District of

Pennsylvania, the court rejected the landowners' claims in excess of \$4 million and entered judgment at \$1.33 million. The courthouse development is heralded as a revitalization springboard for downtown Harrisburg, Pennsylvania.

# Defending Stewardship of Wildlife and Management of Public Lands

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Clark Canyon Reservoir, Montana Water Adjudication (Jen Najjar)

## Defending Stewardship of Wildlife and Management of Public Lands

The Division handles litigation to protect stewardship of wildlife and marine resources and the United States' interests in managing public lands and implementing federal programs consistent with our client agencies' statutory mandates. This litigation is handled by the Division's Wildlife and Marine Resources Section and the Natural Resources Section.

### Promoting Responsible Stewardship of America's Wildlife and Marine Resources

ENRD represents federal agencies charged with implementing the federal laws governing the protection and stewardship of the Nation's wildlife and marine resources. For example, under the Endangered Species Act (ESA), Congress authorized the Departments of the Interior and Commerce, acting through the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) respectively, to list imperiled species as either endangered or threatened, designating critical habitat for such species, and then applying the protections of the ESA. The Magnuson Stevens Fishery Conservation and Management Act (MSA) charges NMFS with the task of managing ocean commercial fishing to provide for sustainable fishing while, at the same time, optimizing fishing yield. ENRD attorneys achieved favorable results in several cases challenging actions under these statutes.

- Under the Endangered Species Act, FWS is required to designate specific areas within the geographical area occupied by species listed as endangered if FWS finds such areas contain features that are essential to the conservation of the species. In *Northern New Mexico Stockman's Assoc. v. U.S. Fish & Wildlife Service* (D.N.M.), two groups of cattle ranchers challenged FWS' designation of critical habitat for the endangered New Mexico meadow jumping mouse in northern New Mexico. ENRD attorneys turned back the challenge, with the court affirming the designation in full.
- In *Friends of Animals v. FWS* (D. Or), ENRD successfully defended the FWS' issuance of Enhancement of Survival take permits and attendant Safe Harbor Agreements ("SHAs") with four private landowners in southern Oregon. The SHAs and take permits allow FWS to continue implementing its Barred Owl Removal Experiment, which is designed to assist the recovery of the ESA-listed Northern Spotted owl.
- In *Loper Bright Enterprises v. Ross* (D.D.C.) and *Relentless v. DOC* (D.R.I.), fishing interests challenged a NMFS regulation requiring herring fisherman along the Atlantic seaboard to carry at-sea monitors on their vessels, and for fishing vessels to pay the costs of observer coverage. These requirements were deemed necessary to ensure effective enforcement and conservation of the fishery. In both cases the courts upheld the regulation in its entirety.

## Protecting Federal Water Rights and the Operation of Reclamation and Flood Control Projects

ENRD represents the United States in numerous water rights adjudications across the West. One example is the *Montana General Water Rights Adjudication*, a statewide general stream adjudication of all 90 basins in Montana. This adjudication includes both the adjudication of water rights owned by the United States and litigation of objections filed by the United States against competing private water right claims that have the potential to adversely impact federally owned water rights and interests. At any given time, the Division is handling between 100 and 150 cases within this adjudication on behalf of the Bureau of Land Management, Fish and Wildlife Service, National Park Service, Bureau of Reclamation (Reclamation), and Forest Service. Examples of favorable rulings and resolutions include:

- The Division secured a favorable ruling that Reclamation's water right for its East Bench Project included all irrigated lands developed under the project and was not limited to the initial estimates of potential irrigation in the project planning documents. This ruling was obtained at trial and affirmed on appeal by the Montana Supreme Court.
- ENRD resolved all pending objections to the water rights for Reclamation's Milk River Project through negotiated stipulations with Native American Indian Tribes, private ranchers, and the irrigation districts, a process that took more than seven years to complete.
- The Division negotiated a favorable resolution involving water rights of Reclamation and four irrigation districts covering 120,000 acres in the Yellowstone River Powder River basin, and favorably resolved objections to Reclamation's claims for storage rights in Tiber Reservoir, on the Marias River, through negotiations with the Blackfoot Tribe and a large irrigation district.

The Division also handles Arizona's *Gila River Adjudication*, a state court general stream adjudication commenced in the 1970s for the Gila River basin in southeastern Arizona. In that complex and contentious adjudication, 66,000 water right claims have been filed by approximately 24,000 parties. In a contested case designated as an issue of broad legal importance, *In re Town of Huachuca City*, the special master adopted ENRD's arguments that a well permit from the State Department of Water Resources is required in order to appropriate water for a well pumping near a stream, and that the court may not weigh the equities in denying a water right where the pumper had not secured a permit.

In addition to this water rights litigation, ENRD secured favorable rulings in defending lawsuits filed against Reclamation, which operates large-scale irrigation projects throughout the western and mid-western United States. Some examples include the following successful outcomes:

- In *State of Missouri v. Reclamation* (W.D. Mo.), the Division successfully defended against Missouri’s NEPA challenges to Reclamation’s issuance of a water supply contract and approval of a portion of a pipeline owned and operated by a North Dakota water conservancy district that will transfer water from the Missouri River basin to central North Dakota.
- The Division obtained a victory in *Center for Biological Diversity v. U.S. Dep’t of the Interior* (D. Utah), which involved a NEPA challenge asserting that Reclamation failed to address alleged significant impacts of a contract with the State of Utah concerning in-stream flows of the Green and Colorado Rivers for the benefit of endangered fish.

The Division also successfully defended the U.S. Army Corps of Engineers in its operation of projects throughout the United States for flood control and other purposes. For instance, ENRD secured a favorable ruling in *Public Power Council v. U.S. Army Corps of Eng’rs* (D. Or.), which involved a challenge under NEPA by a consortium of consumer-owned utilities to the Corps’ implementation of a measure addressing operations of Detroit Dam in Oregon, which is part of the greater Willamette Valley Project.

## **Management of Public Lands by the Forest Service and BLM**

Federal land management agencies, including the Forest Service and the Bureau of Land Management (BLM), manage public lands under statutory mandates to enable often competing multiple uses, including timber harvest, wildlife protection, recreation, and grazing. This mandate has become increasingly challenging as climate change alters ecosystems across the West. ENRD plays a key role in defending efforts by these agencies to carry out their statutory mandates to manage federal lands. In 2021:

- In *Cascade Forest Conservancy v. U.S. Forest Serv.* (W.D. Wash.), the Division successfully defended a Forest Service project to repair a drainage tunnel in the Mount Saint Helens National Volcanic Monument to avoid the breach of a natural dam created by the explosion of the volcano and the flooding of downstream communities.
- In *WildEarth Guardians v. Weber* (D. Mont.) and *Swan View Coalition v. Bernhardt* (D. Mont.), ENRD successfully defended NEPA challenges to the Flathead National Forest’s revision of its Forest Plan, which will guide activities on the forest for the next decade.
- In *Klamath-Siskiyou Wildlands v. U.S. Bureau of Land Mgmt.* (D. Or.), the Division successfully defended a project in Oregon designed to meet BLM’s statutory obligations to harvest timber, while protecting the federally listed Northern Spotted Owl.
- In *Conservation Congress v. U.S. Forest Serv.* (E.D. Cal.), ENRD attorneys turned back a challenge under the ESA and NEPA to a forest restoration project on the Shasta-Trinity



National Forest that will thin trees in a late-successional reserve and designated critical habitat for the Northern Spotted Owl.

- In *Unite the Parks v. U.S. Forest Serv.* (E.D. Cal.), the Division successfully defeated ESA and NEPA challenges to 45 Forest Service projects across four national forests in California in the range of the endangered Southern Sierra Fisher.

## **Management of National Parks**

ENRD plays a key role in assisting the National Park Service in protecting the Nation's most iconic public lands.

- In *San Francisco Herring Ass'n v. Interior* (N.D. Cal.), a trade association representing commercial herring fishermen and buyers challenged the National Park Service's regulation prohibiting commercial herring fishing within the boundaries of the Golden Gate National Recreation Area. The district court granted the United States' motion for summary judgment and affirmed the National Park Service's authority to regulate commercial fishing within the waters of the recreation area.

## **Protecting the United States' Interests in Federal Land**

The Division defends the United States from efforts to claim title in federal lands. In these cases, plaintiffs dispute the United States' ownership and ask the court to rule that they own the property in question.

- In *Thiessen v. United States* (D.N.M.), the plaintiff rancher asserted ownership of 48,000 acres of the Gila National Forest in New Mexico after his federal grazing permit was cancelled for trapping and killing a federally protected Mexican Gray Wolf and making misrepresentations in his permit application. The Division successfully obtained dismissal of the case, affirming the federal interests in the land.
- In *McCluskey v. United States* (D. Colo.), ENRD successfully defeated the plaintiffs' attempt to quiet title to land located in the White River National Forest in Colorado on which the plaintiffs sought to establish a private road to their vacation residence.
- In *Grames v. Sarasota County* (M.D. Fla.), the Division successfully defeated the plaintiffs' attempt to quiet title to property interests along the Legacy Trail, a rails-to-trails corridor in Sarasota, Florida.

## **Regulatory Authority over Indian Lands**

The Division also defends federal agencies against attempts to interfere with regulatory authority that Congress gave them.

- In *Oklahoma v. U.S. Dep't of the Interior* (W.D. Okla.), the State of Oklahoma challenged Interior's determination that it was required to assume regulatory control over coal mining operations within the historic reservations of the Muscogee (Creek) Nation, Choctaw Nation, and the Cherokee Nation of Oklahoma. Interior concluded that all three reservations are "Indian lands" not subject to state regulation under the Surface Mining Control and Reclamation Act, following the Supreme Court's holding in *McGirt v. Oklahoma* that the Muscogee (Creek) Nation's reservation had never been disestablished. ENRD successfully defended against a preliminary injunction motion that sought to compel Interior to continue funding two state agencies previously charged with regulating coal mining and reclamation on the reservations. In addition, through its own preliminary injunction motion, ENRD secured commitments from the State to cease issuing permits, approving bond releases, or otherwise interfering with Interior's statutorily authorized regulation of surface coal mining operations within the reservations.

# Preserving the Federal Fisc



Rampart Lakes

## Preserving the Federal Fisc

### Fifth Amendment Takings Cases

The Natural Resources Section defends a wide variety of constitutional claims brought under the Just Compensation Clause of the Fifth Amendment. That clause requires the payment of “just compensation” when private property is taken for a public purpose. Claims for inverse condemnation under the Fifth Amendment—commonly called “takings” claims—can be brought against almost any federal agency and are based on either regulatory action or a claimed physical intrusion by the government. The amount at issue in takings cases often reaches into billions of dollars.

Takings claims are among the most complex actions litigated by ENRD. Division attorneys have long been proficient at defending these cases, making use of electronic discovery tools, developing highly technical and scientific evidence, and presenting the government’s cases at trial. Moreover, as a result of the social distancing protocols associated with the COVID-19 pandemic, the Division has been on the cutting edge of efforts to pivot to virtual discovery and trial presentations. ENRD has had notable successes in traditional takings litigation in rails-to-trails, flooding, and other realms.

- *Jackson-Greenly Farm, Inc. v. United States* (Fed. Cir.) was brought by a group of 62 claimants who attributed flooding at their properties along the Mississippi River to “river training structures” that facilitate navigation. The plaintiffs sought over \$1 billion. ENRD attorneys obtained a dismissal on statute of limitations grounds.
- *Ministerio Roca Solida v. United States* (Fed. Cl.) concerned periodic flooding of a church camp in a federal wildlife refuge. Using meteorology and hydrologic modeling during a week-long trial, ENRD attorneys established that the property’s flooding resulted from severe storms and the property’s location in a flood plain, not from an action by the United States.

### Tribal Trust Cases

The Division continues to represent the United States’ interests in litigation involving tribal claims for money damages associated with alleged breaches of trust or treaty responsibilities, helping to preserve the federal fisc against unwarranted monetary claims. For example, in *Cheyenne & Arapaho Tribes v. United States* (Fed. Cl.), the Tribes had sought \$1 billion in damages from the United States for an alleged treaty violation caused by the distribution and sale of opioids. The court dismissed the case, agreeing with our arguments that the treaty provision in question created a right for individual tribal members, not the Tribes, and that the provision only covered criminal activity that occurred on tribal lands.

# Training, Diversity, and Operations



Environmental Crime Victim Assistance Program Leadership (Laurie Dubriel)



Virtual Trial, Environmental Enforcement Section (Mark Fuller)

## Training, Diversity, and Operations

ENRD has a robust program of professional development and mentoring, and prioritizes diversity, equity, inclusion, and accessibility in its operations. As ENRD's workforce transitions from working remotely during the COVID-19 pandemic, to working in a hybrid work environment—remotely and in our common office spaces—ENRD is rising to the challenges and opportunities presented through outstanding training and programming that meets the needs of our important mission.

**Professional Development—It's More than Just Job Skills.** The Division knows it is critical to invest in the professional development of its lawyers and professional staff. In 2021, ENRD continued to build a comprehensive approach to our professional development programming, adapted for virtual learning necessitated by the pandemic.

ENRD is fortunate to have several outstanding in-house and other resources to develop and deliver training and programming going far beyond basic job skills. The Department's National Advocacy Center is a world-class residential and virtual training center that offers multi-day seminars on Civil and Criminal Trial Advocacy, Evidence, and much more. A number of ENRD attorneys attended these virtual trainings in FY 2021. Trainings are also offered by ENRD's Office of Professional Development & Diversity and ENRD's Senior Litigation Counsel for E-Discovery, and through collaborations with other litigating components in the Department.

Of course, ENRD focuses first on job skills. For our newest attorneys entering the Division through the Attorney General's Honors Attorney Program, in 2021 (as in previous years), ENRD delivered a two-week training program featuring two dozen orientation lectures and interactive sessions to give our Honors Attorneys and some new lateral attorneys a solid foundation. Highlights included courses on working with client agencies, principles of discovery, handling expert witnesses, how to effectively delegate certain work to professional staff, negotiations, a legal writing course with renowned instructor Ross Guberman, and two practicums on oral advocacy and taking and defending depositions. For more experienced attorneys, the Division offered an advanced legal writing course, legal writing editing for attorney managers, and monthly courses on discovery strategies and meeting discovery obligations.

The Division also understands that exceptional lawyering requires developing "soft skills"—like managing work flow, solving problems, and collaborating with colleagues—to complement job skills. All attorneys and professional staff have free, on-demand access to soft skills training courses, as well as job skills and ethics courses, through the Department's learning management system, LearnDOJ. In 2021, all ENRD managers received manager training as well.

**Diversity, Equity, Inclusion, and Accessibility.** Another important prong in ENRD's approach to professional development is our programming dedicated to diversity, equity, inclusion, and accessibility, or DEIA. In 2021, ENRD featured two interactive sessions with an expert from the Department's Employee Assistance Program at the FBI who shared research on the

neurobiological effects of experiencing racist incidents, and racism generally, and we discussed these impacts on individuals, communities, and our workplace.

Along with agencies across the federal government, ENRD also celebrated Black History Month, Women's History Month, Asian/Pacific American Heritage Month, PRIDE Month, Hispanic Heritage Month, and Native American Heritage Month—each with a multi-page flyer that profiled prominent individuals, and identified topical and educational podcasts, books, documentaries, events, and other resources. We also streamed a Juneteenth documentary and a documentary on the Stonewall Uprising.

In 2021, nine ENRD employees were selected to participate in the Department's popular Diversity and Inclusion Dialogue Program; three employees served as facilitators for the program. This six-month program allows small groups of employees to come together to discuss commonalities and differences based on the many dimensions of diversity that are represented in the Department's workforce.

**Mentoring.** The Department and ENRD are committed to ensuring that all employees build a network of peers and others who can serve as formal and informal mentors and advisors throughout an employee's career. With the support of the Department's Office of Attorney Recruitment and Management, ENRD pairs new attorneys who have fewer than five years of experience with a more seasoned ENRD attorney to serve as a formal mentor. And in 2021, three ENRD employees were accepted to be mentees in the Department's coveted Mentor Program, in which each mentee is paired with a mentor from a different Department component for a six-month, structured program. One ENRD attorney also was chosen to serve as a mentor in this program.

**Wellness.** Like state bar associations across the country, ENRD recognizes that lawyer well-being is part of a lawyer's ethical duty of competence. Wellness, mindfulness, and meditation programs can support efforts to balance work and life obligations, manage stress, and foster overall better mental health for employees. For many years, ENRD has offered Mindful Wednesdays, a half-hour optional break each Wednesday for employees to enjoy a guided meditation. The Division continued to do this virtually each week throughout 2021. In May, ENRD's Well-Being Week in Law offered employees one hour each day to learn about mindfulness techniques, the benefits of mindfulness, and a short guided meditation session to focus inward and rejuvenate. ENRD also raised awareness about the free monthly programs that the Department's Employee Assistance Program offered.

ENRD's programming for 2022 is already breaking new ground. The Division will be hosting a virtual three-day conference at the National Advocacy Center for attorneys across the Department, and for our federal agency, state, and tribal government partners, on the intersection of Environmental Justice and Climate Change and Adaptation, and how ENRD can continue to lead and innovate on these issues through our casework.

# Career Opportunities



ENRD Earth Day Volunteer Event (Jessica White)



## Career Opportunities

The Environment and Natural Resources Division of the U.S. Department of Justice handles environmental and natural resources litigation on behalf of the United States. Working for ENRD has enormous benefits, including:

- **Impact** - Make a difference! The Division is the largest environmental law firm in the country, and we work on issues of nationwide importance every day. Our attorneys have cases in all 50 States and U.S. Territories.
- **Challenging Experiences from Day One** - New attorneys are given responsibility for their own cases, and many will have an opportunity to make court appearances within a few months of their arrival.
- **Growth** - Learn something new. ENRD offers professional development opportunities for attorneys, paralegals, and professional staff, including hands-on learning with excellent training opportunities in advocacy, federal practice, litigation, legal support, information technology, management, and leadership.
- **Great Coworkers** - Our employees come from diverse backgrounds but have a common goal—working in a collegial environment to help promote a healthier and cleaner environment for our Nation and preserve its abundant natural resources.
- **Service to America** - Representing the United States in court is fulfilling and meaningful. The rewards of public service have led to uncommonly high job satisfaction in our Division.
- **Meaningful Benefits** - Federal service offers many outstanding benefits. More information is available here: [https://www.justice.gov/enrd/100th-Files/LIBRARY/Employee\\_Benefits.pdf](https://www.justice.gov/enrd/100th-Files/LIBRARY/Employee_Benefits.pdf).

### Types of Employment

- **Attorney Employment.** The Attorney General's Honors Program is the Nation's premier entry-level federal attorney recruitment program. The application process opens in late July and closes in early September; details are available at <https://www.justice.gov/legal-careers/entry-level-attorneys>. Individual sections within the Division also advertise for lateral attorneys (attorneys of varying experience levels) to join us. Details are available at <https://www.justice.gov/enrd/attorney-employment>.
- **Volunteer Legal and Non-Legal Internships.** The Division hires volunteer law students and undergraduates both in the summer and during the school year for its various

litigating sections. Information and vacancy announcements for the volunteer law clerk program is available at <https://www.justice.gov/enrd/internships>.

- **Pathways for Students and Recent Graduates to Federal Careers.** Through the Pathways Program, the Division offers paid positions for students and recent graduates, including legal assistant and paralegal positions. More information is available here: <https://www.justice.gov/enrd/pathways-students-recent-graduates-federal-careers-0>.
- **Paralegals, Legal Assistants, and Administrative and Technical Staff.** The Division has opportunities for paralegals and legal assistants, as well as for technical and administrative staff. More information is available here: <https://www.justice.gov/enrd/administrative-technical-and-paralegal-employment>.