

U.S. Department of Justice



Environment and Natural Resources Division

ENRD



ENRD

FY 2024
PERFORMANCE BUDGET
CONGRESSIONAL BUDGET JUSTIFICATION

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

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

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

The Administration’s policy implicates the core of ENRD’s mission; and the Division will be chiefly responsible for implementing the policy through litigation, client counseling, and community engagement functions in FY 2024.

To support the Division’s leadership role in fulfilling the ambitious, historic objectives described in EO 13990, ENRD is seeking a \$788,000 budget enhancement to combat Timber and Wildlife Trafficking, and a \$1,583,000 budget enhancement to support Animal Welfare Enforcement.

At the same time ENRD supports new initiatives and reinvigorated efforts outlined in the President’s environmental agenda, the Division is also seeking a more durable budgetary approach to sustaining the Division’s important environmental enforcement efforts, particularly around legacy pollution. Reliable funding of the Division’s core mission will ensure the long-term viability of ENRD, regardless of inevitable fiscal variabilities, political pressures, or other external dynamics. To reduce reliance on the Department’s Three Percent Fund and achieve such long-term fiscal stability, for FY 2024, ENRD is seeking a structural change through a technical adjustment to base (ATB) of \$11,557,000, which will provide direct base funding for critical affirmative civil enforcement (ACE) work that is already being done, but is currently being funded through internal, non-appropriated sources that are unsustainable in the long-term.

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

A. Introduction:

The Environment and Natural Resources Division was established as the “Public Lands Division” in 1909 to handle all cases concerning “enforcement of the Public Land Law” and relating to Indian affairs. As the Nation grew and developed, so did the responsibilities of the Division. Its name changed to the “Environment and Natural Resources Division” to better reflect those responsibilities. Over 100 years after the Division’s founding, ENRD is as mindful as ever of the strong legacy it inherited and the opportunities and challenges that lie ahead. The Division has a main office in Washington, D.C., and field offices across the United States. Its staff is organized into ten

specialized sections, in addition to the Office of Environmental Justice. The Division is responsible for enforcing and defending actions taken under more than 150 federal statutes and represents virtually every federal agency in cases arising in all 50 states and the United States' territories.

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

- Enforcing the Nation's civil and criminal pollution-control laws;
- Securing environmental justice through litigation, client counseling and community engagement;
- Leveraging the Nation's environmental laws to combat the climate crisis;
- Defending environmental challenges to federal agency programs and activities;
- Representing the United States in matters concerning the stewardship of the Nation's natural resources and public lands;
- Acquiring land and real property for federal interests;
- Bringing and defending cases under the wildlife protection and animal welfare statutes; and
- Litigating cases concerning the resources and rights of Indian tribes and their members.

To effectively carry out its important mission in FY 2024, ENRD is requesting a total of \$156,501,000, including 610 positions (423 attorneys), and 560 FTEs (41 reimbursable FTEs).

Building on resources provided in the FY 2023 President's Budget for ENRD, the FY 2024 President's Budget adds an enhancement of \$788,000, including 8 positions (4 Attorneys), and 4 FTEs to combat Timber and Wildlife Trafficking, as well as a budget enhancement of \$1,583,000, including 5 positions (3 Attorneys), and 3 FTEs to support Animal Welfare Enforcement.

B. Issues, Outcomes, and Strategies:

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

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

In **defensive litigation**, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the Nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including defense of agency decisions regarding conversion to clean energy policies, matters related to the leasing and development of fossil fuels on federal land, litigation over

water quality and allocation of scarce water resources, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. The Division is increasingly called upon to defend the Department of Defense's training and operations necessary for military readiness and national defense. It also supports numerous agencies' efforts to implement the Administration's renewed focus on environmental protection, environmental justice and government action to address the causes and impacts of climate change.

ENRD Budgetary Restructuring

Technical Adjustment to Base (ATB) to Reduce Reliance on Three Percent Funding

ENRD is requesting \$11,557,000, including 35 non-add Positions, 35 Attorneys, and 35 FTEs, through an adjustment to base (ATB), to stabilize the manner in which the Division funds affirmative environmental enforcement work. This zero-net-growth request is intended to reduce the Division's reliance on the Three Percent Fund ("the Fund") to pay for permanent staff positions to perform key mission work without undermining ENRD's ability to meet its core functions. Providing a more stable approach to supporting the Nation's important federal environmental enforcement efforts will ensure the viability of ENRD and will allow the Division to effectively carry out its broader fundamental mission.

The statute authorizing the Three Percent Fund allows the Department of Justice (DOJ) to retain "up to 3 percent of all amounts collected pursuant to civil debt collection activities of the Department of Justice." The provision was enacted to provide DOJ with additional resources to enhance affirmative civil debt collection efforts. Fund balances, hence monies available for allocation, vary year to year, based on the nature of annual collections. ENRD annually requests funding from the Department to support affirmative enforcement litigation that results in debt collection activities. Many of the statutes ENRD regularly litigates, including the Clean Air Act (CAA) and Clean Water Act (CWA), entail sizeable civil penalties, but also promote an "even playing field" across industries, establish a deterrent for potential violators of the Nation's environmental laws, and lead to a cleaner and healthier environment for the American people. These penalties return funds to the federal fisc and, through the authorizing statute, help sustain the Fund.

Although Three Percent Funding has been essential in the past to address unanticipated or pressing large-scale enforcement efforts, such as the Deepwater Horizon oil spill or the proliferation of vehicular emissions cheating devices, most funding in recent years has supported the core of ENRD affirmative civil CAA and CWA enforcement matters – matters that are important, complex and high-stakes, yet relatively routine given the nature of ENRD's docket. In the long-term, the funding of such core, mission-centric work is most appropriately accommodated, with base appropriations.

ENRD's affirmative civil enforcement work is an essential component of the Division's mission. But because the Fund's collections vary year to year, reliance on unstable Three Percent funding potentially puts ENRD's environmental enforcement work at risk. ENRD's civil environmental enforcement docket is unique and, given both the Division's expertise and the authorities required to resolve environmental enforcement cases, work cannot be transitioned to U.S. Attorney's Offices. Therefore, ENRD seeks to shift program support from the Three Percent Fund to congressionally-appropriated funding. This will create a more stable, long-term approach for the Division's highly successful environmental enforcement practice. To do so, ENRD requests a technical adjustment to base to reduce its dependency on Three Percent funding to pay for permanent staff positions. This

would be an important step for securing the continued success of the Division's affirmative civil enforcement program, which has achieved remarkable outcomes for the American people, the environment and the federal fisc.

Change in Source of Funding for Superfund Litigation

In the 2022 Infrastructure Investment and Jobs Act and the Inflation Reduction Act, Congress reinstated the excise taxes that had funded the Superfund before expiring in the 1990s. The reinstated excise taxes on certain chemicals and imported products are effective for ten years (through January 1, 2032), and will fund EPA's Superfund program along with a permanent excise tax on crude oil and petroleum products. The Division continues to bring Superfund litigation on behalf of EPA, and will need to pursue continued support from EPA to fund those activities from the new taxes in order to maintain those activities.

C. Current and Anticipated Workload Challenges:

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

The Division will also continue to defend challenges to federal environmental, energy, natural resource, and wildlife protection programs, as well as agency actions and decisions related to such programs. In FY 2024, for example, ENRD anticipates defending federal agency decisions regarding infrastructure development, renewable energy projects and policies to ensure sustainable use and development of federal agency resources, litigation over water quality and allocation of scarce water resources, the management of public lands and natural resources, endangered species and critical habitat, and land acquisition and exchanges. Furthermore, ENRD performs an important bona fide national security function by defending the Department of Defense's training and operations necessary for military readiness and acquires land and property for national defense purposes.

External Challenges

Environmental protection statutes and administrative law principles allow states, non-governmental organizations, and individuals to bring judicial challenges to federal agency action. This includes regulatory and deregulatory actions taken by federal agencies to implement the Administration's priorities and initiatives and to modify or repeal prior Administration rules or programs. When such lawsuits are filed, ENRD's mission is to defend its client agencies. **Defensive cases** make up approximately half of the Division's workload, with court schedules and deadlines driving the pace

of work and attorney time in this type of litigation. These cases are non-discretionary – the federal government must respond to lawsuits filed against it. ENRD’s defensive caseload has increased significantly in recent years and is expected to continue to increase in FY 2024. This defensive work is a specialized litigation docket that cannot effectively or efficiently be referred to the United States Attorneys’ offices.

Below is a summary of some of the current and expected defensive challenges that will impact the Division through FY 2024, which in the aggregate are likely to require significant ENRD resources:

- The Administration’s **climate and energy** agenda will lead to an increase in litigation over policy initiatives and the management of energy infrastructure. ENRD will defend new and updated regulations issued by EPA to reduce emissions of harmful greenhouse gases. This docket of important cases under the pollution control statutes is expected to increase significantly as new regulations are promulgated. Under Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” agencies have been reviewing and analyzing numerous agency actions, such as potential changes in National Monument boundaries and oil and gas leasing in the Alaska National Wildlife Refuge and the Naval Petroleum Reserve-Alaska.
- The Division is currently defending hundreds of cases alleging a taking without just compensation in violation of the Fifth Amendment stemming from the Army Corps of Engineers’ management of two flood-control reservoirs near Houston during and immediately after **Hurricane Harvey**. The cases have been split into “upstream” and “downstream” dockets and the claims of test plaintiffs in the upstream docket are moving forward in the trial court, while the claims of the downstream docket are on appeal. After these upstream test cases are tried, the Division expects claims involving thousands of additional plaintiffs to move forward in FY 2024.
- The Division represents the United States and the Departments of the Interior and Treasury in more than a dozen pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which tribes or Indian plaintiffs demand “full and complete” historical trust accountings and damages for financial injury resulting from the government’s alleged mismanagement of the plaintiffs’ trust funds and non-monetary assets (such as timber, mining or grazing rights). The plaintiffs’ damage claims total billions of dollars in the currently pending cases. Throughout FY 2024, the present cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts, but also extensive non-monetary tribal trust resources between 1946 and the present.
- The Division also handles several types of litigation over **water allocation**, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. ENRD anticipates increasing demands on resources from a growing docket of water rights cases, stemming in part from the significant impacts that climate change has had on the Nation’s water resources. In particular, we expect growth in the litigation over how the government operates projects such as the Klamath Project or California’s Central Valley Project, when scarcity makes it impossible to meet the needs of Tribal water rights, species protection, agriculture, and

municipal water supply. Likewise, we will see an increase in voluminous proceedings known as “general stream adjudications,” in which courts – mostly state courts in the western United States – adjudicate the rights of all the water users in a river basin. The ENRD staff dedicated to general stream adjudications across the entire West is generally smaller than the staff employed by each of the western states alone; and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our personnel resources.

Internal Challenges

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

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

D. Achieving Cost Savings and Efficiencies:

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

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

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

In the area of litigation support, ENRD has been innovative and forward-thinking by deploying and maintaining a highly cost-effective, in-house litigation support computer lab, which provides a wide

range of services, such as scanning, OCR-processing, e-discovery/data processing, email threading, database creation and web hosting. In FY 2022, the Division’s litigation support lab recognized savings of approximately \$5 million, compared to what the services provided would have cost if outsourced to a contractor/vendor.

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

II. Summary of Program Changes

As described in greater detail in Section V of this document, ENRD is requesting an enhancement of \$788,000, including 8 positions (4 Attorneys), and 4 FTEs to combat *Timber and Wildlife Trafficking*, as well as an enhancement of \$1,583,000 including 5 positions (3 Attorneys), and 3 FTEs to support *Animal Welfare Enforcement*.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Timber and Wildlife Trafficking	Expand and further develop the Division’s efforts to address timber and wildlife trafficking	8	4	788	30
Animal Welfare Enforcement	Enhance both criminal and civil enforcement of federal animal welfare laws.	5	3	1,583	35

III. Appropriations Language and Analysis of Appropriations Language

In FY 2024, the Division is not seeking any changes to GLA appropriations language.

The following Department legal activities are financed from this appropriation:

Environment and natural resource matters. The Environment and Natural Resources Division enforces the Nation’s civil and criminal environmental laws and defends environmental challenges to Government action. Additionally, the Division represents the United States in virtually all matters concerning the use and development of the Nation's natural resources and public lands, wildlife protection, Indian rights and claims, worker safety, animal welfare, and the acquisition of Federal property.

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

ENRD recommends no substantive changes to the Appropriation language in the 2024 Budget.

IV. Program Activity Justification

<i>Environment and Natural Resources Division</i>	Direct Pos.	Estimate FTE	Amount
2022 Enacted	541	486	119,938
2023 Enacted	597	518	130,204
Adjustments to Base and Technical Adjustments	[35]	35	23,926
2024 Current Services	597	553	154,130
2024 Program Increases	13	7	2,371
2024 Program Offsets	0	0	0
2024 Request	610	560	156,501
Total Change 2023-2024	13	42	26,297

Positions for Adjustments to Base and Technical Adjustments are bracketed to reflect non-add designation.

<i>ENRD-Information Technology Breakout (of Decision Unit Total)</i>	Direct Pos.	Estimate FTE	Amount
2022 Enacted	18	18	5,499
2023 Enacted	18	18	5,499
Adjustments to Base and Technical Adjustments	0	0	0
2024 Current Services	18	18	5,499
2024 Request	18	18	5,499

A. Environment and Natural Resources Division

1. Program Description

As described above, ENRD works to:

- Enforce the Nation’s civil and criminal pollution-control laws;
- Secure environmental justice through litigation, client counseling and community engagement;
- Leverage the Nation’s environmental laws to combat the climate crisis;
- Defend environmental challenges to federal agency programs and activities;
- Represent the United States in matters concerning the stewardship of the Nation’s natural resources and public lands;
- Acquire land and real property for federal interests;
- Bring and defend cases under the wildlife protection and animal welfare statutes; and
- Litigate cases concerning the resources and rights of Indian tribes and their members.

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

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

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

A substantial portion of the Division’s work includes litigation under a wide array of statutes related to the management of public lands and associated natural and cultural resources. All varieties of public lands are affected by ENRD’s litigation docket, ranging from entire ecosystems, such as the Nation’s largest sub-tropical wetlands and rain forest, to individual rangelands or wildlife refuges, to historic battlefields and monuments. Examples of ENRD’s land and natural resources litigation

include original actions before the U.S. Supreme Court to address interstate boundary and water allocation issues; suits challenging federal agency decisions that affect economic, recreational, and religious uses of the national parks, national forests, and other public lands; challenges brought by individual Native Americans and Indian tribes relating to the United States' trust responsibility; and actions to recover royalties and revenues from development of natural resources, including timber and subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, including USDA's Forest Service and the many components of DOI, such as the National Park Service (NPS), Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). The **Natural Resources Section** is primarily responsible for these cases. The Division's **Wildlife and Marine Resources Section (WMRS)** handles civil cases arising under the federal fish and wildlife conservation laws. This work includes defending agency actions under the Endangered Species Act (ESA), which protects endangered and threatened animal and plant species; the Marine Mammal Protection Act (MMPA), which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), which regulates fishery resources. The Wildlife section also has responsibility for civil enforcement and forfeiture related to federal animal welfare statutes. The **Environmental Crimes Section (ECS)** brings criminal prosecutions under these laws, often through provisions of the Lacey Act, which makes interstate and international trafficking in illegal wildlife a felony. The main federal agencies that ENRD represents in this area are the FWS and NOAA's National Marine Fisheries Service (NMFS).

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

Division cases frequently involve allegations that a federal program or action violates constitutional provisions or environmental statutes. Examples include Fifth Amendment takings claims, in which landowners seek compensation based on the allegation that a government action has taken an interest in real property, and suits alleging that a federal agency has failed to comply with the National Environmental Policy Act (NEPA). Both takings and NEPA cases can affect vital federal programs, such as those governing the Nation's defense capabilities (including military preparedness, weapons programs, nuclear materials management, and military research), renewable energy development, transportation systems and food supply. In other cases, plaintiffs challenge regulations promulgated to implement the Nation's pollution control statutes, such as the CAA and CWA, or activities at federal facilities that are claimed to violate such statutes or other environmental laws. The Division's main clients in these areas include the Department of Defense (DOD), EPA, the Corps, the U.S. Department of Transportation (DOT), and DOI's various components. The **Natural Resources Section** and the **Environmental Defense Section** handle these cases.

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

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

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

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

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

The **Office of Environmental Justice (OEJ)** coordinates the Justice Department's wide-ranging environmental justice programs and initiatives. OEJ serves as the central hub for DOJ's efforts to advance its comprehensive environmental justice enforcement strategy. The Office works alongside a number of other departmental components, including the Civil Rights Division and United States

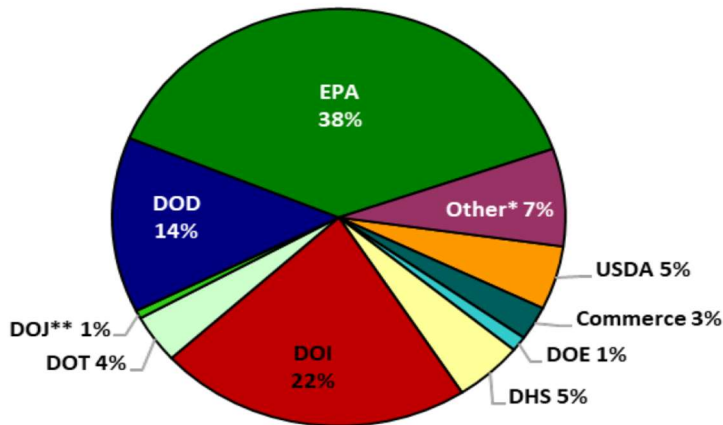
Attorneys' offices, to prioritize meaningful and constructive engagement with the communities most affected by environmental crime and injustice.

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

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

ENRD's Cases/Matters Pending by Client Agency as of September 30, 2022

Total Cases/Matters – 6,627

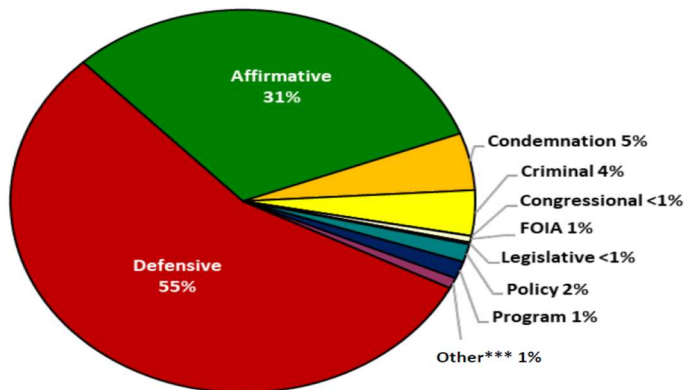


*Other - includes many different Cabinet Departments and agencies with minimal numbers of cases.

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

ENRD's Cases/Matters Pending by Case Type as of September 30, 2022

Total Cases/Matters – 6,627



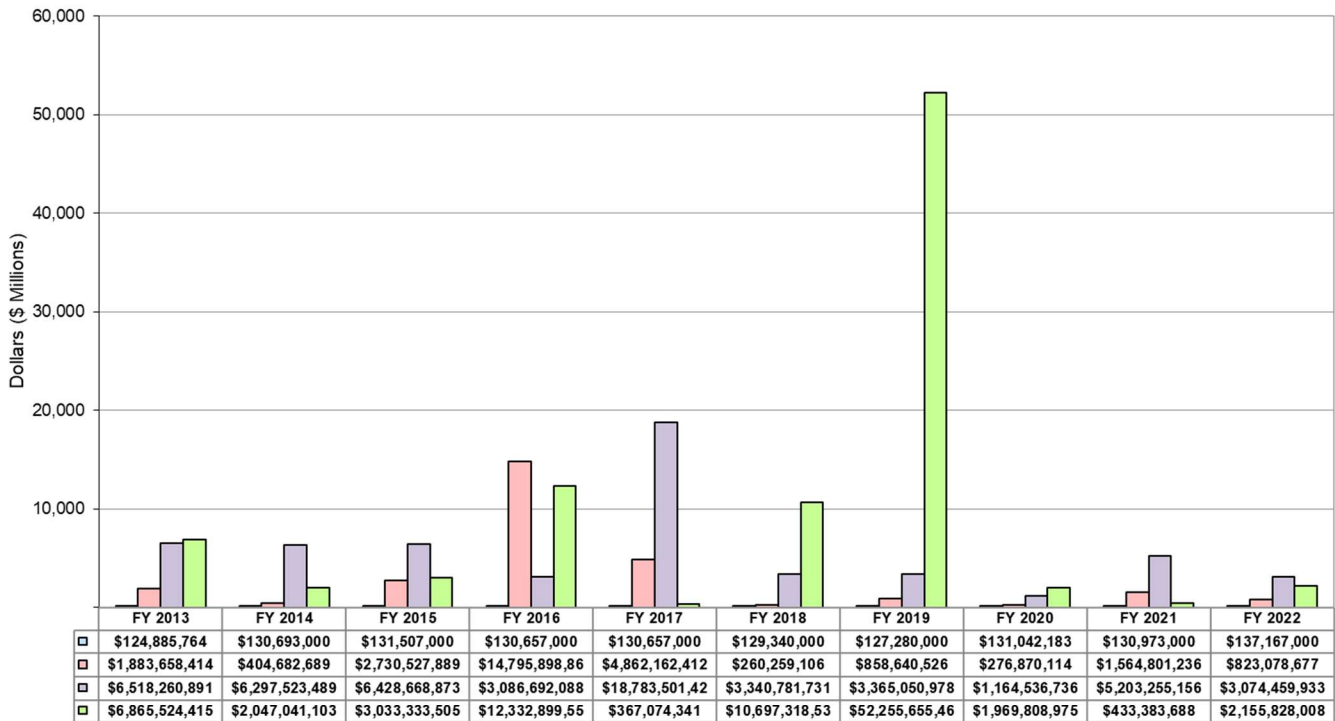
*Affirmative - includes case types of Civil Affirmative, Amicus, and Citizen Suits.

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

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

ACCOMPLISHMENTS

In FY2022, ENRD successfully closed 207 matters and 1,516 cases while maintaining a robust docket of 5,772 cases, matters, and appeals. The Division recorded more than \$823 million in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief (clean-up work and pollution prevention actions by private parties) obtained in FY 2022 exceeded \$3.1 billion. ENRD’s defensive litigation efforts avoided costs (claims) of over \$2.2 billion in FY 2022. In FY 2022, the Division achieved a favorable outcome in 100 percent of its civil affirmative cases, 93 percent of its civil defensive cases, 95 percent of its criminal cases and 100 percent of its condemnation cases. ENRD continues to be a valuable investment of taxpayer dollars as the number of dollars returned to the Treasury exceeds ENRD’s annual appropriation many times over.



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

ENRD Budget
(Includes GLA and Superfund)

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

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

Amount Saved in Defensive and Condemnation Litigation
(Excludes USAO Lead Cases)

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

Civil Cases

- ***City of Jackson Safe Drinking Water Act Crisis***

In November 2022, the United States filed an action under the Safe Drinking Water Act and an interim order in federal court for appointment of a third party to manage and stabilize the City of Jackson, Mississippi's public drinking water system, and build confidence in the system's ability to supply safe drinking water to the system's customers. The order is to serve as an interim measure while the United States, the City, and MSDH attempt to negotiate a judicially enforceable consent decree to achieve long-term sustainability of the system and the City's compliance with the SDWA and other relevant laws.

- ***North Slope Borough of Alaska Solid and Hazardous Waste Handling Violations***

On March 16, 2022, the Department of Justice and the Environmental Protection Agency (EPA) announced a proposed settlement with the North Slope Borough of Alaska to resolve federal hazardous waste and oil spill violations. The settlement requires the Borough to take comprehensive actions and make infrastructure investments to comply with solid and hazardous waste management rules and oil spill prevention rules. The Borough will also hire an independent third-party auditor to ensure that the compliance requirements in the settlement are successfully implemented and pay a civil penalty of \$6.5 million.

A multi-year environmental investigation of the Borough uncovered violations of the Resource Conservation and Recovery Act (RCRA), which regulates solid and hazardous waste, and the Clean Water Act (CWA) at numerous facilities owned and operated by the Borough in Utqiagvik, Anaktuvuk Pass, Atkasuk, Kaktovik, Nuiqsut, Point Hope, Point Lay, Wainwright, Deadhorse and Prudhoe Bay. Many of the violations resulted from the Borough's failure to properly manage and store thousands of drums of oil and hazardous waste in these communities, some of which led to oil spills.

- ***Clean Water Act Non-Compliance Actions***

On February 14, 2022, Cliffs Burns Harbor (Cleveland-Cliffs) agreed to resolve alleged violations of the Clean Water Act (CWA) and other laws, for an August 2019 discharge of ammonia and cyanide-laden wastewater into the East Branch of the Little Calumet River. The discharge, which led to fish kills in the river, also caused beach closures along the Indiana Dunes National Lakeshore.

Cleveland-Cliffs is undertaking substantial measures to improve its wastewater system at its steel manufacturing and finishing facility in Burns Harbor, Indiana.

The complaint filed with the settlement alleges that Cleveland-Cliffs exceeded discharge pollution limits for cyanide and ammonia; failed to properly report those cyanide and ammonia releases under the Emergency Planning and Community Right-to-Know Act (EPCRA), and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); and violated other Clean Water Act and permit terms.

The Division's 2022 actions also included:

Agreements with two towns in Indiana discharging into the Little Calumet River to implement construction projects and capital investments that will eliminate discharges of untreated sewage into the nearby water bodies. Jointly with Indiana, the United States obtained agreement on measures estimated to cost about \$100 million in improvements to the two sewer systems. *United States v. Highland, Indiana* (N.D. IN). *United States v. Griffith, Indiana*, (N.D. IN).

A consent decree with an explosive manufacturing plant in Ohio in which the United States required Austin Powder Company, at its Red Diamond plant, to implement significant upgrades to that facility's wastewater treatment operations at an estimated cost of \$3 million to resolve numerous Clean Water Act violations. It also was required to pay a civil penalty of \$2.3 million. *United States v. Austin Powder Company* (S.D. Ohio)

- ***Clean Air Act Enforcement Actions at Plants in Louisiana and Texas***

The Division brought an action against Packing Corporation of America following an explosion and release of extremely hazardous substances that killed three workers and injured seven others at its production facility in Louisiana. The case resulted in a settlement requiring the company to pay a \$2.5 million civil penalty.

The Division pursued two natural gas processing facilities after a catastrophic fire in 2015 killed an employee at one of their Texas facilities, other serious fires occurred at other of the companies' plants, and an August 2018 leak of toxic hydrogen sulfide resulted in the death of another company employee in Big Lake, Texas. Five of the companies' subsidiaries of West Texas Gas Inc. must undertake measures costing an estimated a \$5 million and pay more than \$3 million in civil penalties to resolve claims stemming from the chemical accidents and violations of the accident prevention program.

- ***Stopping Sales of Auto Emissions Control Defeat Devices Actions***

In 2022, 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. In one case, the Division obtained a default judgment of \$10 million in civil penalties against two companies, a nearly \$1 million civil penalty against the individual owner, and a permanent injunction prohibiting all future sales of the prohibited products. In another action against a Canadian company and its Arkansas distributor, the companies agreed to stop selling devices that bypass or disable vehicle emissions control systems and pay a \$1.6 million penalty.

- ***Suits to Reduce Greenhouse Gas Violations Contributing to Climate Change***

Together with the State of Colorado, ENRD entered into a settlement with DCP Operating Company LP and five other subsidiaries of DCP Midstream LP in *United States v. DPC Operating Co., LP* (D. Col.). The consent decree, which the court approved in October, will strengthen leak detection and repair practices at eight natural gas processing plants in Colorado. Under the settlement, DCP agreed to pay a \$3,250,000 civil penalty and to implement comprehensive injunctive measures across all eight of its natural gas processing plants in an area of Colorado that is in serious

nonattainment with National Ambient Air Quality Standards for ozone. EPA estimates that the settlement will reduce emission of 1,300 tons of methane from production areas near communities in northern Colorado disproportionately impacted by pollution. Methane is more than 25 times as potent as carbon dioxide at trapping heat in the atmosphere.

The Division reached a settlement in *United States v. Schnitzer Steel Indus., Inc.* (D. Mass.) to resolve alleged violations of the Clean Air Act and regulations designed to protect the stratospheric ozone layer at 40 scrap metal recycling facilities nationwide. Schnitzer failed to recover refrigerant from small appliances and motor vehicle air conditioners before disposal or to verify with the supplier that the refrigerant had been properly recovered prior to delivery to Schnitzer's facilities. The settlement required the company to pay a civil penalty of \$1,550,000 and to implement compliance measures worth over \$1,700,000, including the destruction of R-12 refrigerant in scrapped appliances and automobiles received at its facilities. R-12 contains chlorofluorocarbons with 10,000 times the global warming potential of carbon dioxide

- ***Superfund Enforcement Cases***

On March 4, 2022, the Department of Justice announced that the Northern Indiana Public Service Company (NIPSCO) will clean up soil contamination at individual residences within the Town of Pines Groundwater Plume Superfund site in Porter County, Indiana, at an estimated cost of \$11.8 million to resolve federal and state Superfund liability. The complaint, filed simultaneously with the consent decree, alleges that the company is liable for the cleanup of coal ash from its power generation facility that it distributed as landscaping fill in the Town of Pines and its vicinity. The soils contaminated by coal ash contain hazardous substances including arsenic, thallium and lead.

The United States sued seven companies, including International Paper Co., Proctor & Gamble Co. and Chemical Waste Management Inc., as either former owners and operators of the barrel fill or companies who sent wastes to for disposal to the Tremont City Barrel Fill site in Ohio. Under the agreement to resolve the United States' claims, the parties are required to perform the cleanup at an estimated cost of \$27.7 million of the closed 8.5-acre landfill where about 51,500 drums and 300,000 gallons of industrial liquid waste were disposed in waste cells in the late 1970's.

Successors to Monsanto Company will complete the cleanup of four former landfills and waste lagoons in Sauget, Illinois, across the Mississippi River from St. Louis. The settlement will require the companies to clean up hazardous substances including PCBs, dioxin, lead, cadmium, benzene and chlorobenzene, reimburse EPA for past costs spent at the sites and take responsibility for implementing EPA's cleanup plan estimated to cost \$17.9 million.

- ***Actions to Restore Natural Resources***

The United States and the State of Texas bought an action against Kirby Inland Marine LP for injuries to natural resources resulting from Kirby's discharge of approximately 4,000 barrels (168,000 gallons) of oil from one of its barges into the Houston Ship Channel. To resolve the allegations, Kirby has agreed to pay \$15.3 million in damages and assessment costs under the Oil Pollution Act for injuries to natural resources from the spill that flowed from the Houston Ship Channel into Galveston Bay and the Gulf of Mexico, causing significant impacts and injuries to the Texas coastline including the wildlife refuge on Matagorda Island, and to aquatic and terrestrial habitats, as well as to dolphins and migratory birds.

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

On January 15, 2021, a federal court issued a preliminary injunction in favor of the United States and against Jeffrey and Lauren Lowe, Greater Wynnewood Exotic Animal Park LLC, and Tiger King LLC based on claimed violations of the Endangered Species Act and the Animal Welfare Act. U.S. District Court Judge John F. Heil III ordered the Lowes to immediately surrender all Big Cat cubs under the age of one year and their mothers to the government for the pendency of the injunction. The court also ordered the defendants to retain an attending veterinarian and to provide records accounting for all animals acquired and disposed of since June 2020. The court further ordered the defendants and anyone acting on their behalf, including Eric Yano and Stephens Lane LLC, to cease exhibiting animals without a valid U.S. Department of Agriculture (USDA) license.

- ***Civil Enforcement Action Against Animal Welfare Act Licensed Dog Breeding Facility***

ENRD filed a judicial civil enforcement action against an Animal Welfare Act-licensed breeding facility in *United States v. Envigo RMS*, (W.D. Va.). The defendant bred and sold beagles to research facilities, and had already been cited for dozens of violations. ENRD attorneys obtained a temporary restraining order and a preliminary injunction that paved the path for a consent decree under which the defendant company agreed to surrender over 4,000 beagles and close its facility. The case garnered extended national attention from the media and Congress, thereby serving as an important message for the regulated community.

Criminal Cases

- ***Summit Pipeline***

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

- ***Vessel Pollution Cases***

On May 5, 2022, Liquimar Tankers Management Services Inc. and Evridiki Navigation Inc. were sentenced after being convicted at trial on all charges, including violating the Act to Prevent Pollution from Ships, falsifying ships’ documents, obstructing a U.S. Coast Guard inspection and making false statements to U.S. Coast Guard inspectors. The District of Delaware sentenced the corporations to a total of \$3 million criminal fine, and a five-year period of probation. Evridiki was fined \$2 million and Liquimar was fined \$1 million.

A court sentenced Pacific International Lines (Private) Limited (PIL), on February 18, 2021, to pay a \$3 million fine and complete a four-year term of probation, during which all vessels operated by the company that call on U.S. ports must implement an environmental compliance plan. The company

pleaded guilty to violating the Act to Prevent Pollution from Ships (APPS) and the Clean Water Act for the actions of a crew in intentionally and routinely discharging oily bilge water into a Guam harbor.

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

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

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

On October 6, 2021, a court sentenced Kang Juntao to 38 months' incarceration, followed by one year of supervised release, for criminal activity related to a wildlife smuggling operation. Kang pleaded guilty to money laundering, following his extradition from Malaysia in December 2020. While in his native China, Kang organized a network of suppliers and shippers in at least eight states to smuggle approximately 1,500 protected box turtles, wood turtles, and spotted turtles worth \$2,250,000 from the United States to Hong Kong.

In *United States v. Kizzy Solomon et al.* (M.D. Ga.), the Division secured a record term of incarceration for animal fighting. Defendant Leslie Meyers, previously convicted of a felony, brought a handgun to the dogfight where he was caught. On September 24, 2021, the court sentenced him to 123 months' imprisonment for the animal fighting and prohibited firearms crimes. The sentences in this multi-defendant case totaled 272 months' incarceration across a dozen defendants. All told, ENRD has prosecuted some fifty-three defendants for animal welfare crimes since 2016, leading to more than 1,250 months' of total incarceration. The Division's efforts have led to the rescue of more than 500 dogs from brutal circumstances.

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

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

2. Performance and Resource Tables

PERFORMANCE AND RESOURCES TABLE												
Decision Unit: Environment and Natural Resources												
RESOURCES (\$ in thousands)			Target		Actual		Target		Changes		Requested (Total)	
			FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
Total Costs and FTE (Reimbursable: FTE are included, but costs are bracketed and not included in totals)			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
			488	119,938	488	119,938	559	130,204	42	26,297	601	156,501
			[2]		[2]		[41]			[41]		
TYPE	STRATEGIC OBJECTIVE	PERFORMANCE	FY 2022		FY 2022		FY 2023		Current Services Adjustments and FY 2024 Program Changes		FY 2024 Request	
			FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
Program Activity	3.5	Advance Environmental Justice and Tackle the Climate Crisis	488	119,938	488	119,938	559	130,204	42	26,297	601	156,501
			[2]		[2]		[41]			[41]		
APG Measure ¹	N/A	N/A										
KPI ²	3.5	Percent of environmental enforcement matters in or substantially affecting overburdened and underserved communities that are favorably resolved.										
Performance Measure ³	3.5	N/A										

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

PERFORMANCE MEASURE TABLE						
Decision Unit: Environment and Natural Resources Division						
Strategic Objective	Performance Measures		FY 2022	FY 2023	FY 2024	FY 2024
			Target	Actual	Target	Target
3.5	Agency Priority Goal ¹	Advance Environmental Justice and Tackle the Climate Crisis				
3.5	Key Performance Indicator ²	Strategic Objective 3.5 is not currently recognized as one of the Agency Priority Goals				
3.5	Performance Measure	Percentage of environmental enforcement matters in or substantially affecting overburdened and underserved communities that are favorably resolved.				

1 / Data is not available
2 / Data is not available
[N/A= Data Unavailable]

3. Performance, Resources, and Strategies

Environmental Justice Activities

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

➤ **Performance Measure** – N/A

❖ ***FY 2024 Target: N/A***

❖ ***FY 2022 Actual: N/A***

B. Strategies to Accomplish Outcomes

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

Strategic Goal 3 – Protect Civil Rights

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

V. Program Increases by Item

A. Timber and Wildlife Trafficking

Item Name:	Combating Timber and Wildlife Trafficking
Budget Decision Unit(s):	Environment and Natural Resources Division
Organizational Program:	<i>Environmental Crimes Section (ECS)</i>
Program Increase:	Positions <u>8</u>, Atty <u>4</u>, FTE <u>4</u>, Dollars <u>\$788,000</u>

1. Description of the Item

ENRD is requesting 4 attorney positions, 2 paralegal positions, and 2 intelligence analyst positions, 4 FTEs, and a total of \$788,000 to expand and further develop the Division’s efforts to address timber and wildlife trafficking and to build capacity in overseas countries.

ENRD seeks a budget enhancement to fund required personnel, critical expert consultant support, and essential logistical and litigation support to advance timber and wildlife trafficking investigations and prosecutions. This enhancement will also increase ENRD’s ability to support U.S. commitments to combat wildlife trafficking, illegal logging and deforestation globally, and support training and enforcement capacity building efforts.

The Department of Justice has taken a leadership role in the high-profile multinational effort to combat timber and wildlife trafficking and related transnational organized crime. Both timber and wildlife trafficking are serious transnational crimes that threaten security, economic prosperity, and the rule of law, fuel corruption, and harm conservation efforts and human health. Such trafficking also increases the likelihood that zoonotic diseases like SARS-CoV2 will be spread or that new zoonotic diseases will develop.

The Department is one of three co-chairs of the Presidential Task Force on Wildlife Trafficking, which implements the *National Strategy for Combating Wildlife Trafficking* by strengthening law enforcement, reducing demand, and building international cooperation. And, the Department of Justice has a leadership role in implementing and enforcing the 2008 Lacey Act Amendments to address the international trade of illegally harvested plants, including timber. In several recent Executive Orders, President Biden has emphasized the need to conserve global forests and address timber trafficking as part of efforts to address both climate change and transnational organized crime. For example, Executive Order 14072 (April 22, 2022) directs agencies to implement the United States’ Plan to Conserve Global Forests, a key element of the Administration’s plan to implement the UN Framework Convention on Climate Change, and which specifically addresses international trade in timber.

President Biden has recognized the fight against corruption as a core U.S. national security interest, and the recently issued United States Strategy on Countering Corruption recognizes the links between corruption and trafficking in timber and wildlife. Further, profits from timber trafficking have been documented to support terrorist groups and the wood involved has been used for gun stocks. ENRD's prosecutions and related work directly support these Administration priorities. ENRD prosecutes wildlife and timber traffickers for crimes that cross international boundaries and are tied to corruption and transnational criminal organizations, and supports efforts to build international capacity and partnerships in this area.

For FY 2021-2023, the Office of the U.S. Trade Representative has provided ENRD with a total of \$1.66 million in funding associated with the U.S.-Mexico-Canada Agreement (USMCA) trade agreement to support expanded prosecutorial and investigative work to address offenses with a transboundary component, as well as to enhance monitoring and ensure compliance with USMCA environmental obligations, including with respect to international wildlife and timber trafficking.

2. Justification

Timber and wildlife trafficking are multi-billion dollar criminal activities that not only raise critical conservation concerns, but have evolved into an acute security threat in some regions. Record high demand for products—exacerbated by inadequate preventative measures, weak institutions, the sales conduit provided by the internet, and expanded infrastructure in some timber harvest countries that make both wildlife and timber more accessible to poachers—has resulted in an explosion of illicit trade in plants, fish and wildlife in recent years, with the increasing involvement of organized transnational criminal syndicates. Illicit trade in plants and wildlife undermines security, threatens the peace and economies of fragile regions, fuels corruption, decimates iconic animal populations, and devastates forests that are critical to combat climate change and support local populations. In addition, widespread illegal logging itself facilitates habitat loss and poaching of otherwise inaccessible wildlife. To combat these forms of trafficking, the Department is taking a holistic approach by combating illegal logging and illegal wildlife trafficking together, as there are strong linkages between these illicit activities.

Strong enforcement is critical to stopping this illegal trade. The Department works closely with the U.S. Fish & Wildlife Service, NOAA, the Department of Agriculture, and Homeland Security Investigations to unravel complex international trafficking schemes and prosecute those involved. Increased federal attention to the twin crises in timber and wildlife trafficking has generated additional referrals for prosecution, as well as requests for capacity building, and we expect this to continue, in part driven by the efforts to place a second DOJ Resident Legal Advisor to focus on wildlife and timber trafficking, and the deployment of U.S. Fish and Wildlife Service investigators as attachés in twelve strategic timber and wildlife trafficking hotspots. Upon passage of the bipartisan United States Innovation and Competition Act (USICA), the U.S. Fish and Wildlife Service would be directed to hire, train, and deploy an additional 50 attachés, leading to a further expected surge in criminal wildlife trafficking cases. ENRD prosecutors also provide significant support for the counter-trafficking efforts of these U.S. enforcement personnel stationed abroad.

ENRD's capacity building efforts are focused on key range and consumer nation states in Africa, Asia, and Latin America, including the Amazon and Congo Basins where the impacts on climate change are the most significant. In some countries where work has been ongoing for up to a decade now, the work is moving from capacity building to conducting coordinated investigations

with the now-trained foreign investigators while also providing continued, advanced capacity building. At the same time, requests are increasing to expand this work into additional countries, including specifically a request from the National Security Council for work in the Democratic Republic of the Congo, a request to engage pursuant to Section 301 of the Trade Act in Vietnam, and requests to engage more broadly in Southeast Asia and African countries such as Nigeria where the U.S. Fish and Wildlife Service recently placed an attaché.

ENRD partners with the Criminal Division and with a range of other agencies, most importantly the Department of State, to target this capacity-building work and avoid duplication of effort. This work is well coordinated with other agencies working in this space, through regular inter-agency meetings and joint capacity building efforts. The experience has shown that such training, capacity building, coordination, and information sharing efforts develop more effective partners to investigate and prosecute transnational environmental crimes, and increases our ability to enforce U.S. criminal statutes that have extraterritorial dimensions.

Additionally, in trade relationships, the United States has made specific commitments related to forest legality and wildlife trafficking. To fully implement the environment chapter of the USMCA, DOJ and other federal agencies have committed resources to provide technical assistance to build the law enforcement and prosecutorial capacity to investigate and prosecute timber and wildlife trafficking crimes. The U.S. and Vietnam also reached an agreement to resolve a Section 301 Trade Act timber investigation in which the United States committed to provide technical assistance to enhance law enforcement capacity to combat timber trafficking.

To support these efforts, ENRD's budget enhancement of \$788,000 will support four attorney, two paralegal, and two intelligence analyst positions in the Environmental Crimes Section. The attorneys and paralegals will handle the increased docket of prosecutions and support capacity-building efforts. These prosecutions typically require substantial attorney time and paralegal and other litigation support, as they are often complicated by the need to obtain evidence through Mutual Legal Assistance Treaties, translate documents into English, coordinate with foreign governments, collect and analyze large volumes of documents, and pursue extradition. The attorney and paralegal resources will also be used to support the Administration's commitments set forth in the National Strategy and executive orders on forests, climate change and transnational organized crime by conducting additional training, capacity building, coordination, and information-sharing efforts with the United States' international partners in source, transit, and destination countries for illegal trade in plants and protected wildlife.

The two intelligence analysts will analyze the illicit timber trafficking trade, including finances, supply chain analysis, relationships to other nature crimes (*e.g.*, mining, wildlife trafficking), and developing trends (*e.g.*, deforestation related to illegal land conversion). Currently, ENRD does not have any analyst staff, and must rely on agents who have not been trained in this work and ad hoc support from specialists within the Department of Homeland Security. The work of the requested analysts would enable identification of subjects and targets, make linkages to organized criminal networks, support coordinated enforcement work with international partners, and inform capacity-building programming. These analysts will help create a blueprint and foundation for future enforcement actions, particularly coordinated complex investigations into the operations of multinational corporations involved in the global trade in illegal wildlife and wild-harvested timber and the tracking of monies related thereto.

3. Impact on Performance

This proposal advances the Department’s Strategic Goals 3.5 (Advance Environmental Justice and Tackle the Climate Crisis) and 4.2 (Combat Corruption, Financial Crime, and Fraud). Illegal logging and illegal trade in timber play a key role in facilitating international deforestation, which is a major contributor to the climate crisis. The Division’s proposal would aid in the implementation of the United States’ Plan to Conserve Global Forests, a key element of the Administration’s plan to implement the UN Framework Convention on Climate Change. Executive Order 14072 (April 22, 2022) directs agencies to implement the Plan, and specifically addresses international trade in timber. International timber and wildlife trade also destroys sustainable resources that are often essential to supporting the most fragile and disadvantaged communities worldwide; addressing that trade therefore advances international equity and environmental justice objectives. This proposal therefore supports both the climate and the environmental justice elements of Strategic Goal 3.5. Prosecution of international timber and wildlife trafficking also serves to disrupt international criminal networks, eliminate a key source of their funding, and address a threat to the stability of governments and the rule of law in countries where this illegal trade exists, supporting Strategy 3 of Strategic Goal 4.2.

Funding

1. Base Funding

FY 2022 Enacted				FY 2023 Enacted				FY 2024 Current Services			
Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)	Pos	Agt/Atty	FTE	Amount (\$000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

2. Personnel Increase Cost Summary

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	\$476	4	\$230	\$158	\$7	\$633	\$29
Paralegals (0950)	\$106	2	\$99	\$68	\$2	\$136	\$5
Intel Analysts (0132)	\$106	2	\$99	\$68	\$2	\$136	\$5
Total Personnel	\$688	8	\$428	\$294	\$12	\$905	\$38

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Contractual Services and Supplies	\$100	\$0	1	\$0	\$0
Total Non-Personnel	\$100	\$0	1	\$0	\$0

Non-personnel costs are for litigation support and required travel.

4. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/ Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	8	4	4	\$688	\$100	\$788	\$905	\$38
Grand Total	8	4	4	\$688	\$100	\$788	\$905	\$38

Affected Crosscut – Not applicable.

B. Animal Welfare Enforcement

Item Name:	Animal Welfare Enforcement
Budget Decision Unit(s):	Environment and Natural Resources Division (“ENRD”)
Organizational Program:	<i>Environmental Crimes Section (“ECS”)</i> <i>Wildlife and Marine Resources Section (“WMRS”)</i>
Program Increase:	Positions <u>5</u>, Atty <u>3</u>, FTE <u>3</u>, Dollars <u>\$1,583,000</u>

1. Description of the Item

ENRD is requesting \$1,583,000, including 5 positions, 3 attorneys and 3 FTEs, to support the Division’s efforts to enhance both criminal and civil enforcement of federal animal welfare laws.

ENRD seeks a budget enhancement to fund required personnel, expert consultants, and litigation support to improve federal efforts to enforce federal animal cruelty laws. This enhancement will advance public safety, hold those who harm vulnerable animals accountable, and help ensure the humane treatment of abused dogs and other animals.

Ensuring the humane treatment of animals – whether by a zoo, commercial breeder, horse show, laboratory, or even a slaughterhouse – is a priority. Violations of federal statutes are serious matters which often intersect with other law enforcement priorities. Some animal welfare offenses, such as dog-fighting, may be committed by highly organized interstate criminal enterprises which attract an array of other illegal activities including drug trafficking, gun running and gang violence, all of which threaten public safety. In addition, public corruption is an element found in many animal fighting cases as the size and scope of the fighting operations requires the cooperation of local law enforcement to avoid detection. Law enforcement agents have found young children being exposed to the brutality of animal fighting, which prompted Congress in 2014 to not only make it a crime for anyone to attend an animal fight, but a felony to bring a minor to the fight. Most recently, in 2018, Congress amended the animal fighting venture prohibition to prohibit cockfighting in all U.S. jurisdictions.

Other animal welfare offenses, such as the creation and distribution of obscene “animal crush” videos, not only trigger a compelling federal interest in preventing intentional acts of extreme cruelty, but also invoke significant concerns regarding interpersonal abuse and violent offenders. Animal crush videos involve the literal torture and killing of animals on camera – acts that are universally abhorrent but remain difficult to detect and prosecute at the local level. In 2010, due to the growing underground market for the creation and sale of such videos, Congress criminalized the creation and distribution of animal crush videos, making the crime a seven-year-felony. Not

surprisingly, offenders in such cases have been deemed a danger to the community. In 2019, Congress amended the law to criminalize the intentional act of animal crushing.

The federal animal welfare laws discussed above reflect a cohesive national enforcement policy aimed at protecting vulnerable populations and promoting the integrity of the justice system. In 2015, the Department recognized the need for a coordinated approach and assigned ENRD primary responsibility for enforcing the animal welfare statutes. Since then, the Division has had a robust track record of prosecutions and active investigations in this area. Between 2015 and 2022, more than 54 defendants were charged, convicted, or sentenced for animal welfare offenses, and more than 563 dogs have been rescued in ENRD actions. These defendants were sentenced to serve a total of more than 92 years in jail for these and related crimes for which they were convicted. Moreover, ENRD has stood up a program that allows for the relatively prompt civil forfeiture in appropriate cases of dogs seized in animal fighting ventures.

In addition, ENRD has brought groundbreaking civil actions to protect animals from cruelty. For example, ENRD filed a civil complaint against Jeffrey and Lauren Lowe, Greater Wynnewood Exotic Animal Park LLC, and Tiger King LLC, to address recurring inhumane treatment and improper handling of animals in violation of the Animal Welfare Act (AWA) and, for some of the animals, the Endangered Species Act. ENRD obtained a preliminary injunction requiring the defendants to surrender all Big Cat cubs under the age of one year and their mothers to the government and other relief. In May 2021, the United States seized 68 protected lions, tigers, lion-tiger hybrids and one jaguar from Jeffrey and Lauren Lowe's Tiger King Park pursuant to a judicially authorized search and seizure warrant for ongoing Endangered Species Act violations. ENRD then worked together with the Criminal Division to file a civil forfeiture action to clear title to the seized animals. The United States successfully concluded the civil enforcement action in December 2021, obtaining default judgment against the corporate defendants and obtaining a civil consent decree under which the Lowes surrendered and relinquished ownership of all remaining animals at the facility and prohibiting them from engaging in AWA-licensed activity in the future.

In September 2021, ENRD filed a civil complaint against Daniel Gingerich, the operator of an Iowa puppy mill. After securing a temporary restraining order, ENRD successfully negotiated the surrender of the more than 500 dogs and a permanent injunction barring Mr. Gingerich from engaging in activity regulated by the AWA. More recently, ENRD filed a civil complaint against Envigo RMS, a USDA-licensed breeder that sells beagles to research facilities. The company had amassed over 60 violations of the Act since July 2021. Upon filing its civil action, ENRD obtained a temporary restraining order requiring Envigo to quickly come into compliance with a number of key provisions of the Animal Welfare Act, and also secured the removal of hundreds of dogs. ENRD also has coordinating responsibility for the Department in the area of animal welfare enforcement. U.S. Attorney's Offices may also bring these cases, and the Division provides expertise to support this work. The Division also works closely with the Department of Agriculture and other investigatory agencies, facilitates training, and develops enforcement policy. Among other accomplishments, ENRD has built capacity among the federal law enforcement and legal communities, by conducting training programs, developing toolkits, and conducting outreach to investigatory agencies. This work has resulted in increased engagement by investigatory agencies regarding both criminal and civil enforcement actions, and increasing capacity to send referrals to DOJ.

2. Justification

In the past five years, ENRD has brought numerous successful prosecutions and civil actions, and made substantial programmatic improvements. ENRD has seen an upward trend in referrals from USDA as well as increasing inquiries from the Hill about the status of DOJ prosecutions, which leads the Division to need additional resources in order to meet the pace of these referrals. This trend is anticipated to continue. In 2019-2020, the Division brought four criminal cases total. In the first half of 2022, the Division has already opened four new criminal matters, and in 2021, ENRD opened seven. Civil enforcement work has also increased in recent years.

Because the welfare of animals is often at risk, Division attorneys must move quickly to build a case and file for injunctive relief to protect animals at a facility. Such civil enforcement actions would require several attorneys to immediately direct resources to assessing the merits and, when appropriate, preparing the action and motion for emergency relief. Frequently these cases also require a significant allocation of resources on the front end to ensure the safety, care, and feeding of animals rescued in the course of an investigation. The number of animals rescued can be significant. One recent case involved evaluating more than 3,700 beagles and removing around 450 beagles from the premises, and another involved more than 3,000 roosters and hens. Each animal had to be individually evaluated by a vet, provided medical care as needed, and maintained in a safe and humane environment during the pendency of the investigation.

The personnel additions to criminal and civil enforcement teams are critical to be able to respond in timely fashion to cases that by their nature arise abruptly, for instance after discovery of a “serious danger” under the Animal Welfare Act. Once these cases get under way, we are often in the position of having to litigate civil forfeiture actions in parallel with pursuing indictments and criminal convictions, in order to remove the animals as soon as possible and prevent their further deterioration. For this reason, the request includes litigation support, reflecting the need to prosecute in two courts at once.

Similarly, for most of these cases we require two sets of veterinary evaluations – forensic evaluations by veterinarians to determine whether violations of federal law have occurred who can then serve as expert witnesses in court, and additional teams of veterinary support to screen animals for injuries, disease, and other maladies requiring care. This budget request reflects both veterinary needs.

For most of ENRD’s budget, personnel followed by litigation support represent the bulk of our requests. However, the most severe limiting factor on our capacity to protect animals is funding for the care and management of seized and forfeited animals, and housing of many of the animals until they are rehomed. We rely on the U.S. Marshal’s Service in civil forfeitures relating to dogfighting or involving endangered species, but otherwise must scramble to seek last-minute support by animal welfare organizations. Without contracts in place to ensure availability of support when animals are found in “serious danger”, we run the risk of having to turn away cases or selecting a subset of animals in a dangerous situation for rescue. For this reason, a rather large portion of the FY24 request for animal welfare represents funding to enable ENRD to contract for animal care and management.

The requested budget enhancement of \$1,583,000 will support three attorney and two paralegal positions, which will primarily be responsible for bringing criminal and civil enforcement cases to enforce the Animal Welfare Act, Animal Fighting Venture Prohibition Act, and other federal animal welfare laws. The requested resources will also be used to acquire the services of veterinary and other experts and other litigation support costs. In addition, the requested resources will support ENRD's nationwide work providing coordination, training, and policy development to U.S. Attorney's Offices, investigatory agencies, and state and local partners. ENRD attorneys lead the Department's work in combating animal fighting ventures, which includes providing counsel as a matter of course to U.S. Attorney's Office who confront these issues, to handling their own robust docket of cases focusing on such violations.

3. Impact on Performance

This request advances the Department's Strategic Goals 2.3, Combat Violent Crime, 2.6, Protect Vulnerable Communities, and 4.2, Combat Corruption, Financial Crime, and Fraud. Animal welfare offenses are often closely associated with violent crime, with corrupt criminal networks, and with worker safety, and prosecuting them serves to ensure safer communities. Moreover, the Department's work to protect the most vulnerable necessarily encompasses offenses against animals, because such offenses cannot be tolerated in a humane society. The Department has tasked ENRD with the primary responsibility for this work, and additional resources will enable the Department to bring additional criminal prosecutions and civil enforcement actions. ENRD's efforts to coordinate litigation, facilitate training, and develop policy will also improve the Department's overall effectiveness in this area. Existing performance measures will track progress for the proposed increase.

Funding

1. Base Funding

FY 2022 Enacted				FY 2023 Enacted				FY 2024 Current Services			
Pos	Agt/ Atty	FTE	Amount (\$000)	Pos	Agt/ Atty	FTE	Amount (\$000)	Pos	Agt/ Atty	FTE	Amount (\$000)
0	0	0	\$0	0	0	0	\$0	0	0	0	\$0

2. Personnel Increase Cost Summary

Type of Position/Series	FY 2024 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				2nd Year	3rd Year	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Attorneys (0905)	\$357	3	\$230	\$158	\$7	\$475	\$22
Paralegals (0950)	\$106	2	\$99	\$68	\$2	\$136	\$5
Total Personnel	\$463	5	\$330	\$226	\$10	\$611	\$26

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2024 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Contractual Services and Supplies	\$1,120	\$0	1	\$0	\$0
Total Non-Personnel	\$1,120	\$0	1	\$0	\$0

The requested resources will also be used to acquire the services of veterinary and other experts (feeding, housing, transport, care, and management of seized animals) and other litigation support costs.

4. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2025 (net change from 2024)	FY 2026 (net change from 2025)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	5	3	3	\$463	\$1,120	\$1,583	\$611	\$26
Grand Total	5	3	3	\$463	\$1,120	\$1,583	\$611	\$26

Affected Crosscuts – Not applicable.

VI. Program Offsets by Item

(None)

VII. Exhibits