

U.S. Department of Justice



Environment and Natural Resources Division

ENRD



ENRD

F Y 2 0 2 2
PERFORMANCE BUDGET
CONGRESSIONAL BUDGET JUSTIFICATION

Table of Contents

I. Overview.....	3
II. Summary of Program Changes.....	8
III. Appropriations Language and Analysis of Appropriations Language.....	8
IV. Program Activity Justification.....	8
A. Environment and Natural Resources Division	
1. Program Description.....	9
2. Performance Table.....	19
3. Performance, Resources, and Strategies.....	22
V. Program Increases by Item.....	28
VI. Program Offsets by Item.....	36
VII. Exhibits.....	36

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

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

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

The Administration’s policy, as described above, implicates the core of ENRD’s mission; and the Division will be chiefly responsible for implementing the policy through litigation and counseling functions in FY 2022.

The President further focused the environmental policy of the Administration by issuing EO 14008, “Tackling the Climate Crisis at Home and Abroad,” on January 27, 2021. Among other actions and commitments, EO 14008 establishes a “whole-of-government” approach to addressing the climate crisis and formalizes the government’s commitment to Environmental Justice (EJ). To support the Division’s leadership role in fulfilling the ambitious, historic objectives described in EO 13990 and EO 14008, ENRD is seeking a \$5,000,000 budget enhancement in FY 2022.

At the same time ENRD supports the new initiatives and reinvigorated efforts outlined in the President’s environmental agenda, the Division is also seeking a more durable budgetary approach to sustaining the Division’s important environmental enforcement efforts. Reliable funding of the Division’s core mission will ensure the long-term viability of ENRD, regardless of inevitable fiscal variabilities, political pressures, or other external dynamics.

To achieve such long-term fiscal stability, for FY 2022, ENRD is seeking a structural change through a technical adjustment to base (ATB) of \$9,000,000, which will provide direct base funding for critical affirmative civil enforcement work that is already being done, but is currently being funded through internal, non-appropriated sources that are unsustainable in the long-term.

ENRD’s aggregate budgetary requirements in FY 2022, including the above-referenced enhancement – described in greater detail in Section V of this Budget – and the technical ATB total \$133,738,000. The requested funding will ensure that ENRD is able to support and defend the President’s priorities, enforce the Nation’s cornerstone environmental laws, and continue to secure significant victories for the Department, its client agencies, and the American people.

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

A. Introduction:

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

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

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

To effectively carry out its important mission in FY 2022, ENRD is requesting a total of \$133,738,000, including 559 positions (389 attorneys), and 558 FTEs (41 reimbursable FTEs). ENRD is requesting an enhancement of **\$5,000,000, including 18 positions (16 attorneys), and 10 FTEs** to support the Administration’s Environmental Justice and Climate Crisis initiatives.

B. Issues, Outcomes, and Strategies:

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

In **affirmative litigation**, ENRD obtains relief to ensure compliance with the environmental laws, secures redress for past violations that harm the environment, ensures that violators of criminal and civil statutes are appropriately punished, establishes credible deterrents against future violations of these laws, recoups federal funds spent to abate environmental contamination, and obtains money to restore or replace natural resources damaged by oil spills or the release of other hazardous

substances into the environment. ENRD also ensures that the federal government receives appropriate royalties and income from activities on public lands and waters.

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

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.

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 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 2022. 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 2022, which in the aggregate are likely to require significant ENRD resources:

- The Division serves as the Nation's lead legal advisor for all agencies working on acquiring land to secure the **U.S.-Mexico Border and related infrastructure**. While the President's

Proclamation on January 20, 2021 (Proclamation 10142, “Termination of Emergency With Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction”) – which was announced in accompaniment with the revocation of EO 13768 – altered the scope of federal activities along the southwest U.S. border, ENRD will continue to litigate pending and future cases and provide legal advice and guidance on how best to proceed with condemnation, land acquisition, title and valuation matters to improve security along the southwest border. This work is extraordinarily technical and time-consuming.

- 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 are moving forward in each docket. After these test cases are tried in FY 2020 and FY 2021, the Division expects claims involving thousands of additional plaintiffs to move forward in FY 2022.
- The Division currently represents the United States and the Departments of the Interior and Treasury in more than a dozen pending **Tribal Trust** cases in various federal district courts and the United States Court of Federal Claims, in which tribes or Indian plaintiffs demand “full and complete” historical trust accountings and damages for financial injury resulting from the government’s alleged mismanagement of the plaintiffs’ trust funds and non-monetary assets (such as timber, mining or grazing rights). The plaintiffs’ damage claims total billions of dollars in the currently pending cases. Throughout FY 2022, the present cases will require substantial resources in order to conduct or complete extensive fact and expert discovery related to claims for alleged mismanagement of not only numerous tribal trust or individual Indian money accounts, but also extensive non-monetary tribal trust resources between 1946 and the present.
- The Division also handles several types of litigation over **water allocation**, including **water rights litigation** on behalf of every federal agency with water-dependent facilities, programs, or land management responsibilities. In the coming years, ENRD anticipates increasing demands on resources from a growing docket of water rights cases, stemming in part on the significant impacts climate change has had on the Nation’s water resources. In particular, we expect growth in the litigation of voluminous proceedings known as “general stream adjudications,” in which courts – mostly state courts in the western United States – adjudicate the rights of all the water users in a river basin. The ENRD staff dedicated to general stream adjudications across the West is generally smaller than the staff employed by each of the western states alone; and these cases – which often involve thousands of parties, tens of thousands of claims and objections, and take decades for discovery, pretrial litigation and trial – already place significant demands on our personnel resources.

Internal Challenges

ENRD's has little to no control over the availability of reimbursable monies, which are sometimes cut arbitrarily or paid far in arrears. And that difficulty is compounded by limited flexibility to shift resources around to accommodate evolving needs.

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, extranet docketing systems, and electronic discovery – we are in constant need of ensuring our workforce has the expertise and access to software, hardware, and systems to keep pace. 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.

D. Achieving Cost Savings and Efficiencies

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

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

As a leader in employing technological solutions, ENRD continues to implement cost-effective alternatives such as video conferencing and web-based applications for meetings (which inevitably reduce travel costs). We continue to push the use of on-line travel reservations, as opposed to using agent-assisted booking services, leading to additional cost savings. ENRD has reduced its fax machine inventory by over 90% and will address whether more fax machines can be decommissioned, saving line costs as well as machine maintenance and supply cost. 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 2020, the Division's litigation support lab recognized savings of approximately \$12.4 million, compared to what the in-house services provided would have cost if outsourced to a contractor/vendor.

II. Summary of Program Changes

As described in greater detail in Section V of this document, ENRD is requesting an enhancement of \$5,000,000, including 18 positions (16 attorneys) and 10 FTEs, to support *Environmental Justice and Combating the Climate Crisis*.

Item Name	Description				Page
		Pos.	FTE	Dollars (\$000)	
Environmental Justice and Combating the Climate Crisis	Environmental Justice and Combating the Climate Crisis	18	10	5,000	30

III. Appropriations Language and Analysis of Appropriations Language

FY 2022, the Division is not seeking any changes to GLA appropriations language.

IV. Program Activity Justification

<i>Environment and Natural Resources Division</i>	Direct Pos.	Estimate FTE	Amount
2020 Enacted	541	486	109,423
2021 Enacted	541	481	113,458
Adjustments to Base and Technical Adjustments	[53]	26	15,280
2022 Current Services	541	507	128,738
2022 Program Increases	18	10	5,000
2022 Program Offsets	0	0	0
2022 Request	559	517	133,738
Total Change 2021-2022	18	10	20,280

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
2020 Enacted	18	18	5,499
2021 President's Budget	18	18	5,499
Adjustments to Base and Technical Adjustments	0	0	0
2022 Current Services	18	18	5,499
2022 Request	18	18	5,499

A. Environment and Natural Resources Division

1. Program Description

As described above, ENRD works to:

- Enforce the Nation's civil and criminal pollution-control laws;
- Defend environmental challenges to federal agency programs and activities;
- Represent the United States in matters concerning the stewardship of the Nation's natural resources and public lands;
- Acquire land and real property for federal interests;
- Bring and defend cases under the wildlife protection 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** 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). ECS also works with agents from USDA prosecuting animal welfare crimes.

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, 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. 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 EPA, is leading the development of the federal Environmental Crime Victim Assistance Program.

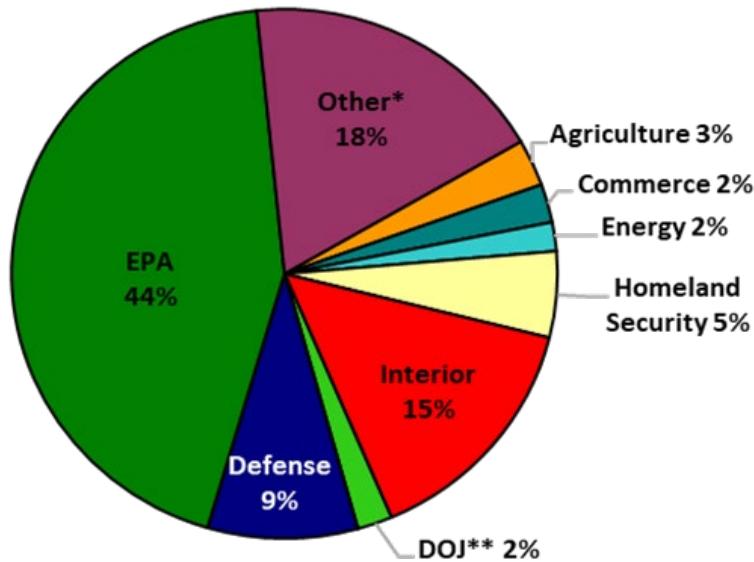
The **Executive Office (EO)** is the operational management and administrative support section for ENRD. It provides financial management, human resources, information technology, procurement, facilities, security, litigation support, and other important services to the Division's workforce. The Executive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

The **Office of the Assistant Attorney General (OAAG)** is a cadre of extraordinary attorneys who ensure 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, 2020

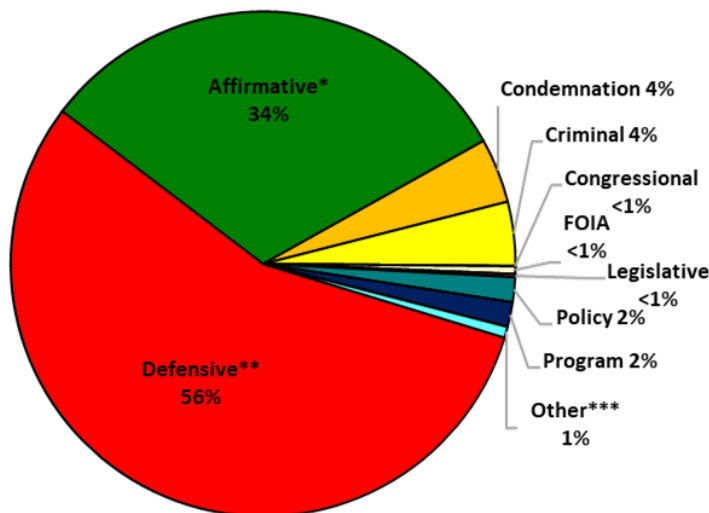
Total Cases/Matters – 6,186



*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, 2020

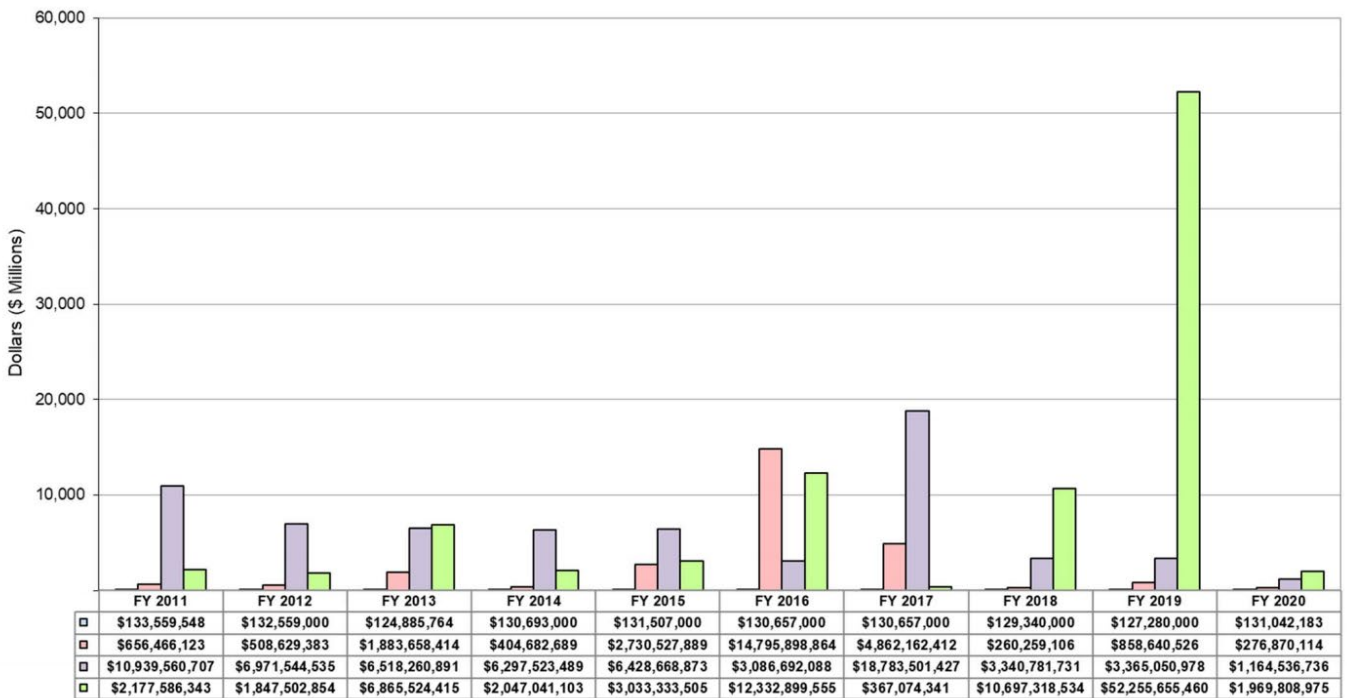
Total Cases/Matters – 6,186



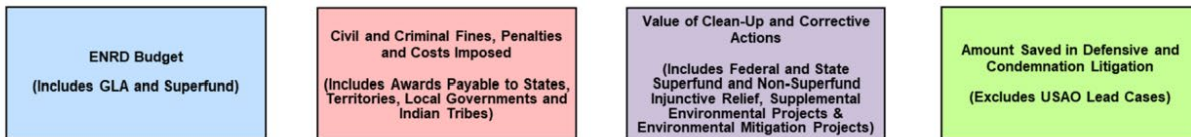
*Affirmative - includes case types of Civil Affirmative, Amicus, and Citizen Suits.
 **Defensive - includes case types of Civil Defensive, Civil Contempt, Notices of Intent and Petitions for Review.
 ***Other represents types of work not covered by any category, such as projects, etc.

ACCOMPLISHMENTS

In FY 2020, ENRD successfully closed 1,924 matters and 946 cases while maintaining a robust docket of 6,186 cases, matters, and appeals. The Division recorded more than \$276 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 2020 exceeded \$1.1 billion. ENRD’s defensive litigation efforts avoided costs (claims) of over \$1.9 billion in FY 2020. In FY 2020, the Division achieved a favorable outcome in 98.9 percent of its civil affirmative cases, 89.6 percent of its civil defensive cases, 98.5 percent of its criminal cases and 98.7 percent of its condemnation cases. In sum, ENRD continues to be a valuable investment of taxpayer dollars as the number of dollars returned to the Treasury exceeds ENRD’s annual appropriation many times over.



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



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

Civil Cases (Both Affirmative and Defensive)

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

On September 14, 2020, the U.S. Department of Justice, Environmental Protection Agency (EPA), and California Air Resources Board (CARB) announced a proposed settlement with German

automaker Daimler AG and its American subsidiary Mercedes-Benz USA, LLC (collectively, “Daimler”) resolving alleged violations of the Clean Air Act and California law associated with emissions cheating.

Under the settlement, lodged with the U.S. District Court for the District of Columbia, Daimler will recall and repair the emissions systems in Mercedes-Benz diesel vehicles sold in the United States between 2009 and 2016 and pay \$875,000,000 in civil penalties and roughly \$70,300,000 in other penalties. The company will also extend the warranty period for certain parts in the repaired vehicles, perform projects to mitigate excess ozone-creating nitrogen oxides (NOx) emitted from the vehicles, and implement new internal audit procedures designed to prevent future emissions cheating. The recall program and federal mitigation project are expected to cost the company about \$436,000,000. The company will pay another \$110,000,000 to fund mitigation projects in California. Taken together, the settlement is valued at about \$1.5 billion.

- ***Hyundai Diesel Engine and Construction Vehicle Clean Air Act Settlement***

On September 19, 2019, EPA and ENRD reached a settlement with Hyundai Construction Equipment Americas Inc. (HCEA) and Hyundai Heavy Industries Co. Ltd (HHI) (collectively known as “Hyundai”) to pay a \$47 million civil penalty for violating Title II of the Clean Air Act. The settlement resolves allegations that Hyundai sold heavy construction vehicles with diesel engines that were not certified to applicable emission standards. From 2012 to 2015, Hyundai pre-purchased, or “stockpiled” engines that met outdated emissions standards and then illegally imported, marketed and sold heavy construction equipment with these engines installed, in violation of the Clean Air Act. Additionally, Hyundai imported, marketed and sold units of equipment in quantities that exceeded their exemption allowance limit under the Transition Program for Equipment Manufacturers (TPEM) program regulations. Defendants allegedly introduced into United States commerce at least 2,269 illegal diesel non-road vehicles.

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

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

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

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

On December 17, 2020, the U.S. Environmental Protection Agency and the Department of Justice announced a proposed nationwide settlement with Home Depot U.S.A. Inc. resolving alleged violations of the EPA's Lead Renovation, Repair and Painting (RRP) Rule at home renovations performed by Home Depot's contractors across the country. The States of Utah, Massachusetts, and Rhode Island, which have EPA-authorized RRP programs, joined the United States in this action. The settlement, in a consent decree lodged with the District Court for the Northern District of Georgia, requires Home Depot to implement a comprehensive, corporate-wide program to ensure that the firms and contractors it hires to perform work are certified and trained to use lead-safe work practices to avoid spreading lead dust and paint chips during home renovation activities. Home Depot will also pay a \$20.75 million penalty, the highest civil penalty obtained to date for a settlement under the Toxic Substances Control Act. Of the \$20.75 million penalty, \$750,000 will be paid to Utah, \$732,000 to Massachusetts, and \$50,000 to Rhode Island.

- ***Superfund Enforcement Cases***

On January 3, 2019, the Division reached a settlement with P.H. Glatfelter Company to pay \$20.5 million for reimbursement of EPA's past costs and natural resource damages related to extensive PCB contamination. The company must also reimburse all future government costs of overseeing one of the Nation's largest Superfund cleanup projects at Wisconsin's Lower Fox River and Green Bay Site. P.H. Glatfelter further agreed to take on responsibility for EPA's long-term monitoring and maintenance activities.

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

On December 11, 2019, the U.S. Environmental Protection Agency, U.S. Department of Justice, the Kalamazoo River Natural Resource Trustee Council, and Michigan Department of Environment, Great Lakes, and Energy (EGLE) announced a proposed consent decree that will require NCR Corp. to clean up and fund future response actions at a significant portion of the Allied Paper Inc./Portage Creek/Kalamazoo River Superfund site. The consent decree also includes payments related to natural resource damages and past cleanup efforts at the site.

- ***Kohler Clean Air Act Litigation***

On January 30, 2020, the Department of Justice, Environmental Protection Agency and the state of California announced a settlement with Kohler Co. (Kohler) resolving alleged violations of the Clean Air Act and California law. Under the terms of the settlement, Kohler will retire unlawfully generated hydrocarbon (HC) and oxides of nitrogen (NOx) emission credits. Retirement of these credits will result in approximately 3,600 tons of HC and NOx emissions reductions. In addition, the company will pay a \$20 million civil penalty. The violations pertain to Kohler's manufacture and sale of millions of small, non-road, non-handheld spark-ignition (small SI) engines that did not

conform to the certification applications Kohler was required to submit to the EPA and the California Air Resources Board (CARB). More than 144,000 of the engines were also equipped with a fueling strategy designed to cheat emissions testing standards (commonly referred to as a “defeat device”). Small SI engines are used in lawn mowers, ride-on mowers, commercial landscaping equipment, and generators.

- ***Plains Pipeline L.P. Oil Spill Enforcement***

On March 13, 2020, federal officials announced a civil settlement with Plains All American Pipeline L.P. and Plains Pipeline L.P. (Plains) arising out of Plains’ violations of the federal pipeline safety laws and liability for the May 19, 2015, discharge of approximately 2,934 barrels of crude oil from Plains’ Line 901 immediately north of Refugio State Beach, located near Santa Barbara, California. The settlement requires Plains to implement injunctive relief to improve Plains’ nationwide pipeline system and bring it into compliance with the federal pipeline safety laws, in addition to addressing unique threats and modifying operations that caused the Line 901 oil spill; pay \$24 million in civil penalties; pay \$22.325 million in natural resource damages and \$10 million to reimburse the governments for natural resource damage assessment costs; and pay \$4.26 million to reimburse the Coast Guard for its clean-up costs. Excluding the value of the required injunctive relief changes to Plains’ national operations, the settlement is valued in excess of \$60 million.

Criminal Cases

- ***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.

- ***Dog Fighting Cases***

On July 2, 2019, the final defendant out of 12 defendants was sentenced in Operation Grand Champion, a multi-jurisdictional dog fighting investigation conducted by the U.S. Department of Agriculture Office of Inspector General, Federal Bureau of Investigation, and Homeland Security Investigations, which brought the matter to a close. The investigation commenced in 2015 and resulted in the convictions of 12 defendants in four federal districts. The 12 defendants were sentenced to a total of 315 months in prison. The phrase “Grand Champion” is used by dog fighters to refer to a dog with more than five dog fighting “victories.” As a result of the investigation, 113 dogs were rescued and either surrendered or forfeited to the government.

- ***Vessel Pollution Cases***

On June 20, 2019, Portline Bulk International S.A. pleaded guilty in federal court in Charleston, South Carolina, to one count of violating the Act to Prevent Pollution from Ships and one count of Obstruction. The charges stem from the falsification of the Oil Record Book onboard the M/V Achilleus, a Maltese-flagged ocean-going bulk carrier ship managed by Defendant Portline. From April 2017 to August 2018, senior members of the vessel's engineering team oversaw and participated in the bypass of the ship's Oil Water Separator utilizing a yellow plastic hose, referred to as a "magic pipe." The ship's Chief Engineer made a series of fake entries and key omissions in the Oil Record Book in order to conceal the illegal overboard discharges of oily bilge water. On August 14, 2018, the false Oil Record Book was presented to the U.S. Coast Guard (USCG) during an inspection in the Port of Charleston. Portline agreed to pay a criminal fine of \$1.5 million when sentenced. The company was also placed on organizational probation for four years and, as a condition of probation, was required to develop and implement an environmental compliance plan.

On October 15, 2019, two shipping companies incorporated in Liberia pled guilty in federal court in Wilmington, Delaware, to failing to notify the U.S. Coast Guard of a hazardous condition on one of its vessels and to violating the Act to Prevent Pollution from Ships (APPS) by presenting false documents to the Coast Guard that covered up vessel oil pollution. The plea agreement imposes a \$1.8 million criminal penalty. Defendants Nederland Shipping Company and Chartworld Shipping Company are the owner and operator of the 13,049 gross ton, ocean-going, refrigerated cargo/container vessel called the M/V NEDERLAND REEFER. Large ships like the M/V NEDERLAND REEFER generate oil-contaminated bilge waste when water mixes in the bottom or bilges of the ship with oil that has leaked from the ship's engines and other areas. This waste must be processed to separate the water from the oil and other wastes by using pollution prevention equipment, including an Oily Water Separator (OWS), before being discharged into the sea. APPS requires that the disposal of the ship's bilge waste be recorded in the ship's Oil Record Book (ORB).

On February 10, 2020, Bernhard Schulte Shipmanagement (Singapore) PTE LTD. (Bernhard), a vessel operating company, pleaded guilty in federal court to one count of maintaining false and incomplete records relating to the discharge of bilge waste from the tank vessel Topaz Express, a felony violation of the Act to Prevent Pollution from Ships. U.S. District Judge Derrick K. Watson of the District of Hawaii accepted the guilty plea. Chief Engineer Skenda Reddy and vessel Second Engineer Padmanaban Samirajan previously pled guilty to their involvement in the offense. Under the terms of the plea agreement, Bernhard will pay a total fine of \$1,750,000 and serve a 4-year term of probation. This is the largest fine ever imposed in the District of Hawaii for this type of offense. Bernhard further must implement a robust Environmental Compliance Plan, which applies to all 38 vessels operated by the company that call on U.S. ports.

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

On February 7, 2019, Fuel Bio One LLC, an Elizabeth, New Jersey, biodiesel fuel company, was sentenced for discharging more than 45,000 gallons of wastewater from its commercial biodiesel fuel production facility into the Arthur Kill, a waterway separating New Jersey from Staten Island, New York. The company had pleaded guilty in June 2018 to one count of violating the Clean Water Act. Fuel Bio One LLC was sentenced by U.S. District Judge William J. Martini to pay a criminal fine of \$100,000. The company was also sentenced to probation for a period of five years, during which the company must (1) provide biannual reports to the court and the government documenting

its waste generation, handling, and disposal practices; (2) develop, implement, and fund an employee training program to ensure that all employees are aware of proper waste handling and disposal practices and to ensure that all storage, treatment, and disposal of wastewater complies with the Clean Water Act; and (3) allow the EPA full access to all offices, warehouses, and facilities owned or operated by the company.

2. Performance and Resource Tables

Decision Unit/Program: Environment & Natural Resources Division											
		Actual FY 2019		Actual FY 2020		Target FY 2021		Current Services Adjustments and FY2022 Program Changes		FY 2022 Request	
WORKLOAD/RESOURCES 1/											
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	6,110		6,186		5,632				5,632	
	# of Cases Successfully Resolved/Success Rate	94%		94%		83%				83%	
CIVIL	1. Number of cases (active & closed)	5,448		5,495		5,000				5,000	
	2. Number of matters (active & closed)	374		387		360				360	
CRIMINAL	3. Number of cases (active & closed)	254		269		230				230	
	4. Number of matters (active & closed)	34		35		42				42	
DIVISION RESOURCES - Total Year Costs & FTE's <i>(Appropriated only) Bracketed number represents Reimbursable FTE and are not included in the cost.</i>		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		479[41]	108,672	481[41]	109,423	481[41]	\$ 113,458	26	20,280	517[41]	\$ 133,738
		Actual FY 2019		Actual FY 2020		Target FY 2021		Current Services Adjustments and FY2022 Program Changes		FY 2022 Request	
PROGRAM ACTIVITY	PERFORMANCE/RESOURCES										
CIVIL		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
	TOTAL COSTS & FTE	431	\$ 97,805	433	\$ 98,481	433	\$ 102,112	23	\$ 18,252	456	\$ 120,364
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed	3,389	2,059	3,672	1,823	no estimate	no estimate			no estimate	no estimate
	2. Number of matters active/closed	204	170	198	189	no estimate	no estimate			no estimate	no estimate
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	185	99%	3,672	99%	no estimate	no estimate			no estimate	no estimate
	2. Defensive cases successfully resolved	405	90%	198	90%	no estimate	no estimate			no estimate	no estimate
	3. Penalties Awarded 2/*	Superfund	Non-Superfund	Superfund	Non-Superfund	Superfund	Non-Superfund			Superfund	Non-Superfund
	- Federal	\$ 2,212	\$ 363,446	\$ 740	\$ 188,393	no estimate	no estimate			\$ 740	\$ 188,393
	- State	106	55,594	-	17,290	no estimate	no estimate			\$ -	\$ 17,290
	4. Clean-up Costs Awarded 4/										
	- CERCLA Federal Cost Recovery 3/ 5/	324,787	17,182	26,227	20,175	no estimate	no estimate			\$ 26,227	\$ 20,175
	- Federal Injunctive Relief	187,004	3,109,158	-	-	no estimate	no estimate			\$ -	\$ -
	- CERCLA State Cost Recovery	7,428	672	-	173	no estimate	no estimate			\$ -	\$ 173
	- State Injunctive Relief	-	-	-	53,953	no estimate	no estimate			\$ -	\$ 53,953
	5. Supplemental Environmental Projects (SEP's) 6/										
	- Value of Federal SEP's	-	17,504	-	822,521	no estimate	no estimate			\$ -	\$ 822,521
	- Value of State SEP's	-	15,208	-	4,303	no estimate	no estimate			\$ -	\$ 4,303
	6. Environmental Mitigation Projects 7/										
	7. Costs Avoided (Saved the U.S. in Defense Cases) 8/	\$ -	\$52,255,655		\$ 1,159,835	no estimate	no estimate			\$ -	\$ 1,159,835

CRIMINAL		FTE	\$000	FTE	\$000	FTE	\$000			FTE	\$000
	TOTAL COSTS & FTE	48	\$ 11,618	48	\$ 10,942	48	\$ 11,346	3	\$ 2,028	51	\$ 13,374
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed			Active	Closed
	1. Number of cases active/closed	174	80	218	51	no estimate	no estimate			no estimate	no estimate
	2. Number of matters active/closed	34	-	29	6	no estimate	no estimate			no estimate	no estimate
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Number of criminal cases successfully resolved	92	99%	65	90%	no estimate	no estimate			no estimate	no estimate
	2. Dollars Awarded										
	- Fines 9/		\$ 78,636		\$ 9,459	no estimate	no estimate			\$ -	\$ 9,459
	- Restitution		7,218		16,637	no estimate	no estimate			\$ -	\$ 16,637
	- Community Service Funds 10/		1,000		110	no estimate	no estimate				
	3. Criminal Environmental Compliance Plan 11/		\$ -		\$ -	no estimate	no estimate			\$ -	\$ -
Additional Explanation for Targets, Program Changes, and Program Requests											
* In accordance with Department guidance, estimates of performance are not projected for the noted categories.											
Data Definition, Validation, Verification, and Limitations:											
1/ A matter is defined as "an issue requiring attorney time (i.e. congressional & legislative inquiries, Freedom of Information Act (FOIA) inquiries, notice of intent to sue, or policy issues)."											
Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date. Cases and matters reported here are those that had time reported.											
2/ Penalties Awarded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars awarded, Attorneys' Fees, and Royalties paid in cases involving the use of U.S. mineral lands.											
3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this fund.											
4/ Cost recovery is awarded to federal & state governments for reimbursement of the clean-up of sites contaminated with hazardous substances. Injunctive relief is estimated clean-up costs for contaminated sites which are court ordered to be completed by the defendant.											
5/ Includes monies paid by the Federal Government for its share of clean-up costs of Superfund sites.											
6/ Supplemental Environmental Projects (SEP) are environmentally beneficial projects that defendants are ordered to perform by the court (i.e. a factory installing a device to reduce the release of pollutants into the environment)											
7/ A mitigation project is actions a defendant agrees to take to remedy the harm caused by its past non-compliance.											
8/ Costs Avoided is the difference between the amount for which the government is sued, and the amount actually paid to plaintiffs.											
9/ Includes Special Assessments, Reimbursement of Court Costs and Attorneys' Fees, and Asset Forfeitures.											
10/ Community Service Funds represents actions which benefit the environment and local community that defendants are ordered to complete in addition to any other sentence.											
11/ Criminal Environmental Compliance Plans are plans that may vary in detail, usually imposed on organizational defendants as conditions of probation at sentencing, that set out various actions that defendants must undertake in an effort to bring them into and keep them in compliance.											
Data Collection & Storage: The majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).											
Data Validation and Verification: The division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the division to maintain accuracy.											
Data Limitations: Timeliness of notification by the courts.											
Data does not include United States Attorney (USA) exclusive cases											

		PERFORMANCE MEASURE TABLE							
		Decision Unit: Environment and Natural Resources Division							
Strategic Objectives	Performance Report and Performance Plan Targets		FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
			Actual	Actual	Actual	Actual	Actual	Target	Target
2.2, 4.1, 4.3	EFFICIENCY Measure	Total dollar value awarded per \$1 of expenditures (Affirmative)	\$251	\$295	\$51	\$60	\$21	\$81	\$81
2.2, 4.1, 4.3	EFFICIENCY Measure	Total dollars saved the government per \$1 of expenditures (Defensive)	\$162	\$5	\$131	\$664	\$23	\$22	\$22
2.2, 4.1, 4.3	OUTCOME Measure	Civil affirmative cases successfully resolved	99%	98%	100%	99%	100%	85%	85%
2.2, 4.1, 4.3	OUTCOME Measure	Civil defensive cases successfully resolved	93%	93%	92%	90%	91%	75%	75%
2.2, 4.1, 4.3	OUTCOME Measure	Criminal cases successfully resolved	96%	97%	100%	99%	98%	90%	90%
2.2, 4.1, 4.3	OUTPUT Measure	Number of criminal cases (active and closed) 1/	270	236	239	254	269	230	230
2.2, 4.1, 4.3	OUTPUT Measure	Number of criminal matters (active and closed) 1/	47	42	45	34	35	42	42
2.2, 4.1, 4.3	OUTPUT Measure	Number of civil cases (active and closed) 1/	4,766	4,948	5,317	5,448	5,495	5,000	5,000
2.2, 4.1, 4.3	OUTPUT Measure	Number of civil matters (active and closed) 1/	302	443	450	374	387	360	360

1/ Cases and matters are those with time reported.

3. Performance, Resources, and Strategies

Criminal Litigating Activities

A. Performance Plan and Report for Outcomes

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

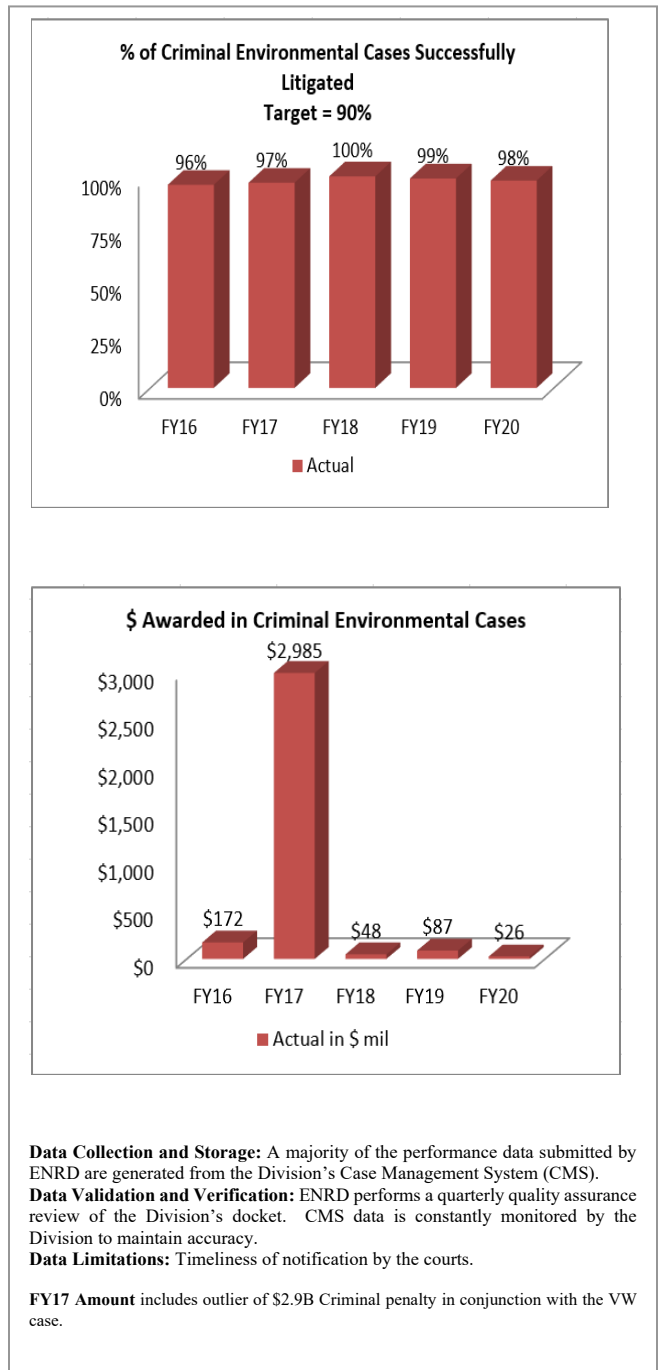
➤ **Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved**

❖ ***FY 2022 Target: 90%***

❖ ***FY 2020 Actual: 98%***

Discussion: ENRD exceeded its FY 2020 success rate goal by +9%. As discussed in the “Accomplishments” section of this budget document, and in press releases, over the past year, the Division prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety and other environmental criminal cases.

FY 2022 Performance Plan: We have set our target at 90 percent of cases successfully litigated for FY 2022. ENRD targets are generally set at an attainable performance level so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for “easy” wins solely to meet higher targets. Such an approach would do a disservice to the public by steering litigation away from more complicated problems facing the country’s environment and natural resources.



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

➤ **Performance Measure - \$ Awarded in Criminal Environmental Cases, Civil Penalties, and Monetary Impositions**

❖ *FY 2022 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2020 Actual: \$276.8 million*

Discussion: While ENRD does not establish monetary goals for this metric, the Division is pleased to report that in FY 2020 we imposed \$276.8 million in criminal fines, civil penalties, and monetary impositions. As discussed in the “Accomplishments” section of this budget document, and in press releases issued by the Division, over the past year, ENRD prosecuted a number of important, often complex, and high-profile vessel pollution, wildlife trafficking, biodiesel fraud, illegal timber harvesting, worker safety, animal welfare, and other environmental crimes.

FY 2022 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY 2022 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

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

B. Strategies to Accomplish Outcomes

The Division establishes strategies for performance and accomplishments relating to the Department’s Strategic Plan. The Division will continue to uphold the rule of law by obtaining convictions and deterring environmental crimes through initiatives focused on vessel pollution, Renewable Identification Number (RIN) fraud, illegal timber harvesting, laboratory fraud, chlorofluorocarbon (CFC) smuggling, wildlife smuggling, transportation of hazardous materials, animal welfare, and worker safety. ENRD will also continue to prosecute international trafficking of protected species of fish, wildlife, and plants with a host of international treaty partners.

The Division has worked, and will continue to work, collaboratively with other federal agencies to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations intended to protect the health of Americans, ENRD is forcing compliance and discouraging continued disregard for the public health and welfare of its citizens.

Civil Litigating Activities

A. Performance Plan and Report for Outcomes

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

➤ **Performance Measure - Percent of Civil Environmental Cases Successfully Resolved**

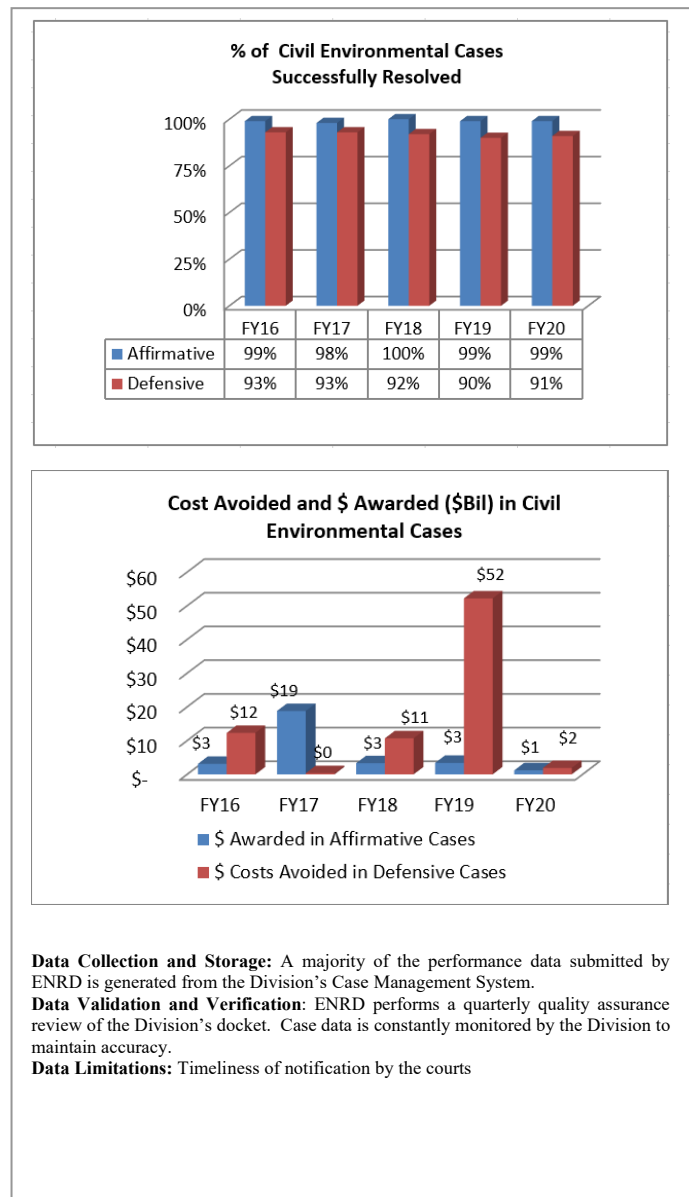
❖ **FY 2022 Targets**
85% Affirmative; 75% Defensive

❖ **FY 2020 Actual**
99% Affirmative; 91% Defensive

Discussion: FY 2020 was a particularly successful year for ENRD. The Division exceeded its civil affirmative success target by +14%, and its civil defensive target by +15%. As described elsewhere in this document, ENRD achieved extraordinary success enforcing the Nation's core environmental statutes and defending the Administration and its federal agencies from lawsuits involving a wide variety of statutes and actions.

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

Public Benefit: ENRD's success in the area of civil defensive litigation will include winning challenges to environmental and energy decisions made by our client agencies. The success of the Department in its civil litigation also ensures the correction of pollution control deficiencies, reduction of harmful discharges into the air, water, and land, clean-up of chemical releases, oil spills,



and abandoned waste, and the proper disposal of solid and hazardous waste. In addition, the Department's enforcement efforts help ensure military preparedness, safeguard the quality of the environment in the United States, and protect the health and safety of its citizens.

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

❖ *FY 2022 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2020 Actual: \$1.9 billion avoided; \$1.1 billion awarded*

Discussion: ENRD had a remarkably successful year in FY 2020 avoiding costs through its defensive cases and imposing injunctive relief on polluters in affirmative civil cases. ENRD's efforts in this area protected and preserved the federal fisc and also compelled polluters – rather than federal, state and local governments – to pay for pollution controls and compliance measures and for environmental clean-up and restoration efforts for which they were responsible.

FY 2022 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation and judicial calendars. The overall performance of the Division tends to reflect peaks and valleys when large cases are decided. Therefore, we do not project targets for this metric annually.

Public Benefit: The Division's success in this area ensures that violators of the Nation's pollution control and hazardous waste management laws implement appropriate controls to prevent or reduce harmful discharges into the Nation's water, land and air. The improved quality of air, water and natural resources provides significant health benefits to the American people.

➤ **Efficiency Measures**

Total Dollars Saved the Government per \$1 Expenditures

❖ *FY 2022 Targets: \$81 awarded; \$22 saved*

❖ *FY 2020 Actual: \$21 awarded; \$23 saved*

Discussion: The Division has an exemplary record in protecting the environment, tribal rights, the Nation's natural resources, wildlife, and public lands and the federal fisc. ENRD anticipates continued success through vigorous civil litigation efforts which will produce outcomes that achieve significant gains for the public and the U.S. Treasury.

Public Benefit: The Division's vigorous civil litigation efforts defend federal programs and Administration priorities and initiatives, ensure compliance with the environmental laws, secure

redress for past violations that harm the environment, ensure that those who violate the laws receive appropriate punishment, establish a credible deterrent against future violations of these laws, recoup federal funds spent to abate environmental contamination, obtain funds to restore or replace natural resources damaged by oil spills or releases of hazardous substances into the environment, ensure military preparedness and the security of the Nation's borders, and ensure the safety and security of our water supply. Polluters who violate the environmental laws are not allowed to gain an unfair economic advantage over law-abiding companies. The deterrent effect of the Division's work encourages voluntary compliance with environmental and natural resources laws, thereby improving the environment, the quality of our natural resources, and the safety and health of United States citizens.

B. Strategies to Accomplish Outcomes

The Division establishes strategies for performance and accomplishments relating to the Department's Strategic Plan. ENRD will continue to execute its core mission of enforcing and defending the Nation's environmental and natural resource laws. Our successes in FY 2022 will continue to pay dividends to the U.S. Treasury, protect the federal fisc, protect the Nation's air, water, land and natural resources, and uphold the health, safety and economic interest of the American people.

V. Program Increases by Item

A. Environmental Justice and Combating the Climate Crisis

Item Name:	Environmental Justice and Combating the Climate Crisis
DOJ Focus Area:	Agile Responsiveness
Strategic Goal:	N/A
Strategic Objective:	N/A
Budget Decision Unit(s):	Environment and Natural Resources Division (“ENRD”)
Organizational Program:	<i>Appellate Section (“APP”)</i> <i>Environmental Crimes Section (“ECS”)</i> <i>Environmental Defense Section (“EDS”)</i> <i>Environmental Enforcement Section (“EES”)</i> <i>Indian Resources Section (“IRS”)</i> <i>Land Acquisition Section (“LAS”)</i> <i>Law and Policy Section (“LPS”)</i> <i>Natural Resources Section (“NRS”)</i> <i>Wildlife and Marine Resources Section (“WMRS”)</i>
Program Increase:	Positions <u>18</u>, Atty <u>16</u>, FTE <u>10</u>, Dollars <u>\$5,000,000</u>

1. Description of the Item

ENRD is requesting \$5,000,000, including 18 Positions, 16 Attorneys, and 10 FTEs, to expand the use of existing authorities in affirmative cases to reduce greenhouse gas (GHG) emissions and to address the impacts of climate change, and continue defensive and other ENRD work related to climate change. ENRD will also implement the Division’s new environmental justice (EJ) responsibilities under Executive Order 14008 (86 Fed. Reg. 7619 (Feb. 1, 2021)).

This request is directly in support of one of the new administration’s top priorities, addressing climate change.

(a) Environmental Justice.

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

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

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

Because the Administration’s EJ initiatives require new, or renewed, focus on these issues, rather than simply a shift in priorities, ENRD anticipates needing an increase in resources to achieve these priorities. ENRD will need to hire additional enforcement attorneys, along with professional staff and contractors to provide litigation support, to implement the comprehensive EJ enforcement strategy that ENRD has been tasked with developing. At the same time, the demands of our defensive sections will increase, as they take on a more robust client-counseling role in addition to managing their defensive litigation dockets, which we do not expect to see subside. Finally, particularly in its early stages, ENRD anticipates providing significant support to other DOJ components and other federal agencies to carry the government-wide EJ enforcement strategy and the other mandates of Executive Order 14008.

(b) Climate Change.

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

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

and infrastructure. *86 Fed. Reg. at 7622.*

For decades, ENRD has significantly reduced pollution across the nation and protected the country's natural resources through its civil and criminal affirmative and defensive litigation and other work. Our annual accomplishments reports demonstrate the breadth of the Division's actions.

<https://www.justice.gov/enrd/selected-documents>

As with EJ, the Division will make actions to address the climate crisis a central feature of its work. ENRD cannot provide the resources needed without jeopardizing the Division's work in other core environmental and natural resources areas that is so critical to the health and welfare of the nation, as Executive Order 13990 also recognizes:

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

2. Justification

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

(i) Environmental Justice.

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

A. Preparation and Implementation of a Comprehensive EJ Enforcement Strategy

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

ENRD is well positioned to implement this directive. While EJ was not a focus of the prior Administration, substantial infrastructure and expertise on EJ exist within ENRD as a result of work done in previous Administrations; future work will build on this base. ENRD played a significant role in creating DOJ's current EJ Strategy, issued in 2014, and also has in place an ENRD EJ Strategy and section plans for incorporating EJ principles into the work of all ten of ENRD's sections, including those that enforce the full array of environmental protection and natural resource laws. This experience provides a solid foundation for creating a comprehensive EJ enforcement strategy across the government. In addition, the Division continues to support a Senior Litigation

Counsel who focuses on EJ and reports to one of ENRD's Deputy Assistant Attorneys General on the Division's EJ work. The Senior Litigation Counsel for EJ leads ENRD's EJ workgroup, comprised of attorneys and professional staff with EJ experience throughout the Division; heads the Environmental Enforcement Section's EJ coordinators team, which provides case-specific support in enforcement cases raising EJ issues; and participates as a DOJ representative on a federal EJ interagency workgroup and in other activities.

We anticipate that the Comprehensive Environmental Justice Enforcement Strategy (Strategy) will be transformative and far-reaching. It will cover both civil and criminal environmental enforcement, and will have several key components. The Administration, the Department, and our clients have all identified this undertaking as a high priority. The Strategy is currently under development within the Department, in consultation with our client agencies, and is expected to include enhanced enforcement efforts to address environmental justice concerns, increased engagement with EJ communities to ensure environmental justice issues are understood and addressed, and incorporation of EJ considerations in formulating relief in enforcement actions. The Strategy will likely also address ongoing coordination with client agencies, training of enforcement personnel in government agencies, and the unique enforcement issues that arise with respect to Tribes and Indian country. Because this high-priority Strategy has only been in development since the start of the present Administration, these details will need to be finalized by agency leadership following comprehensive analysis and review.

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

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

Through a counseling and advising function, ENRD can help ensure that the policy-making agency has considered EJ issues before taking action, is aware of both the flexibilities and constraints within its statutory authorities, and is otherwise complying with the executive orders addressing EJ. We further have found that agencies benefit from ENRD's environmental enforcement experience in designing rules with strong and effective enforcement mechanisms. Nonetheless, we have found that agencies greatly benefit from this assistance, and that it can make a meaningful difference in policy outcomes.

In addition to one-on-one client counseling, ENRD could lead efforts to educate and provide direction to agency policy-makers throughout the government. For example, ENRD, under the Obama Administration, created a "Law Leaders on Environmental Justice" group to facilitate client

counseling and legal knowledge within the federal agencies on the topic of EJ. This group, co-led by EPA's Office of General Counsel, included career attorneys from a wide range of agencies, and was effective at ensuring that agency lawyers were well prepared to support policy decisions in this area. The group served as an important forum for open dialogue, continuing education, and informal counseling among the federal agencies on EJ issues. We recommend that this group be re-established and made a permanent part of the interagency infrastructure on EJ. ENRD is well positioned to lead this effort. Doing so, however, will require resources and a high-level commitment from multiple agencies.

C. Support for DOJ and Interagency EJ Efforts

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

(ii) Climate Change.

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

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

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

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

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

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

ENRD litigates to protect tribal resources subject to impact by climate change, including protection of treaty hunting and fishing rights and tribal reserved water rights. The Division enforces emission standards from ships under MARPOL Annex VI, which addresses illegal air emissions from ships, including emission of GHGs. Air pollution from ships is a significant contributor to ocean acidification. ENRD's affirmative litigation also addresses the unlawful filling of wetlands and deforestation, two activities that contribute to the adverse impacts of climate change. The Division also prosecutes illegal timber trafficking under the Lacey Act, as well as other criminal statutes.

C. Regulatory and Administrative Climate Litigation

The Division is currently defending a wide range of cases that have substantial climate implications, and we expect this docket to grow significantly as agencies implement Executive Order 14,008. Our work in this area includes: (1) ENRD defense of GHG emission regulations and controls; (2) litigation in support of agency policies and actions to promote conversion to clean energy; and (3) defense of policy and management actions to protect sensitive resources.

ENRD defends Environmental Protection Agency rulemakings that directly restrict the emission of harmful GHGs. This litigation has included rules governing stationary sources under CAA Sections 111(b) and 111(d), such as power plants, and regulating GHG emissions from mobile sources under CAA Sections 202 and 209, such as the SAFE I (California waiver and preemption) and SAFE II (replacement MY 2021-26 light-duty standards) rules. This litigation will include successor rules under those provisions, and other rules EPA may adopt under the CAA or other statutes to address the ill effects of climate change. Further, to the extent that EPA permits relating to GHG emissions are challenged judicially, ENRD will defend those challenges.

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

Sections 207 and 208 of Executive Order 14,008 direct the Secretary of the Interior to pause entering into new oil and natural gas leases on public lands or in offshore waters to the extent possible, and launch a rigorous review of all existing leasing and permitting practices related to fossil fuel development on public lands and waters. ENRD is already defending several challenges to Interior's pause on oil and gas leasing. Challenges to any future decisions to amend or withdraw leases as a result of this review will likely ensue. Section 207 of Executive Order 14,008 also directs Interior to identify steps that can be taken to double renewable energy production from offshore wind by 2030. The Division will handle any ensuing litigation over the permitting and siting of renewable energy infrastructure. ENRD will also defend permit denials or restrictions associated with oil and gas pipelines and liquid natural gas terminals that must be approved by various federal agencies.

Climate change-induced drought and severe weather patterns have already affected the reliability of water supplies for domestic and agricultural uses—particularly in the western United States. ENRD plays a critical role in securing water rights for federal agencies, in addition to Indian tribes. The

Division is handling litigation related to federal and Indian water rights in numerous water rights adjudications and Administrative Procedure Act challenges to the management of federal water delivery projects.

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

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

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

In addition to its extensive litigation responsibilities, ENRD provides advice to other federal agencies on numerous legislative, rulemaking, and policy matters related to its environmental and natural resources portfolio. Those are likely to expand under Executive Order 14,008.

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

3. Impact on Performance

The White House has made two things clear: ENRD must (1) address the disproportionately high and adverse human health, environmental, and other impacts on disadvantaged communities, through, among other means, development and implementation of a comprehensive environmental justice enforcement strategy and (2) make combating climate change a central part of its work. Successful ENRD enforcement of environmental protection and natural resource laws is a critical step in achieving the Justice Department's Strategic Goals. The Environmental Justice program enhances a critical aspect of the Department's long-standing role in enforcing and upholding the federal laws that preserve and protect the environment and our natural resources. The Division will also defend and enforce any new climate-focused statutes, regulations, and policies effective during FY 2022. Existing performance measures will track progress for this program increase.

Funding

1. Base Funding

FY 2020 Enacted				FY 2021 President's Budget				FY 2022 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 2022 Request (\$000)	Positions Requested	Full Year Modular Cost per Position (\$000)	Annualizations (\$000)			
				1st Year	2nd Year	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Attorneys (0905)	\$3,696	16	\$231	\$260	\$261	\$29	\$1
Paralegals (0950)	\$99	1	\$99	\$117	\$154	\$18	\$55
Clerical/Admin (0301)	\$74	1	\$74	\$81	\$99	\$7	\$18
Total Personnel	\$3,869	18	\$404	\$458	\$514	\$54	\$74

3. Non-Personnel Increase/Reduction Cost Summary

Non-Personnel Item	FY 2022 Request (\$000)	Unit Cost (\$000)	Quantity	Annualizations (\$000)	
				FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Contractual Services and Supplies	\$1,131	\$1,131	1	\$0	\$0
Total Non-Personnel	\$1,131	\$1,131	1	\$0	\$0

4. Total Request for this Item

Category	Positions			Amount Requested (\$000)			Annualizations (\$000)	
	Count	Agt/Atty	FTE	Personnel	Non-Personnel	Total	FY 2023 (net change from 2022)	FY 2024 (net change from 2023)
Current Services	0	0	0	\$0	\$0	\$0	\$0	\$0
Increases	18	16	10	\$3,869	\$1,131	\$5,000	\$54	\$74
Grand Total	18	16	10	\$3,869	\$1,131	\$5,000	\$54	\$74

VI. Program Offsets by Item

VII. Exhibits