



U.S. Department of Justice

Environment and Natural Resources Division

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

DIRECTIVE No. 2016-04

Title: Delegation of Authority to Initiate, Litigate and Compromise ENRD Civil Cases and to Approve Revisions to Certain Previously Approved Consent Decrees or Settlements

Authority: This Directive is issued pursuant to the authority vested in me as Assistant Attorney General for the Environment and Natural Resources Division (ENRD) by 28 C.F.R. §§ 0.65, 0.65a, 0.160, 0.162, 0.164 and 0.168.

Purpose: This Directive revises and clarifies ENRD Directive No. 2013-05, which delegated from the Assistant Attorney General to the United States Attorneys and the supervising Deputy Assistant Attorneys General (DAAGs), Chiefs, and Deputy Chief(s) of the ENRD litigating Sections certain authority to initiate, litigate, and compromise ENRD cases and take certain associated actions. This substance of prior ENRD Directive No. 2011-08 has been consolidated into this Directive, and delegations relating to the Environmental Crimes Section are now being addressed in a separate Directive, and are no longer addressed here.

Relationship to Other Directives: This Directive supersedes and revokes Directive No. 2013-05 and Directive No. 2011-08. Other Division Directives relating to delegation of authority to initiate, litigate and compromise cases are: Directive No. 2016-03 (Delegation of Authority to Initiate, Litigate and Compromise Environmental Defense Section (EDS) and Environmental Enforcement Section (EES) Cases); Directive No. 2002-02 (Revocation of Unnecessary, Inactive and Obsolete Directives); and Directive No. 1991-34 (Re-Delegation of Authority to Initiate ENRD Claims in Bankruptcy Court).

Effective Date: This Directive shall become effective upon approval by the Associate Attorney General or the Deputy Attorney General.

Action:

I. DELEGATION OF AUTHORITY TO UNITED STATES ATTORNEYS TO INITIATE OR OTHERWISE LITIGATE ENRD CIVIL CASES:

A. Land Cases

1. In response to a request in writing from a person authorized to make the request on behalf of the field office of any federal department or agency ("authorized field officer"), United States Attorneys are hereby authorized to litigate without prior authorization from the Assistant Attorney General on behalf of such federal department or agency in matters concerning real property of the United States and trust and restricted Indian lands (but excluding the authority to initiate eminent domain actions), provided such matters do not involve new or unusual issues, issues of national significance, issues of water rights, claims regarding the diminishment or disestablishment of tribal reservation boundaries, or the abrogation of tribal treaty rights. Such matters include the following:
 - a. Actions to recover possession of, or quiet title to, property from tenants, squatters, trespassers, or others, and actions to enjoin trespass;
 - b. Actions to recover damages resulting from trespass when the amount of the claim for actual damage based upon an innocent trespass does not exceed \$1 million, and actions to recover amounts exceeding \$1 million
 - (i) if the actual damages are \$1 million or less and applicable state law permits the recovery of multiple damages (*e.g.*, double or treble) for either a willful or innocent trespass; or
 - (ii) if the actual damages are \$1 million or less, but the action is for conversion to obtain recovery of the enhanced value of property severed and removed in the trespass;
 - c. Actions to collect delinquent rentals or damages of not more than \$1 million for use and occupancy;
 - d. Actions to collect costs of forest fire suppression and other damages resulting from such fires;
 - e. Actions to collect delinquent operation and maintenance charges of not more than \$1 million accruing on Indian irrigation projects and federal reclamation projects;
 - f. Actions to collect loans of money or livestock made by the United States to individual Indians without limitation on amount, including loans made by Indian tribal organizations to individual Indians if the loan agreements,

notes or securities have been assigned by the tribal organizations to the United States; and

- g. Actions in which the United States is named as a party pursuant to 28 U.S.C. §§ 2410(a)(3) and (4) (*i.e.*, actions to partition or condemn property on which the United States has a lien).
2. Before initiating proceedings pursuant to paragraph A.1. of this section, the United States Attorney shall forward a copy of the authorized field officer's written request to the Chief, Natural Resources Section (NRS), except where the lands at issue are trust or restricted Indian lands a copy of the field officer's written request shall be sent to the Chief, Indian Resources Section (IRS), Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044-7611.
3. The extent to which a United States Attorney is responsible for handling any eminent domain or condemnation action is determined by the Land Acquisition Section. The authority delegated in this paragraph is subject to the limitations set forth in section II.D.3.

B. Other Civil Environmental Cases

1. United States Attorneys are authorized to litigate, without prior authorization from the Assistant Attorney General, on behalf of the Secretary of the Army, acting through the Corps of Engineers, in response to a written request from an authorized field officer of the Corps of Engineers in the following civil cases:
 - a. Civil actions involving the filling or the deposit of dredged or fill material into, or the alteration of the channels of, the waters of the United States, in violation of section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 403; or section 404 of the Federal Water Pollution Control Act Amendments of 1972 (FWPCA), 33 U.S.C. § 1344; or of both statutes; and
 - b. Civil actions involving the discharge of refuse into the navigable waters of the United States, and their tributaries, in violation of section 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. § 407, except for *in rem* actions against vessels, which shall remain under the jurisdiction of the Civil Division.
2. The authority set forth in paragraph B.1. of this section is revocable on a case-by-case basis where, in the opinion of the Assistant Attorney General, new or unusual issues of law or policy, or issues of national significance, are involved. Generally speaking, direct referral cases are of a routine nature and involve statutory provisions whose interpretation is well-settled. Prior to initiating proceedings pursuant to paragraph B.1. of this section, the United States Attorney

shall forward a copy of the authorized field officer's written request and the litigation report to the Chief of the Environmental Defense Section (EDS), Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044-7611. United States Attorneys are encouraged to consult with ENRD on these cases. In addition and in accordance with U.S.A.M. 5-6.312, the United States Attorney shall promptly furnish copies to EDS of all pleadings filed in any direct referral case described in paragraph B.1. of this section.

3. United States Attorneys also are authorized to handle the following matters without prior authorization from the Assistant Attorney General:
 - a. Claims referred by the United States Coast Guard, in response to a written request from an authorized field officer, seeking the collection of federal clean-up costs and/or the imposition of civil penalties under section 311 of the Clean Water Act (CWA), 33 U.S.C. § 1321; or seeking the collection of federal clean-up costs and/or the imposition of civil penalties under sections 1002 and 1017 of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. §§ 2702 and 2717; or of both statutes;
 - b. Miscellaneous proceedings, such as warrant requests, undertaken to assist agencies seeking investigative entry under section 308 of the CWA, 33 U.S.C. § 1318; sections 114 or 206 of the Clean Air Act (CAA), 42 U.S.C. §§ 7414, 7525; sections 3007 or 3013 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6927, 6934; section 11 of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2610; or section 9 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136g; and
 - c. Claims under any statute listed in U.S.A.M. 5-12.100 for collection of civil penalties previously assessed by the referring agency in an administrative proceeding where the amount of the penalty does not exceed \$1 million.
4. The authority delegated in paragraph B.3 of this section is subject to the limitations set forth in section III and is revocable on a case-by-case basis where, in the opinion of the Assistant Attorney General, new or unusual issues of law or policy, or issues of national significance, are involved. Before initiating proceedings pursuant to paragraph B.3. of this section, the United States Attorney shall forward a copy of the authorized field officer's written request to the Chief, Environmental Enforcement Section (EES), Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044-7611. In addition, in accordance with U.S.A.M. 5-12.321, the United States Attorney shall promptly furnish copies to EES of all pleadings filed in any direct referral case described in paragraph B.3. of this section.

C. Civil Wildlife and Animal Welfare Enforcement Cases

1. United States Attorneys are authorized to litigate in civil enforcement cases, without prior authorization from the Assistant Attorney General, on behalf of any other federal department or agency in response to a direct request in writing from an authorized field officer of such department or agency, in claims brought pursuant to the following wildlife and animal welfare statutes:
 - a. Endangered Species Act, 16 U.S.C. §§ 1531-1543 (2012);
 - b. Lacey Act and related provisions, 16 U.S.C. §§ 3371-3378 and 18 U.S.C. §§ 41-44, 47 (2012);
 - c. Airborne Hunting Act, 16 U.S.C. § 742j-1 (2012);
 - d. Migratory Bird Treaty Act, 16 U.S.C. §§ 701-712 (2012);
 - e. Migratory Bird Conservation Act, 16 U.S.C. §§ 715-715s (2012);
 - f. Bald and Golden Eagle Protection Act, 16 U.S.C. §§ 668-668d (2012);
 - g. Dingell-Johnson Sport Fish Restoration Act, 16 U.S.C. §§ 777-777n (2012);
 - h. National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd, 668ee (2012);
 - i. Marine Protection, Research, and Sanctuaries Act, 16 U.S.C. §§ 1431-1445c-1 (2012);
 - j. Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §§ 1801-1882 (2012);
 - k. Whaling Convention Act, 16 U.S.C. §§ 916-916l (2012);
 - l. Atlantic Tunas Convention Act, 16 U.S.C. §§ 971-971k (2012);
 - m. Tuna Conventions Act, 16 U.S.C. §§ 951-961 (2012);
 - n. Marine Mammal Protection Act, 16 U.S.C. §§ 1361-1407 (2012);
 - o. Fur Seal Act, 16 U.S.C. §§ 1151-1187 (2012);
 - p. Wild Free-Roaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (2012);

- q. Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661-667e (2012);
 - r. Animal Damage Control Act, 7 U.S.C. §§ 426-426d (2012);
 - s. Sponge Act, 16 U.S.C. §§ 781-785 (2012);
 - t. Northern Pacific Halibut Act, 16 U.S.C. §§ 773-773k (2012);
 - u. Rhinoceros and Tiger Conservation Act, 16 U.S.C. §§ 5301-5306 (2012);
and,
 - v. Wild Bird Conservation Act, 16 U.S.C. §§ 4901-4916 (2012).
 - w. Humane Methods of Livestock Slaughter Act, 7 U.S.C. §§ 1901-1907
(2015).
 - x. Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (2015).
 - y. Animal Fighting Prohibition Enforcement Act, 7 U.S.C. § 2156, 18 U.S.C.
§ 49 (2015).
 - z. Horse Protection Act, 15 U.S.C. §§ 1821-1831 (2015).
 - aa. 28-Hour Law, 49 U.S.C. § 80502 (2015).
 - bb. Antarctic Conservation Act, 16 U.S.C. §§ 2401-2413 (2015).
2. The authority set forth in paragraph C.1. of this section is revocable on a case-by-case basis where, in the opinion of the Assistant Attorney General, new or unusual issues of law or policy, or issues of national significance, are involved. Upon receipt of a referral of any civil law enforcement action under the above statutes, the United States Attorney shall give notice to the Chief, Wildlife and Marine Resources Section (WMRS), P.O. Box 7611, Ben Franklin Station, Washington, DC 20044-7611, before filing or declining to file an action, as set forth in U.S.A.M. 5-10.312. In addition, in accordance with U.S.A.M. 5-12.321, the United States Attorney shall promptly furnish copies to WMRS of all pleadings filed in any direct referral case described in paragraph C.1. of this section.

D. Delegation of Non-Direct Referral Cases

1. Cases Delegated Upon Approval of Complaint

In addition to the categories of cases set forth above, concurrently with a request to the Assistant Attorney General for approval to initiate litigation, United States Attorneys may

request in writing that the Assistant Attorney General delegate the further litigation of a case to the United States Attorney. In addition, for cases where the authority to initiate litigation has been delegated by the Assistant Attorney General to the Chief and Deputy Chiefs of EES pursuant to ENRD Directives, concurrently with a request to the Chief or a Deputy Chief of EES for approval to initiate litigation, United States Attorneys may request in writing that the Chief or Deputy Chief of EES delegate the further litigation of a case to the United States Attorney. The authority delegated in this paragraph is subject to the limitations set forth in section III.

2. Cases Delegated By Section Chiefs

ENRD Section Chiefs are authorized, with respect to matters assigned to their respective sections, to delegate the litigation of cases to United States Attorneys. As with direct referral cases, cases delegated under this subsection shall generally speaking be of a routine nature and involve statutory provisions whose interpretation is well-settled. Such delegations shall be in writing and may be revoked if, in the opinion of the ENRD Section Chief, new or unusual issues of law or policy, or issues of national significance arise in the litigation. The authority delegated in this paragraph is subject to the limitations set forth in section III.

E. Litigation Involving the Environmental Protection Agency

All litigation involving the EPA must be conducted in accordance with the 1977 Memorandum of Understanding between the Department of Justice and the Environmental Protection Agency, 42 Fed. Reg. 48,942 (Sept. 21, 1977) (including the time frames set forth in paragraphs 8, 9 and 10 of that document), and with the guidance and policies established by the EPA, ENRD and EES regarding litigation of civil environmental cases. EES will provide the United States Attorneys with copies of all pertinent guidance and policies. In addition, United States Attorneys will promptly report on the status of cases under the delegations in this Directive whenever information is needed for required reports to client agencies, Congress, etc., or for docket reviews with Department and Division management or with client agencies.

Except for matters referred to in paragraph B.3. of this section, all requests from the EPA for civil litigation must be submitted by the EPA to the Assistant Attorney General. Matters requiring an immediate temporary restraining order, however, may be submitted concurrently by the Regional Administrators of the EPA to a United States Attorney and the Assistant Attorney General.

F. Coordination with ENRD

1. When constitutional questions or other significant issues arise in the course of initiating or otherwise handling claims pursuant to the authority delegated above, or when an appeal is taken by any party, the United States Attorney must consult ENRD in a timely manner.

2. For purposes of maintaining accurate information on civil environmental case filings, judgments and settlements, whenever a United States Attorney files a suit, settles a case, accepts a compromise or closes a claim pursuant to the authority delegated herein, a memorandum fully explaining the basis for the action taken shall be executed and placed in the file and a copy sent to the Chief of EDS, for direct referrals from the Corps of Engineers, as provided in paragraph B.1. of this section, to the Chief of EES, for direct referrals from EPA, as provided in paragraph D. of this section, to the Chief of the Land Acquisition Section (LAS), for direct referrals, as provided in paragraph A.3. of this section, or to the Chief of NRS or other appropriate Chief in all other cases for which a United States Attorney has exercised authority delegated by this Directive.

II. AUTHORITY TO COMPROMISE, DISMISS, OR CLOSE CLAIMS

A. Delegation to Deputy Assistant Attorneys General

The Deputy Assistant Attorneys General are hereby delegated all the power and authority of the Assistant Attorney General in charge of ENRD, including with respect to the institution of suits, the acceptance or rejection of compromise offers, the administrative settlement of claims, and the closing of claims or cases, unless any such authority or power is required by law to be exercised by the Assistant Attorney General personally or has been specifically delegated to another Department official.

B. Delegation to Section Chiefs

Subject to the limitations imposed by 28 CFR 0.160(d) and 0.164, and section III of this directive, and the authority of the Solicitor General set forth in 28 CFR 0.163, ENRD Section Chiefs, with respect to matters assigned or delegated to their respective sections, are hereby delegated authority to:

1. Accept offers in compromise of claims asserted by the United States in all cases in which the gross amount of the original claim does not exceed \$10,000,000;
2. Accept offers in compromise of, or settle administratively, claims against the United States in all cases in which the principal amount of the proposed settlement does not exceed \$1,000,000;
3. Reject any offers in compromise; and
4. Close any affirmative claim or case where the gross amount of the original claim does not exceed \$10,000,000.
5. File suits, counterclaims, and cross-claims, or take any other action necessary to protect the interests of the United States in all routine nonmonetary cases, and in other monetary claims or cases where the gross amount of the original claim does not exceed \$10,000,000. Such actions in nonmonetary cases which are other than routine will be submitted for the approval of the Assistant Attorney General, ENRD; and,
6. Issue subpoenas, civil investigative demands, and any other compulsory process.

C. Delegations of Authority to Approve Revisions to Certain Previously Approved Consent Decrees or Settlements

The Chiefs and Deputy Chiefs of the Appellate Section, EDS, EES, IRS, LAS, the Law and Policy Section (LPS), NRS, and WMRS are each hereby authorized to approve revisions to previously approved consent decrees or settlements that have the effect of extending agreed deadlines by no more than 12 months. This authority includes the approval of successive revisions to previously approved consent decrees or settlements that have the effect of extending agreed deadlines, so long as the cumulative time period by which such deadlines are extended does not exceed 12 months.

The delegation of authority described in this section I.C. extends only to those cases for which authority to accept offers of compromise has been delegated to the Assistant Attorney General. This delegation of authority does not extend to cases in which the Deputy Attorney General or Associate Attorney General approved the original consent decree or settlement or prior revision thereto. This authority is limited by section III below and may not be exercised where an agency involved is opposed to the proposed action. The authority

delegated in this section I.C. may not be re-delegated without prior written approval by the Assistant Attorney General.

D. Delegation to United States Attorneys

1. Compromise of Cases in General

Following a direct referral to, and initiation by, a United States Attorney of claims concerning real property of the United States, as specified in section I, paragraph A.1., and cases that are directly referred to them by the Coast Guard, in accordance with section I, subparagraph B.3.a., the United States Attorney is hereby authorized, without prior approval of the Assistant Attorney General and subject to the limitations imposed by section III, to:

- a. Accept or reject offers in compromise of, or settle administratively, claims against the United States in which the amount of the proposed settlement does not exceed \$1 million;
- b. Accept or reject offers in compromise of, or settle administratively, claims asserted by the United States in cases in which the gross amount of the original claim does not exceed \$2 million; and
- c. Accept or reject offers in compromise of, or settle administratively, claims asserted by the United States in cases in which the gross amount of the original claim does not exceed \$10 million, provided that the difference between the gross amount of the original claim and the proposed settlement does not exceed \$2 million.

Such authority to settle claims asserted by or against the United States may be exercised only with the written concurrence of a person authorized to provide such concurrence on behalf of the field office of the federal department or agency concerned. When the United States is a plaintiff, a United States Attorney may accept an offer without the written concurrence of such a person if the acceptance is based solely upon an inability-to-pay analysis, as confirmed by a qualified financial expert.

2. Compromise of Certain Civil Cases

- a. Except where the United States Attorney has been delegated authority pursuant to section I, paragraph D., or with respect to matters covered by paragraph C.4. of this section, all offers in compromise of cases in which the Department of Justice represents the EPA, the Administrator or any other official of that Agency, shall be submitted to the Chief of EES, who shall review the compromise if it is within the authority delegated to the Chief of EES, or forward it to the Assistant Attorney General with a recommendation. Similarly, all offers in compromise of cases in which the Department of Justice represents the Secretary of the Army, acting through the Corps of Engineers pursuant to section I, paragraph B.1., shall be submitted to the Chief of EDS, who shall review the compromise if it is within the authority delegated to the Chief of EDS, or forward it to the Assistant Attorney General with a recommendation.
- b. For cases that have been delegated by the Assistant Attorney General to the United States Attorney pursuant to section I.D. and that have been principally litigated by the United States Attorney, the United States Attorney is authorized, without additional approval by the Assistant Attorney General and subject to the limitations imposed by section III, to compromise the following claims:
 - (i) Claims brought under the Safe Drinking Water Act (SDWA), 42 U.S.C. §§ 300f-300j-26; the RCRA, 42 U.S.C. §§ 6901-6992k; the CAA, 42 U.S.C. §§ 7401-7671q; the CWA, 33 U.S.C. §§ 1251-1387; the FIFRA, 7 U.S.C. §§ 136-136y; the TSCA, 15 U.S.C. §§ 2601-2697; the OPA, 33 U.S.C. §§ 2701-2762; and section 104 (e) of the CERCLA, 42 U.S.C. § 9604(e); where the amount of the civil penalty to be paid to the United States by a defendant, together with the cost of any Supplemental Environmental Projects (SEPs), does not exceed \$2 million and either (i) the penalty (not including any SEPs) is equal to or greater than the economic benefit of non-compliance, or (ii) the settlement results from an inability to pay analysis as confirmed by a qualified financial analyst; and
 - (ii) Claims under any statute listed in Chapter 5-12.100 of the U.S.A.M. to enforce requests for access to information, entry and/or inspection and samples, or for civil penalties for noncompliance with such requests.
- c. For cases that have been delegated by the Chief or Deputy Chiefs of EES to the United States Attorney pursuant to section I.D. and that have been principally litigated by the United States Attorney, the United States Attorney is authorized, without additional approval by the Chief or Deputy

Chiefs of EES, subject to the limitations imposed by Section III, to compromise such claims within the authority granted to the Chief and Deputy Chiefs of EES in ENRD Directive No. 2016-03 (formerly Directive No. 2014-01).

- d. United States Attorneys are not authorized to compromise claims listed above if the claim is part of a lawsuit in which claims under other statutes are also included (*i.e.*, “multi-media” cases).

3. Compromise of Condemnation Cases

- a. Subject to the limitations imposed by section III, United States Attorneys are authorized, without the prior approval of ENRD, to accept or reject offers in compromise of condemnation proceedings in any case in which:

- (i) The gross amount of the proposed settlement does not exceed \$2 million;
- (ii) The compromise is approved in writing (the written approval to be retained in the file of the United States Attorney concerned) by the authorized field representative of the acquiring agency, if the amount of the compromise exceeds the amount deposited with the declaration of taking as to the particular tract of land involved;
- (iii) The amount of the compromise is compatible with the sound appraisal or appraisals upon which the United States would rely as evidence in the event of trial, with due regard for probable minimum trial costs and risks;
- (iv) The case does not involve the revestment of any land or improvements or any interest, or interests, in land under the Act of Aug. 21, 2002, 116 Stat. 1062 (40 U.S.C. § 3117); and
- (v) The case does not involve a novel issue of condemnation law or question of condemnation practice and policy, or for any other reason, which would necessitate that the settlement offer should receive the attention of ENRD.

- b. The United States Attorney concerned shall immediately forward by email to the Chief of the Land Acquisition Section (LAS) an electronic report, in the form of an email, letter or memorandum, stating the action taken and the reasons therefore. Special care shall be taken to ensure that the report contains a statement as to what the valuation testimony of the United States and the landowners would have been if the case had been tried.

4. Settlement of CERCLA Contribution Claims

- a. Subject to the limitations imposed by section III, United States Attorneys are authorized, without prior approval of ENRD, to accept or reject offers in compromise of CERCLA actions, 42 U.S.C. §§ 9601-9675, in which the United States, or its agencies, is sued for contribution, and over which the United States Attorney has been designated as lead counsel by ENRD, in any case in which the gross amount of the proposed settlement does not exceed \$1 million.
- b. The United States Attorney concerned shall immediately forward to the Department a report, in the form of a letter or memorandum, bearing the United States Attorney's signature or showing personal approval, stating the action taken and containing an adequate statement of the reasons therefore.

5. Closing or Dismissal of Claims

- a. Subject to the limitations imposed by subparagraph C.5.b. and section III, a United States Attorney may close or dismiss (other than by compromise or by entry of judgment) claims asserted by the United States in direct referral matters described in section I, paragraph A., if written concurrence that the matter is without merit factually or legally is provided by a person authorized to concur on behalf of the field office of the federal department or agency concerned. Except for claims brought for the benefit of individual Indians or Indian tribes, the United States Attorney may close a claim without consulting the field office of the federal department or agency concerned if the claim is for money only and the United States Attorney concludes that either (a) the cost of collection under the circumstances would exceed the amount of the claim, or (b) the claim is uncollectible. The United States Attorney may close a claim asserted for the benefit of individual Indians or Indian tribes without consulting the field office of the federal department or agency concerned if (a) the claim is for money only, and (b) the United States Attorney concludes that the claim is uncollectible. Claims asserted for the benefit of individual Indians or Indian tribes may not be closed merely because the cost of collection might exceed the amount of the claim.

b. Restrictions on Closing or Dismissal Delegation

The United States Attorney concerned is not authorized to close or dismiss claims, as described in paragraph C.5.a. of this section, when, for any reason, the closing or dismissal of a particular claim would, as a practical matter, control or adversely influence the disposition of other claims and the closing or dismissal of all the claims, taken together, would exceed the

authority delegated by paragraph C. of this section; or for any reason set forth in section III.

E. Authority of United States Attorneys to Approve Federal Register Notices

1. Pursuant to 28 C.F.R. § 50.7, each proposed settlement of an action to enjoin discharges of pollutants into the environment must be lodged with a court at least 30 days prior to entry in order to allow for public comment. For settlements in cases handled by United States Attorneys under paragraph D. of section I, and subject to the limitations imposed by section III, the United States Attorneys are hereby authorized to:
 - a. Approve all Federal Register Notices under 28 C.F.R. § 50.7 and under any statute enforced by the Division;
 - b. Determine on a case-by-case basis whether a modification to an entered consent decree, which had previously been noticed for public comment, requires additional public comment; and
 - c. Approve motions to enter consent decrees after consideration of public comment.
2. However, any motion to enter a consent decree should be referred to the Assistant Attorney General whenever there has been a significant number of public comments or where any comment raises a substantial issue that should receive the attention of the Assistant Attorney General, or where the United States Attorney is of the opinion that, because of a question of law or policy presented, or for any other reason, the motion should receive the attention of the Assistant Attorney General.

III. LIMITATIONS ON DELEGATIONS

The authority to initiate and otherwise litigate cases described in paragraphs I.B.3 and I.D., and the authority to handle, compromise, close or dismiss cases described in section II may not be exercised, and the matter shall be submitted for resolution to the Assistant Attorney General, in any of the following situations:

1. For any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totaling more than the respective amounts designated in the above paragraphs of this section or exceeding the authority to accept offers in compromise delegated to the Assistant Attorney General by 28 C.F.R. § 0.160(a).
2. Because a novel question of law or a question of policy is presented or, for any other reason, the proposed action should, in the opinion of the respective United

States Attorney, DAAG, Chief or Deputy Chief, receive the personal attention of the Assistant Attorney General.

3. A federal agency involved is opposed to the proposed compromise of a claim, or to the proposed closing or dismissal of a case.
4. The proposed settlement converts into a mandatory duty an otherwise discretionary authority of a federal department or agency to promulgate, revise, or rescind regulations.
5. The proposed settlement commits a federal department or agency to expend funds that Congress has not appropriated and that have not been budgeted for the action in question, or commits a department or agency to seek a particular appropriation or budget authorization.
6. The proposed settlement otherwise limits the discretion of a federal department or agency to make policy or managerial decisions committed to such department or agency by Congress or by the Constitution.
7. In accordance with 28 C.F.R. § 0.160(a)(1), the difference between the gross amount of the original claim and the proposed settlement exceeds \$10 million or 15% of the original claim, whichever is greater. In such circumstances, the United States Attorney must seek approval from the Associate Attorney General, through the office of the Assistant Attorney General. Regardless of the amount of the proposed settlement, however, in accordance with 28 C.F.R. § 0.160(c) the Assistant Attorney General may approve certain CERCLA settlements with *de minimis* parties or those whose responsibility can be equitably allocated and either are paying at least their allocated amount or lack the ability to pay.
8. The authority to compromise the case requires approval by the Solicitor General pursuant to 28 C.F.R. § 0.20 or 28 C.F.R. 0.163, such as in Original Actions or cases in which the Solicitor General has authorized an appeal.
9. The proposed action involves the compromise of an Indian Tribe's claim to real property within the meaning of 25 U.S.C. § 177.
10. Sections within ENRD do not concur as to the proposed action.

The authority delegated herein may not be re-delegated without prior written approval by the Assistant Attorney General.


IV. REVOCATION OF DIRECTIVE NO. 2013-05 and DIRECTIVE NO. 2011-08

Environment and Natural Resources Division Directive No. 2013-05 and Environment and Natural Resource Directive No. 2011-08 are hereby revoked and replaced by this Directive.

Consultation and Distribution:

This Directive was developed in consultation with Principal DAAG Sam Hirsch; DAAGs Lisa Jones, Bruce S. Gelber, and Jean E. Williams, and the Chiefs of all of the ENRD Sections. I hereby instruct the LPS to distribute this Directive to all Sections and the Executive Office to make available a copy of the original of this Directive to all ENRD attorneys and other employees via user-friendly software technology such that it is indexed, searchable, and accessible. I further direct LPS to notify the Executive Office for United States Attorneys of the need for appropriate changes to the United States Attorney's Manual.

This Directive relates only to internal procedures and management of ENRD. It does not create any right or benefit, substantive or procedural, enforceable at law by any person against the United States, its agencies, officers, or any other person.

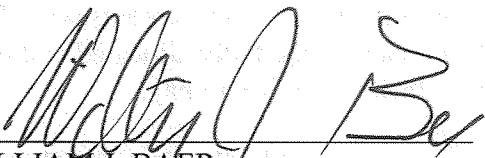


JOHN C. CRUDEN
Assistant Attorney General

11/29/2016

DATE

Approved:



WILLIAM J. BAER
Principal Deputy Associate Attorney General

12/20/16

DATE