

UNITED STATES DEPARTMENT OF JUSTICE  
ENVIRONMENT AND NATURAL RESOURCES DIVISION  
FISCAL YEAR 2000  
SUMMARY OF LITIGATION ACCOMPLISHMENTS

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## **FOREWORD**

I am honored to present this summary of the Environment and Natural Resources Division's accomplishments for fiscal year 2000. As in past years, the Division's work has produced substantial gains for the American people for our environment, and I am proud to work with such a dedicated group of people so committed to public service to obtain such impressive results.

Once again, we have had a record-setting year. Working together with the United States Attorney's Office in Idaho, we obtained the longest prison sentence ever for a particularly heinous environmental crime. In April 2000, a Wharton-educated businessman and attorney who sentenced one of his employees to a lifetime of severe brain damage by ordering him to clean up a tank containing sodium cyanide finally received his own sentence - seventeen years imprisonment and \$6 million in restitution to the victim's family. We also obtained the largest Clean Air Act settlement in a case involving a stationary source, the largest Clean Air Act settlement for violations occurring at a single facility, and the largest civil penalty after trial of a wetlands enforcement case. This track record of strong enforcement continues in the new fiscal year as we resolve cases against a number of coal-fired power plants that failed to install pollution control equipment when making major modifications to their facilities.

Record-breaking sentences and cases are impressive - in particular, we hope that they will impress upon potential lawbreakers the importance of compliance with our environmental laws - but they are only a small part of the story of the Division's work. On a daily basis, the Division's attorneys strive to achieve outcomes in their cases that protect the environment in immediate and tangible ways. We obtain agreements from violators to install effective pollution-control equipment and to implement corporate-wide environmental management systems, we overcome challenges intended to undermine environmental programs and regulations, we require polluters to clean up their messes, and we seek to ensure that the federal government itself conscientiously adheres to our nation's environmental laws. We are also implementing the requirements of the Clean Water Act by working with the States to develop schedules to implement water quality protections.

The Division's work in protecting the environment of course encompasses our unflagging efforts on behalf of our wonderful public lands and natural resources. Our accomplishments in these areas include protection of public lands from overgrazing, wildlife and species habitat from destruction, and national forests from careless use and exploitation. Thus, for example, we successfully defended the Forest Service's decision not to offer new oil and gas leases in an area of the Rocky Mountain Front widely recognized for its natural beauty. We have also successfully defended against a challenge

to the reintroduction of gray wolves into their former home in the Greater Yellowstone ecosystem and negotiated a program to restore lake trout in the Great Lakes as part of litigation over tribal fishing rights. We continue to contribute to the conservation and restoration of the Everglades' unique ecosystem by representing the National Park Service in its acquisitions through eminent domain of approximately 2,500 tracts of land for expansion of Everglades National Park and Big Cypress National Preserve.

What we accomplish can sometimes undo years of damage to the environment. Through our work with our sister agencies, the parties responsible for an oil spill off Rhode Island's coast have agreed to implement programs to restore lobsters and loons, and to acquire land for salt ponds and seabirds. Regarding the Bunker Hill Superfund Site in Idaho, we negotiated a novel consent decree with Union Pacific to cap mine tailings along its 71.5-mile railroad right-of-way in the Coeur d'Alene Basin and to convert the right-of-way into a world-class biking and hiking trail that will be maintained as a State park for most of its length and as a Tribal Park for a segment on the Couer d'Alene Tribe's Reservation.

Our enforcement of the environmental laws has direct positive effects on public health. We have brought several actions under the Safe Drinking Water Act to ensure that citizens all over the United States can drink from public water supplies without fear. Air pollution strikes particularly hard against our elderly and children and the sick, and we have obtained

commitments from companies violating the Clean Air Act that they will engage in projects to reduce air pollution and will help establish and fund a clinic to diagnose and treat respiratory diseases. Joining forces with the Department of Housing and Urban Development and the Environmental Protection Agency, we have secured settlements with several landlords requiring the implementation of lead paint abatement measures. Lead poisoning disproportionately affects disadvantaged children, and our work in this area is an important part of our effort to secure environmental justice for everyone.

We have also obtained commitments to clean up hazardous waste sites and entered into prospective purchaser agreements (PPAs) that will facilitate the transition of contaminated sites and brownfields to property in productive use. One such site was the Pullman/Liquid Dynamics Site on the South Side of Chicago, formerly an industrial waste treatment plant, which was contaminated by approximately 266,000 pounds of hazardous wastes in drums, tank trailers, vats, and tanks. We entered into a PPA with the Salem Baptist Church under which the Church will purchase, remediate, and redevelop a substantial portion of the site in return for a covenant not to sue for past response costs and a release for future liability for existing contamination. The Church plans to construct a campus consisting of a community center, a sanctuary, and a retail center. This site is the subject of only one of the 125 PPAs that we have entered into in the

last 5 years. These PPAs have facilitated redevelopment projects on more than 1200 acres and created more than 1500 short-term and 1700 permanent jobs.

A primary responsibility of the Division is the implementation of the United States' trust responsibility to Indian tribes and the resolution of the issues pertaining to American Indians, some of our nation's most disadvantaged people. We work to protect fishing and water rights throughout Indian country, for example by successfully defending regulations implementing the treaty rights of four Pacific Northwest tribes to a portion of the whiting harvest. In another important victory for tribal interests, the United States Court of Appeals for the District of Columbia Circuit upheld a Clean Air Act regulation allowing tribes to regulate air quality within the boundaries of their reservations.

The Division is committed to obtaining swift and sure justice for all Americans. We are prepared to litigate through trial (and appeal) if necessary, but when we can get better protection for the environment by employing alternative methods of dispute resolution (ADR) such as mediation, we do. In the last year, we have successfully resolved 133 cases through the use of ADR, and are engaging in ADR in over 220 cases. We have found that when employed in appropriate cases, ADR can provide a valuable tool for resolving disputes and achieving compliance with the law in an expeditious and cost-effective manner across the range of our cases.

Even in areas often characterized by bitter conflict, such as water rights disputes, we have had notable successes, for example an agreement with the State of Utah on protection of the water-related resources of Zion National Park, and Cedar Breaks and Hovenweep National Monuments. Our experience shows that ADR isn't a good idea -- it's a great one.

We also make use of our expertise acquired through years of experience to help ensure that the nation's laws will continue to provide strong protection for our environment and natural resources by analyzing proposed legislation in these areas. We also work on issues such as international trade in hazardous chemicals, transboundary movement of hazardous wastes, protection of the world's oceans and coral reefs, vessel-based pollution and accidental introduction of harmful exotic species, and liability for nuclear accidents.

As I look back over my tenure as Assistant Attorney General, I note that one of the Division's most important accomplishments has been the improvement in the working relationships we have with our client agencies, the United States Attorney's Offices, and state and local officials around the country. In the last year alone, these strengthened relationships have played a central role in the implementation of criminal enforcement initiatives such as the lab fraud initiative and in the successes we have obtained in civil and criminal cases generally. Indeed, our cooperation has even extended into the international sphere in the case of the capture of

wildlife smuggling kingpins such Keng Liang Wong. Such cooperative efforts have paid off in improved environmental and resource protection for people all over the United States, and they will continue to do so for years to come.

The Division's Executive Office has provided important support in achieving these accomplishments through its effective work on the computer, personnel, and budgetary issues that all organizations face. The Division's fine legal support assistants also deserve special recognition for all their work behind the scenes, and in this respect, the Support 2001 program has helped immeasurably in accomplishing the Division's work.

In the final analysis, it is the dedication and hard work of the Division's attorneys and support staff that bring about these successes. It has been an enormous privilege and pleasure for me to work with all these people in public service who consistently show the highest levels of professionalism and care deeply about their work. Day after day, working together, we have shown that our national government can make a positive difference in the lives of Americans.

Lois J. Schiffer

Assistant Attorney General

Environment and Natural Resources Division

January 2001



## **PROTECTING THE NATION'S AIR AND WATER**

**Reducing Pollution From Coal-Fired Power Plants.** In November 1999, the Division brought enforcement actions for Clean Air Act violations by 29 power plants. The utilities' failure to install the best available emissions control technology resulted in tens of millions of tons of sulfur dioxide, nitrogen oxides, and particulate matter being illegally emitted into the air, leading to detrimental health effects on asthma sufferers, the elderly and children, and to forest degradation, waterway damage, reservoir contamination, and deterioration of stone and copper in buildings. Four months after initiating this national enforcement effort, we reached a settlement with Tampa Electric Company, which agreed to install and optimize pollution-control equipment to achieve significant emission reductions in nitrogen oxide, sulfur dioxide and particulate matter. It will also pay a \$3.5 million civil penalty.

**Achieving Record Clean Air Act Settlements.** We achieved record civil penalties in two other Clean Air Act cases. The first occurred in July when the Attorney General and EPA Administrator Carol Browner jointly announced our record settlement with Willamette Industries, Inc., involving Clean Air Act violations at fourteen facilities in three EPA Regions. Prior to this settlement, Willamette facilities had been emitting significant amounts of pollutants, including volatile organic compounds (VOCs), carbon monoxide, nitrogen oxide and particulate matter.

Willamette agreed to a \$19.2 million settlement package consisting of \$11.2 million in civil penalties, \$8 million in supplemental environmental projects, and injunctive relief valued at \$74 million, making this the largest stationary source settlement to date. Willamette will be required to install pollution control technology on twenty-five wood dryers and six presses at eleven facilities, perform multi-media audits of all active facilities, maintain a corporate-wide environmental management system, implement continuous parametric monitoring, and obtain emissions offsets to compensate for years of illegal emissions. The projects to be performed include pollution reduction projects, alternative fuels projects, community sewer and water system improvements, and state parkland donations in the immediate areas where Willamette facilities are located, many of which have economically disadvantaged populations.

The second record settlement resolved claims against Chevron, USA, Inc. for violations resulting from VOC emissions during marine loading of petroleum products. VOCs react to form ozone, an extremely pervasive pollutant affecting the health of 80 percent of the population of the United States. Chevron loaded crude and refined petroleum products without proper controls for four years. Under the consent decree, Chevron will: pay a civil penalty of \$6 million; retrofit valves, flanges, and pumps at a California refinery to reduce VOC emissions; and spend \$500,000 to help establish and fund a health clinic to diagnose and treat respiratory diseases

among area residents. This is the biggest Clean Air Act settlement to date for violations occurring at a single facility.

**Reducing Interstate Contributions to Unhealthy Ozone Levels.** In

March 2000, we obtained a favorable decision in challenges by industry groups and several States to EPA's decision to require twenty-two States and the District of Columbia to revise their state implementation plans to reduce nitrogen oxide emissions to address chronic interstate ozone problems in the northeastern states. The court upheld EPA's central approach to establishing state emission "budgets" based on the emission reductions that would occur if the same level of highly cost-effective controls were placed on all major stationary sources of nitrogen oxide in the covered states. The ruling allows EPA to move forward with its plan to ensure ultimate attainment of the ozone standard in the northeastern states.

**Successfully Defending More Stringent Emission Standards.** We

successfully defended EPA's stricter revised standards for nitrogen oxide emissions from fossil-fuel-fired steam generating units. The United States Court of Appeals for the District of Columbia rejected industry's challenge to the standards as excessively costly, and affirmed EPA's decision as best effectuating the Clean Air Act's purposes of reducing air pollution. In another action, the D.C. Circuit also upheld EPA's regulations limiting emissions of volatile organic compounds from paints and architectural coatings.

**Protecting Public Health In Nebraska.** We obtained a partial settlement from IBP, Inc., the world's largest meatpacker, that requires the company to take immediate steps to reduce hydrogen sulfide emissions at its Dakota City, Nebraska, plant. Hydrogen sulfide is deadly in high concentrations, and research over the past few years shows that exposure to even comparatively low doses, which previously was thought to be only unpleasant, can in fact cause neurological damage. IBP emits nearly a ton of hydrogen sulfide per day. Under the agreement, IBP will build covered wastewater treatment lagoons on a mandatory and enforceable schedule, decommission existing uncovered lagoons, and undertake additional projects to limit the release of hydrogen sulfide into the air. Together, these actions are expected to reduce hydrogen sulfide emissions from the plant by as much as 95%. The agreement further requires IBP to treat over three million gallons of well water used at its plant each day to reduce the high concentration of sulfate in the well water, which can be converted to hydrogen sulfide in wastewater, and requires IBP to install seven on-site and two off-site hydrogen sulfide monitors.

**Ensuring Safe Drinking Water in California and Arizona.** In August 2000, we achieved two significant victories in the enforcement of the Safe Drinking Water Act. In the first, we reached a settlement with the City of Phoenix, Arizona, which addressed the City's widespread failure to

monitor for specified contaminants in its drinking water system. Under the settlement, Phoenix will comply with the monitoring regulations, pay a civil penalty of \$350,000, and perform two supplemental environmental projects costing \$1.5 million. One of the projects is aimed at finding solutions for taste and odor problems that exist with the City's drinking water.

The second victory occurred when the District Court for the Northern District of California granted the United States' three motions for summary judgment in a Safe Drinking Water Act case against several small and medium sized public water systems in Monterey County, California and their principals. The Court rejected defendants' arguments of selective prosecution, estoppel, inadmissibility of certain evidence, and lack of standing. The Court also held the two principals of the defendant companies personally liable for all the violations of the Act found against the corporate defendants.

**Landmark Settlement Resolving Multi-State Pipeline Spills.** Along with the State of Texas, we entered into a comprehensive consent decree resolving two Clean Water Act cases against Koch Industries, Inc. Both cases involved numerous illegal spills of oil and related petroleum products, estimated to be in the millions of gallons, from Koch oil and refined petroleum product pipelines and related pipeline facilities. Under the settlement, Koch will pay \$30 million in civil penalties (split evenly

between the United States and the State of Texas), enhance its pipeline leak prevention programs, and expend at least \$5 million on environmental projects in Oklahoma, Texas and Kansas, the states most affected by the discharges. These environmental projects include a pipeline safety study, acquisition and preservation of wildlife habitat, other wetlands and water quality enhancement projects, and an emergency planning and response project.

**Preventing Spills From Locomotive Fuel Tanks.** On August 21, 2000, the federal district court in Colorado signed and entered a consent decree involving Union Pacific Railroad Co. settling a Clean Water Act action arising from eight separate discharges of diesel fuel from ruptured or leaking locomotive fuel tanks. Seven of the discharges were associated with freight train wrecks in Colorado and Utah, and two of the derailments also resulted in spills of other pollutants. Under the oversight of EPA or other federal agencies, Union Pacific completed emergency response actions and undertook wetlands mitigation and environmental restoration actions, as directed by the Forest Service. As part of the settlement, Union Pacific will pay a civil penalty of \$800,000, and undertake extensive injunctive relief to reduce the likelihood or severity of possible future spills, including: (1) equipping all freight locomotives purchased during the next five years with fuel tanks meeting a new industry standard for crash-worthiness; (2) implementation of a comprehensive rock fall hazard

mitigation project (in response to the frequency of rock falls in Colorado which cause train derailments or rupture locomotive fuel tanks); (3) installation of locomotive fuel tank patch kits on "hi-rail" vehicles and training the operators of such vehicles; and (4) preparation of emergency response contingency plans for three rivers along which Union Pacific's track is aligned.

**Restoring Ocean Resources In Rhode Island.** The barge North Cape and the tug Scandia ran aground and spilled oil in the waters of Block Island Sound. In order to resolve our claims under the Oil Pollution Act of 1990, the parties responsible for the spill agreed to undertake a lobster restoration program that will involve the v-notching and restocking of 1.248 million female legal-size lobsters into the waters of Block Island Sound by the end of 2004. The defendants will also pay \$8 million to the National Oceanic and Atmospheric Administration, the Department of the Interior, and the Rhode Island Department of Environmental Management to implement the following restoration projects: shellfish restoration (quahog transplanting), salt pond land acquisition, loon restoration (acquisition of land or easements to protect loon nests), sea bird restoration (acquisition of land or easements to protect eider nests), piping plover restoration, and a fish run project. They have also paid these agencies their costs of assessment of natural resource damages.

**Protecting Wetlands.** After a four-week trial in Sacramento concerning the deep ripping and destruction of wetlands in California's Central Valley, the court found that the defendant, a major real estate developer, committed over 300 violations of the Clean Water Act while converting ranchlands to more lucrative vineyards. The court gave defendants the option of paying \$1.5 million in civil penalties or paying \$500,000 in penalties and agreeing to create new wetlands pursuant to a plan to be filed by EPA.

We also won a trio of major victories in support of our wetland enforcement work. First, the Seventh Circuit rejected a statutory and Commerce Clause-based challenge to the Corps' authority to exercise jurisdiction over isolated wetlands that serve as migratory bird habitat. The Court rejected the argument that Congress does not have the power to regulate isolated waters that have no connection to interstate commerce other than their use as migratory bird habitat. Citing census data showing millions of people spending billions of dollars each year on interstate recreation activities involving migratory birds, as well as longstanding case law recognizing the "national interest" in protecting such birds, the Court held that the destruction of migratory bird habitat and the attendant decrease in the populations of these birds "substantially affects" interstate commerce. Second, the Fourth Circuit reversed the district court's dismissal of a wetland enforcement action, holding that sidecasting of dirt



from a ditch draining a wetland requires a permit under the Clean Water Act. The Court recognized that "[w]etlands perform a vital role in maintaining water quality" and noted that the adverse effects of ditching, dredging and sidecasting activities "are no less harmful when the dredged spoil is redeposited in the same wetland from which it was excavated. The effects on hydrology and the environment are the same." Third, the Second Circuit reversed a dismissal of 30 counts of a 31-count Clean Water Act indictment for filling of wetlands related to the construction of a 370-mile natural gas pipeline, ruling that the Corps has authority under the Clean Water Act to impose permit conditions that are "reasonably related" to the discharge, even if the conditions do not directly regulate the discharge itself. Thus, the Corps may take into account, and impose conditions on, discharge-related activities that take place on dry lands, or that have indirect effects on aesthetic, recreation, or economic values, as long as the conditions are reasonably related to the discharge activity.

**Controlling Non-Point Source Water Pollution.** We achieved a favorable result in a Northern California case in which the court agreed that EPA has authority to establish "total maximum daily loads" (TMDLs) for pollutants from non-point sources. TMDLs identify the maximum loading of a pollutant to a water that is necessary to implement the applicable water quality standards, and allocates this loading to contributing sources of the pollutant. The court concluded that the Clean

Water Act provides for a comprehensive set of water quality standards for waterways affected by both point and non-point sources of pollution, and therefore ruled in favor of EPA.

With this result paving the way, we have continued our effort to defend EPA's implementation of the Clean Water Act's TMDL program. This past year, we achieved settlements that provide for the establishment of TMDLs in the States of Arkansas and Missouri under reasonable schedules, with EPA agreeing to establish TMDLs on behalf of the States if they fail to meet those schedules.

## **ENSURING CLEAN UP OF HAZARDOUS WASTE**

**Appellate Victory Regarding Idaho's Bunker Hill Superfund Site.** The Ninth Circuit Court of Appeals vacated and remanded the district court's adverse ruling that most of our natural resource damage claims at this Superfund Site were barred by the statute of limitations. The court of appeals agreed with our position that EPA had defined the facility to include the entire contaminated area of the Coeur D'Alene River Basin, and deferred to EPA's longstanding site boundaries policy under which boundaries are determined and revised as EPA learns more about the extent of the contamination. This ruling will enable the United States to continue to pursue its claims for injuries to natural resources caused by mining activities.

One significant portion of the litigation over this Superfund site was resolved earlier this year when the United States, the State of Idaho and the Coeur D'Alene Tribe (collectively "Plaintiffs") entered into an agreement with the Union Pacific Corporation which, among other things, will require Union Pacific to cap the former track area of its rail line and create a recreational trail along the 71.5 mile line across most of the panhandle of Idaho. Union Pacific will also pay Plaintiffs' response costs and another \$2,000,000 to the natural resource trustees in settlement of claims for natural resource damages, \$2,730,000 to the State and Tribe as future owners of the right-of-way, and \$35,000 for use by Plaintiffs in funding educational activities related to the response action.

**A National Multi-Media Settlement.** Working with the State of Texas, we concluded a national multi-media settlement with ASARCO, Inc. and its subsidiary, Encycle/Texas, Inc., resolving Resource Conservation and Recovery Act (RCRA) claims for violations at Encycle's recycling facility in Corpus Christi, Texas and ASARCO's copper smelter in El Paso, lead smelter in East Helena, Montana, and copper refinery in Amarillo. The consent decree also resolves Clean Water Act claims at ASARCO's zinc mines in Tennessee. The consent decree provides for a detailed redesign of Encycle's hazardous waste management procedures and appropriate RCRA corrective action at Encycle and the El Paso smelter, the development and use of innovative metals recycling technology at Encycle, an auto and

truck tire recycling project at El Paso, and implementation by ASARCO of an enhanced corporate-wide environmental management and compliance auditing system at its 33 operating domestic facilities. It also requires payment of \$5.5 million in civil penalties, maintenance by ASARCO of a permanent 30-acre environmental conservation area for public use that will serve as a buffer between a disadvantaged neighborhood and industry along the Corpus Christi ship channel, an air quality project to reduce particulate pollution in the El Paso/Juarez air shed, and a wetlands restoration project at ASARCO's Coy Mine in Tennessee.

**Cleaning Up The Tucson Airport Superfund Site.** We obtained an agreement resolving the remaining claims regarding cleanup of the Tucson International Airport Area Superfund Site, in Pima County, Arizona. Under the settlement, all private parties except the City will be jointly and severally liable for: (1) implementing a soils and shallow groundwater remedy in the first "Airport Property" remedial area; (2) paying the Superfund \$1.7 million, which represents 99 percent of the United States' past response costs at the Airport Property; and (3) reimbursing the United States for all of its future costs at the Airport Property, including oversight costs. Total past and future response costs at the two remedial areas may reach \$100 million. The City will guarantee the Tucson Airport Authority's obligation to fund and perform the ongoing regional aquifer remedy.

**Innovative Solution for a Connecticut Brownfield.** We resolved years of litigation with a major asbestos manufacturer, its successor and its bankruptcy trustee over Superfund liability at its former manufacturing facility in Stratford, Connecticut. The resolution included a complex global settlement involving other major creditors of the manufacturer and the sale of the Stratford property, which had become heavily contaminated through sixty years of manufacturing asbestos products. Instrumental to the sale was a Generic Prospective Purchaser Agreement that we issued which provided a covenant not to sue to any bidder that acquired the property, while ensuring the integrity of the protective cap that EPA had installed over the property. A consortium of Walmart, Home Depot and Shaw's Food Stores won the bidding for the property. Through this mechanism, the United States will receive approximately \$20 million through payments for the PPA and our secured claim on the property.

**Addressing Natural Resource Damages in Indiana.** In order to resolve claims that they damaged natural resources along the south bank of the Maumee River near Fort Wayne, Indiana, approximately 87 parties responsible for releases of hazardous substances at or from the Fort Wayne Reduction Superfund Site have agreed to implement a restoration plan under which, among other things, they will acquire approximately 75 acres of land adjacent to the Maumee. Once they have acquired that land, they will reforest and restore almost two-thirds of it, place a conservation

easement on it, and convey it to the Indiana Department of Natural Resources.

**Ensuring Prompt Cleanup of Hazardous Waste Sites.** We have successfully defended efforts to halt the cleanup of wastes at various sites across the United States, including the Lemon Lane Landfill at the Bloomington, Indiana PCB Superfund Sites, the Murray Smelter Superfund Site in Murray, Utah, and the Ross hazardous waste incinerator facility in Ohio.

**Improving Standards for Safe Disposal of PCBs.** In August 2000, the Fifth Circuit upheld EPA's revision of the rules governing the safe disposal of PCBs from attack by industry and environmental groups.

## **CARRYING OUT CRIMINAL ENFORCEMENT INITIATIVES**

**Lab Fraud Initiative.** Laboratories are used to analyze soil, water and other media to determine their chemical composition, to assess whether such chemicals pose human health risks, and to determine whether such media is contaminated and in need of remediation. In light of the role that labs play in the environmental arena, maintenance of the integrity of laboratory sample tests, results, and reports is critical.

Several years ago, the federal law enforcement community became aware of widespread fraud by a growing number of laboratories across the country. As a result, the Lab Fraud Task Force was established in 1998 to survey the problem of fraudulent laboratory testing and to determine how best to tackle it. During FY 2000, Division attorneys were involved in several nationally significant investigations associated with the task force. For example, in September 2000 in *United States v. Caleb Brett U.S.A., Inc.* (D.N.J.), Caleb Brett U.S.A. and three of its managers pled guilty to charges stemming from an investigation of fraudulent testing of petroleum products, including reformulated gasoline, and false statements concerning their results. The company pled guilty to conspiracy to make false statements to EPA. In an apology published in *The New York Times* as part of the plea agreement, the company admitted that its employees falsified laboratory reports and filed false reports on behalf of its clients to EPA in connection with the agency's reformulated gasoline program. It also admitted that its employees concealed information about the scheme from federal investigators. The company agreed to pay a \$1 million fine, and the managers will be sentenced in the next few months.

**Underground Storage Tank Initiative.** There are approximately one million underground storage tanks (USTs) in this country and EPA has estimated that approximately 35 percent of them do not comply with federal regulations. These tanks hold oil, gasoline, hazardous substances,

and hazardous waste, and leaks from them pose a serious threat to nearby groundwater, the primary source of drinking water for most of the country.

In the late 1990's, federal law enforcement officials also learned of the existence of fraud in the testing and remediation of leaking underground tanks. As a result, a number of prosecutions were initiated during the past year. One example is *United States v. Fletcher*, a South Carolina prosecution involving two technicians employed by a South Carolina contractor that performed testing services for owners and operators of USTs. From 1995 through 1997, the two were involved in a mail fraud scheme that included performing over 1,500 false tests for at least 400 UST owners and operators in South Carolina, North Carolina, Virginia, and Georgia. The defendants generated false documents to further the scheme. These documents were sent out with an invoice to each customer, who then mailed in payment for the service. Victims of the defendants' scheme paid \$400,000 for fraudulent testing. The two testers, Chris Fletcher and Mark Scruggs, pled guilty to conspiracy to commit mail fraud resulting from their fraudulent UST testing scheme.

**Vessel Pollution Enforcement Effort.** Over the past several years, along with the Coast Guard, EPA, and U.S. Attorney's Offices, we have undertaken a concentrated enforcement effort to prevent pollution of oceans and inland waterways by ships. The initial focus was training of Coast Guard and other federal agents in the development of successful



criminal prosecutions. These early training efforts have yielded results. Since 1993, there have been 40 environmental prosecutions involving pollution from ships. Building upon the efforts of previous years, the Vessel Pollution Initiative achieved a number of critical successes last year in the areas of inter-agency coordination and planning, active case prosecutions, and the use of important new resources to assist in the detection of environmental offenses.

There were a number of successful prosecutions in the past year that grew out of the Vessel Pollution Initiative. For example, additional sentences were handed down and charges filed in connection with our major investigation and prosecution of Royal Caribbean Cruises, Ltd. (RCCL). In a case arising from a July 1999 plea agreement, RCCL agreed to pay fines and perform community service totaling \$18 million in six judicial districts. Sentences and final judgments were handed down in September (Los Angeles), October (Alaska, New York), and November 1999 (Miami, Puerto Rico). The final sentence, in the Virgin Islands, was handed down in January, 2000. In each district, the company was sentenced to serve a five-year term of probation and required to operate under a court-supervised environmental compliance program. Fine amounts and community service payments varied among the districts. In its plea agreement, the company admitted that it routinely dumped waste from its fleet of cruise ships, and deliberately dumped many other types of

pollutants, including hazardous chemicals from photo processing equipment, dry cleaning operations and printing presses into U.S. harbors and coastal areas. The company also admitted to presenting materially false statements about its oil discharges in its oil record books to the U. S. Coast Guard.

In a follow-up to the prosecutions described above, additional charges were filed this year against two Chief Engineers who served aboard cruise ships owned by RCCL. These cases reflect the continuing effort to identify and prosecute the individuals responsible for the fleet-wide environmental violations that were the subject of the earlier RCCL plea agreements.

In December 1999, criminal prosecutions arising from the routine discharge of oily bilge waste from the SS Rotterdam into Alaskan and Canadian waters were successfully concluded with the entry of guilty pleas to Clean Water Act violations by Nanne Hogendoorn, the vessel's shore-side technical manager; Dirk Smeenk, the ship's Captain; and Hantje DeJong, the Chief Engineer. Hal Beheer, the corporation which operated the Holland America cruise ship, had earlier pled guilty to two violations and was sentenced to pay fines and restitution totaling \$2 million. In April 2000, each of the individual defendants was sentenced to pay a \$10,000 criminal fine. The case marked the first conviction of a land-based corporate officer and of the senior officers aboard a cruise vessel for vessel pollution violations at sea.

Another significant vessel pollution prosecution was successfully concluded in December 1999 with the sentencing of ANAX International Agencies, Inc., Dimitrios Georgantas, the owner of the vessel T/V Command, and Lampros Karganis, the ship's captain. This case arose from the discharge of over 3,000 gallons of bunker fuel oil off the California coast that resulted in substantial environmental damage to wildlife and to beaches south of San Francisco. Based upon guilty pleas to a Clean Water Act violation and a felony failure to report the discharges, ANAX was sentenced to pay a total of \$9.4 million in federal, state and local civil penalties, criminal fines, and restitution, including natural resource damages of \$2.7 million.

## **PROSECUTING THOSE WHO EXPOSE US TO HAZARDOUS SUBSTANCES**

Worker Safety: The Longest Sentence Ever for an Environmental Crime. A Wharton-educated businessman and attorney was convicted of knowingly endangering the health and safety of his employees during illegal hazardous waste storage and disposal activities that left a 20-year-old employee with severe permanent brain damage from cyanide poisoning. In addition to the knowing endangerment charges, Elias was convicted on two counts of illegal disposal of hazardous waste, and making false statements to OSHA inspectors in an effort to conceal the knowing endangerment of his employees. On April 28, 2000, a federal district court in Idaho handed

down the longest sentence ever for an environmental crime -- 17 years in prison. Elias was also ordered to pay approximately \$6 million in restitution to the family of the injured employee, and \$400,000 in cleanup costs.

### Airline Safety: The Transportation of Hazardous Materials in Air

Commerce. In December, 1999, AMR, a subsidiary of American Airlines, the nation's second-largest air carrier, pled guilty to and was sentenced for illegally storing hazardous waste at the Miami International Airport. AMR admitted that during a four-year period, the company failed to follow safety regulations that strictly control the shipment of hazardous materials on passenger airplanes and that there were a number of incidents in which hazardous materials were improperly transported. AMR illegally stored ignitable hazardous waste containing Dioxital, an oxidizer that can explode when exposed to heat and which accelerates the burning of other materials. A drum containing this chemical was rolled on its side, the top blew off and the contents ignited. After employees extinguished the fire, the material was left at the airport and illegally stored for three years until it was discovered during the investigation. Under the plea agreement, American paid \$8 million in fines and is undertaking a court-supervised compliance program at every airport in the United States and abroad where American Airlines accepts cargo for shipment. Of the fine, \$2 million was

paid as corporate community service to the Miami-Dade Fire Department to enhance the department's hazardous materials division.

**Prosecuting Mismanagement of Sewage Treatment Plants.** In *United States v. Johnson Properties, Inc.*, the defendants, owners and operators of a number of sewage treatment plants, admitted their involvement in a scheme in which they purchased small, undercapitalized sewage treatment plants serving residents in southern Louisiana, and then failed to properly operate and maintain them while collecting fees from the residents for sewage treatment services. Johnson Property Inc. (JPI) and six subsidiaries entered guilty pleas in January 2000 to a felony Clean Water Act (CWA) conspiracy charge and agreed to pay a \$4.36 million fine and restitution of \$165,000 for their mismanagement of over 100 sewage treatment and drinking water plants in Louisiana. In June 2000, pursuant to a plea agreement, Glen Kelly Johnson was sentenced to pay \$250,000 restitution to homeowners and \$500,000 in fines, and to serve 36 months incarceration followed by three years supervised release. Johnson, general manager of both JPI and a subsidiary, pled guilty to a CWA conspiracy violation and an obstruction of justice charge. Carol Rowell, director of the JPI in-house monitoring lab and a JPI subsidiary, was also sentenced to serve four months home detention, three months probation, pay a \$2,000 fine, and perform a one hundred hours of community service.

**Stopping Injection of Hazardous Wastes into Wells.** The Division prevailed in two prosecutions involving injecting hazardous waste into wells. In September 1999, BP Exploration (ALASKA) Inc. (BPXA) pled guilty to failing to report the release of hazardous substances as required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in connection with the injection of hazardous wastes such as paint thinner, paint, oil, and solvents into the outer rim of oil wells on Endicott Island near the North Slope of Alaska. BPXA admitted in a plea agreement in September 1999 that it failed to immediately notify authorities of a release of hazardous substances to the environment. The company, BP Amoco's Alaska subsidiary, also admitted it failed to provide adequate oversight and funding to ensure proper environmental management on Endicott Island. On February 4, 2000, BPXA was sentenced to pay the maximum criminal fine of \$500,000 and ordered to establish a nationwide environmental management system designed to prevent future violations as part of a five-year probation sentence. This court-monitored system will be the first of its kind in the oil industry to result from a federal prosecution and will cost \$15 million to implement. The resolution of the criminal case and a related civil case arising from the illegal waste disposal is expected to cost BPXA a total of \$22 million.

In the second prosecution, the defendants Allied Environmental Services, Inc., Koteswara Attaluri, president of Allied, and trucker Mac DeWayne Overholt, were convicted in October 1999 on conspiracy to violate the Safe Drinking Water Act and RCRA, and to commit mail fraud and wire fraud, as well as a substantive mail fraud count, stemming from their participation in a scheme to transport approximately 500,000 gallons of petroleum-impacted wastewater from military facilities to class II injection wells in Oklahoma during 1994 and 1995. Overholt was also convicted of illegally discharging 6,000 gallons of the wastewater into a stream leading to Keystone Lake and transporting hazardous wastes to an unpermitted facility, and making false statements to state and federal investigators. Attaluri was ordered to serve 55 months imprisonment and pay \$1.27 million in restitution for the cost of cleanup, Overholt was sentenced to serve 87 months imprisonment, and Allied was placed on five years probation. The judge held all three defendants jointly and severally liable for the cleanup cost and, if the company begins operating again, a trustee will be appointed to ensure that these violations do not recur. Overholt's sentence is the longest to date in a Safe Drinking Water Act case.

## **ENFORCING WILDLIFE LAWS AND DEFENDING WILDLIFE MANAGEMENT PROGRAMS**

**Exotic Bird Smuggling Ring Broken.** A husband and wife team, Hector and Lucia Carrizales, as well as Lucia Carrizales' sister, Martha Rodriguez, and Rodriguez's friend, Estela Weeks, were charged in a 23-count indictment with conspiracy, smuggling, and Lacey Act offenses stemming from a U.S. Fish and Wildlife Service undercover investigation into the defendants' exotic bird smuggling operation in west Texas. The defendants smuggled rare Mexican birds, including Military Macaws, Amazon Parrots and Toucans, into the United States, and sold them to buyers in Presidio, El Paso, and the Dallas area. Hector Carrizales pleaded guilty to one of the wildlife offenses, and was sentenced to 21 months imprisonment and three years of supervised release on September 13, 2000, for his role in the five-year smuggling conspiracy. Lucia Carrizales pleaded guilty to the conspiracy charges and Estela Weeks pleaded guilty to three Lacey Act offenses for her role in acquiring some of the smuggled birds, and in assisting in the sale of birds to pet dealers and individuals in the Dallas area. Sentencing hearings for Lucia Carrizales and Estela Weeks are scheduled for December. Martha Rodriguez failed to appear in court for her arraignment on the charges against her, and a bench warrant was issued for her arrest. In August of this year, in a gesture of goodwill, 28 of the smuggled birds were returned to Mexican authorities by the U.S. Fish and Wildlife Service at a repatriation ceremony held in Mexico.



## **Surrender of Keng Liang "Anson" Wong to U.S. Authorities in Mexico.**

On August 30, 2000, a two-year effort to extradite reputed international wildlife smuggling kingpin Keng Liang "Anson" Wong from Mexico ended successfully when he surrendered to U.S. authorities in Mexico City and was flown to San Francisco to await trial. Between 1995 and 1998, Division attorneys supervised an undercover investigation of Wong and his Malaysian import-export business, Sungai Rusa Wildlife, by the U.S. Fish and Wildlife Service. This investigation resulted in felony charges against Wong for smuggling 14 shipments of live reptiles into the United States from Malaysia, Indonesia, and the Philippines, containing nearly 300 protected reptiles worth nearly a half million dollars, including extremely rare endangered plowshare tortoises. Wong and his co-conspirators in the United States smuggled the animals using a variety of methods, including Federal Express packages, larger commercial shipments and human couriers. Wong had previously been indicted on wildlife smuggling violations in Florida, but had never appeared in the United States to answer those charges, and could not be extradited from his home country of Malaysia.

**California Gnatcatcher.** We brought suit on behalf of the U.S. Fish and Wildlife Service to enjoin a developer in Riverside County, California from clearing occupied habitat of the threatened California gnatcatcher in violation of the Endangered Species Act. After the court preliminarily

enjoined construction, the developer agreed to seek a permit prior to further development, to set aside a portion of the property and other habitat off-site in mitigation for the development, and to pay a civil penalty for past taking of the gnatcatcher.

**Protecting Salmonid Species.** Shortly after we brought suit on behalf of the Commerce Department to halt the illegal take of salmonid species at a series of irrigation diversions belonging to the Methow Valley Irrigation District in eastern Washington, we reached a settlement that provides that the irrigation district will operate its diversion facilities for the next two years in a manner that minimizes the harm to the protected fish species. After two years, the district will be enjoined from further surface water diversions. It also plans to switch to groundwater pumping which will not harm the fish.

**Spiny Dogfish Fishery.** In response to overfishing of the spiny dogfish (a species of shark), the National Marine Fisheries Service issued rules implementing a fishery management plan for the spiny dogfish fishery and quotas and limits on spiny dogfish fishing. Members of the fishing industry challenged the rules, but were rebuffed on all grounds, including their claims under the Regulatory Flexibility Act ("RFA"). The district court specifically ruled that the economic concerns of the RFA should not be construed to undermine the conservation goals of the Magnuson-Stevens Act.

**Edwards Aquifer in Texas.** We secured an important constitutional victory when a district court in Texas upheld the constitutionality of the Endangered Species Act against an "as-applied" challenge under the Commerce Clause, among other issues, with regard to protection of endangered and listed species in the Edwards Aquifer region of south-central Texas.

**Southwestern Willow Flycatcher.** In this challenge to the Fish and Wildlife Service's designation of critical habitat for the endangered southwestern willow flycatcher, plaintiffs contended that the Service inadequately considered the economic impacts of the designation. The court rejected their claims, holding that the Service complied with the Endangered Species Act's requirement to consider the economic effects of designating critical habitat for the flycatcher by looking at the incremental effects of the designation above and beyond the effects of listing the flycatcher as endangered under the ESA.

**Reintroduction of Wolves into Yellowstone.** The Tenth Circuit Court of Appeals reversed a 1997 district court decision which ordered the removal of the gray wolves that had been relocated to areas in central Idaho and in and around Yellowstone National Park pursuant to the Endangered Species Act. The court ruled that the wolf reintroduction regulations accurately

reflect the goals of the Endangered Species Act to protect natural populations while at the same time promoting the recovery of the species.

## **PROTECTING INDIAN RIGHTS AND RESOLVING INDIAN ISSUES**

**Protecting Treaty Rights and Endangered Species.** The summer of 2000 brought drought conditions in many parts of the West, adding increasing stresses to endangered fish species which in some cases are also of interest to Indian tribes, and putting pressure on tribal water resources. In this context, we successfully defended government efforts to protect both endangered species and tribal resources in the Klamath Basin in Oregon. In Klamath, the Bureau of Reclamation's operation plan to provide minimum flows for Klamath River fish and minimum lake levels for fish was upheld by the courts in the face of several separate and concerted efforts to enjoin it filed by non-Indian irrigation districts and environmental groups. The plan benefitted the fish and the Klamath Basin Tribes, who seek restoration of the fishery to levels that would allow the harvest of fish.

**Protecting Indian Treaty Rights and Lake Trout Rehabilitation.** We played an integral role in the negotiation of a consent decree in *United States v. Michigan*. As a result, rather than engaging in lengthy litigation marked by bitter social conflict, the parties were able to fashion an agreement that provided treaty fishing opportunities of five Michigan

tribes, enhanced restoration of lake trout and sport fishing opportunities. Underpinning the final agreement were significant financial contributions from the Department of the Interior (\$8.25 million) and the Michigan Department of Natural Resources (almost \$17 million) which will enable the tribes to implement their treaty rights in a manner consistent with all of the parties' goal of restoring native trout populations in the Great Lakes.

**Protecting Indian Fishing Rights.** In 1996, the United States recognized the rights of four Pacific Northwest Tribes to a portion of the whiting harvest pursuant to their tribal treaties. The Commerce Department then issued regulations to effectuate that treaty right. Several fishing industry groups joined the States of Oregon and Washington in attacking the Tribes' right to harvest whiting, the annual allocation mechanism, and the annual allocations themselves. In 2000, the district court granted summary judgment to the United States and intervening tribes on all counts, upholding the treaty right and the annual allocations. The case is currently on appeal.

**Settlement of Indian Water Rights Claims.** We worked with the Fort Mojave and Colorado River Indian Tribes to secure a settlement of their water rights claims in *Arizona v. California*, No. 8, Original. In June of this year, that settlement was confirmed by the Supreme Court. Under the settlement, the parties' challenges to the Tribes' reservation boundaries are resolved in a manner favorable to the United States and Tribes and the

associated water rights for the irrigable acreage within those boundaries are confirmed.

We also worked with the Chippewa Cree Tribe of the Rocky Boy's Reservation and the State of Montana to secure Congressional approval of the Chippewa Cree Tribe of the Rocky Boy's Reservation Indian Reserved Water Rights Settlement Act of 1999. This settlement, which followed 15 years of negotiations, settles claims of the Tribe to water within Montana and potential water-related claims of the Tribe against the United States. Under it, Congress will allocate \$50 million for a variety of uses including improving reservoirs on the reservation, importing water from other sources nearby, and assisting with tribal administrative costs and economic development. The settlement is presently awaiting enactment through the State Water Court.

In addition, we worked with the Shivwits Band of the Paiute Indian Tribe of Utah, the State of Utah, and area irrigation districts and municipalities to secure enactment of the Shivwits Band of the Paiute Indian Tribe of Utah Water Rights Settlement Act. The Act approves and authorizes involvement by the Department of the Interior in three related water rights agreements as part of a settlement of the Band's claims to water in the Virgin River adjudication pending in State Court. This settlement also resolves a variety of potential water rights claims among the parties. The water to be provided to the Band will be supplied primarily through the

development of two projects shared with local non-Indian water users. Congress will allocate \$24 million towards this settlement. Of these monies, \$15 million will fund a portion of costs related to the construction and operation of a water reuse facility for the City of St. George, \$3 million will be available for Endangered Species Act concerns, and the remainder will be provided to the Band for economic development and other costs related to the water projects. This settlement is pending the parties' signatures to the final agreements and approval in the state courts, and ends many years of negotiations.

**Protecting Pueblo Indian Land Rights in New Mexico.** Working with the Department of the Interior, we negotiated a settlement agreement with the Pueblo of Santo Domingo (Pueblo) resolving long-standing title and trespass disputes involving more than 80,000 acres of private, public, and Indian lands. In return for the extinguishment of their claims, the Pueblo will receive a total of \$23 million and the conveyance of approximately 4500 acres of Bureau of Land Management land, with an option to purchase another 7000 acres of Forest Service land. This agreement is the product of over three years of intensive negotiations. In addition to the efforts of the United States and the Pueblo, the two principal parties in the negotiations, the State of New Mexico, other pueblos, local governments and private landowners have been consulted and stand to benefit as well. Congress has ratified this agreement.

**Protecting Treaty Lands.** The Ninth Circuit affirmed the district court's ruling that the United States owns the bed and banks of the southern third of Coeur D'Alene Lake, in northern Idaho, in trust for the Coeur D'Alene Indian Tribe. Idaho argued on appeal that the bed and banks of all navigable waters within the state passed to it upon its becoming a state, but the court concluded that it was the intention of both the executive and Congress to reserve the lakebed in the southern third of the lake for the Tribe.

**Defending Tribal Acknowledgment Program.** This year, the United States prevailed in the first comprehensive legal challenge to the Department of the Interior's federal tribal acknowledgment program, the program by which a tribal group may seek to become a federally recognized Indian Tribe. In what is likely to become a landmark opinion on Interior's regulatory program for federal acknowledgment, the court exhaustively analyzed and evaluated the agency's lengthy acknowledgment decision, upholding the agency's decisionmaking approach and outcome in all respects.

**Resolving Indian Land Claims in New York State.** Attorneys in the Division litigated two trials over a three-month period this year to help create a reservation in New York State for the presently landless Cayuga Indians. Prior to the trials, the Court had held that New York State improperly acquired the former 64,000-acre Cayuga Reservation from the



Cayuga in 1795 and 1807. The Division also argued successfully that New York State -- and not any private landowners -- should be liable for paying any damages awarded. The jury returned a verdict of approximately \$40 million. The Cayuga will use the award to purchase land in their former territory with the goal of creating a new reservation.

**Removing Trespassers From Indian Reservations.** Last spring, we were able to complete a lengthy effort to remove 10 trespassers from the Chemehuevi Reservation in California. The United States District Court for the Central District of California issued a Writ of Assistance that provided for the United States Marshal to remove the trespassers. Nine of the trespassers voluntarily left rather than be removed by the Marshal; one entered into a lease and remained. These ten non-Indian individuals had been living on the Reservation for approximately 25 years, but ten years ago decided that they would not pay increases in rent nor would they enter into leases to remain on the Reservation, and many had stopped paying rent altogether.

**Recovering Unlawfully Collected Taxes for Individual Indians.** This summer we finalized a consent decree through which the State of South Dakota will reimburse individual tribal members for payments of the State's motor vehicle tax which had been collected from tribal members who resided in Indian country at the time they paid the tax. This effort was comprised of cases which the United States filed on behalf of the

individuals and cases brought by tribes themselves in which the United States intervened. Pursuant to the consent decree, individuals have the opportunity to file for a reimbursement from the State with two levels of appeal for any denials. The most recent report is that the State has refunded \$1.75 million to individuals.

**Preserving Tribal Authority to Implement the Clean Air Act.** We obtained a favorable decision upholding EPA's rule prescribing how Indian Tribes are to be treated as states for purposes of air quality management and planning. The Court of Appeals found that the Clean Air Act delegates authority to eligible Indian Tribes to manage air resources on all lands (including privately-owned lands) within the exterior boundaries of a reservation; the term "reservation" as used in the Act includes both formal reservations and informal reservations, including Pueblos and tribal trust lands. The decision is a significant victory for the ability of tribes to regulate air quality within their reservations.

## **PRESERVING OUR NATURAL RESOURCES AND PUBLIC LANDS**

**Defending the Forest Service's Management of the National Forests.** We had several victories on this front in the last year. One such victory was a successful defense of the Forest Service's decision not to offer new oil and gas leases on a portion of the Lewis & Clark National Forest

known as the Rocky Mountain Front, which is noted for its diverse wildlife, dramatic scenery, and wild and undeveloped state. Another came when the court dismissed a challenge to the Forest Service's interim roadless area rule, which prohibits road construction and reconstruction for an 18-month period in tens of millions of acres of Forest Service inventoried roadless areas while it develops a long-term rule governing them. In a third, we defeated an attempt to intervene in an action where local schools, counties, and timber interests seeking acceleration of the timber program filed a complaint alleging that the Forest Service failed to aggressively remove dead and dying trees in the Malheur National Forest.

**Protecting the Black Hills of South Dakota.** We led a team which negotiated the first settlement to effect a comprehensive resolution of stakeholder concerns affecting a National Forest. The negotiations, first with the environmental plaintiffs and later expanded to include the intervening timber industry associations, the neighboring counties, and the State of South Dakota, addressed amendment of the Forest's Land and Resource Management Plan to provide for increased protection of biological diversity and species viability, interim protective measures pending the amendment, as well as fire and pest management concerns raised by the state and counties. Provision was made for transitional treatment of timber sales which allowed the flow of sales to the dependent

industry and community to be maintained under negotiated modifications which protected sensitive species and preserved future options.

**Restoring the Everglades.** We continue to defend challenges on a variety of fronts to federal efforts to manage, restore, and protect natural resources in the Florida Everglades and the Big Cypress National Preserve. We are also contributing to protection of the unique Everglades ecosystem by representing the National Park Service in its acquisitions by eminent domain of approximately 2,500 tracts of land to be used for expansion of Everglades National Park and Big Cypress National Preserve.

**Protecting the "Rails to Trails" Program.** The Court of Appeals affirmed the Court of Federal Claims for the Federal Circuit judgment that the conversion of a former railroad property to "interim trail use" as the "Capitol Crescent" recreational trail did not result in a taking of property without compensation.

**Significant Water Rights Successes Across the Western United States.**

Last year was a year of major successes in our water rights litigation. The Arizona Supreme Court held that federal reserved water rights extend to groundwater and that holders of federal reserved water rights enjoy greater protection from groundwater pumping than do holders of state law rights to the extent that greater protection may be necessary to maintain sufficient water to accomplish the purpose of a reservation. The Idaho Supreme

Court affirmed a decision that the United States holds reserved water rights for designated wild and scenic rivers that flow through the state, as well as water rights for the Hells Canyon National Recreation Area. We also obtained agreements to protect endangered species and other wildlife through water releases and flow restoration in rivers in New Mexico and California, secured critical federal reserved water rights for public lands in Nevada, Utah, Colorado and Oregon, and defended federal management of water projects in Washington, California, Oregon and Nevada.

For example, we successfully negotiated a settlement of two agreements in which the United States obtained nearly 95,000 acre-feet of water to maintain a continuous flow to protect the silvery minnows' habitat.

Without this water, the river would have gone dry in key stretches of the minnow's critical habitat, an event that the U.S. Fish and Wildlife Service believes would have led to the extinction of the species. As part of the agreement, we also obtained commitments to improve the habitat conditions on the Rio Grande and to complete bypasses around diversion dams that are preventing the silvery minnow from recolonizing upstream areas where the species must become re-established as part of any recovery.

**Supreme Court Upholds Revised Grazing Regulations.** A number of livestock ranching groups challenged several of the Secretary of the Interior's 1995 amendments to regulations governing grazing on public

lands managed by the Bureau of Land Management as inconsistent with the Taylor Grazing Act and other federal statutes. The grazing groups argued in part that the use of the term "grazing preference" to denote the priority to be accorded applicants for grazing permits, and the term "permitted use" to specify the grazing use allowed under a grazing permit, compromised guaranteed grazing opportunities that they believed had been provided ranchers in the Taylor Grazing Act. The Supreme Court upheld the validity of the challenged regulations, holding as to those terms that the statutes conferred no fixed grazing rights on ranchers and that the Secretary has broad authority under the statutes to determine grazing privileges on the public rangelands.

**Obtaining Royalties for Mineral Leasing.** We successfully defended an order by the Minerals Management Service to Shell Oil to pay royalties. The court rejected Shell's claim that the order to pay was time-barred by the statute of limitations and argument that the MMS could have issued an order to pay years earlier.

**Gettysburg National Tower.** In a nationally publicized action taken at the request of the National Park Service, we successfully obtained possession of the tourist observation tower at the Gettysburg National Military Park. The tower was demolished on July 3, the anniversary of the famous Pickett's Charge in the Battle of Gettysburg. The valuation of the interests condemned is in litigation.

## **DEFENDING VITAL FEDERAL PROGRAMS**

Replacement of the Woodrow Wilson Bridge in the Washington, D.C. Area. A unanimous panel of the D.C. Circuit held that the Federal Highways Administration had complied with the National Environmental Policy Act (NEPA), Section 106 of the Historic Preservation Act, and Section 4(f) of the Transportation Act when it approved plans to replace the Woodrow Wilson Bridge with a twelve-lane span.

**Navy Keeps San Diego Port Lease.** The Justice Department and the U.S. Navy recently won a major battle in two consolidated cases. The Court's judgment allows the Navy to renew leases with the Port of San Diego. This litigation concerns property leased by the Navy in 1949 for a term of 50 years, with a 50-year renewal option. The Port of San Diego and the State of California asserted tidelands trust rights to prevent the United States from invoking its renewal rights, but the court ruled that the city had the authority to enter into the disputed leases, that federal law overruled state laws which limited lease terms, and that the doctrine of laches precluded challenges to the leases' validity. The cases are on appeal to the Ninth Circuit.

**Ensuring Safe Destruction of the Army's Stockpile of Chemical Weapons.** In April 2000, after a two week trial involving citizen groups' attempt to shut down the Tooele Chemical Agent Demilitarization Facility

at the Deseret Chemical Depot in Utah, the court ruled that the Army's destruction of chemical weapons at the facility presented no imminent or substantial endangerment to human health or the environment. The court also held, among other things, that the citizen groups failed to prove that alleged violations under the Resource Conservation and Recovery Act were ongoing or likely to recur.

**Ensuring that Important Federal Law Enforcement Programs Comply With Environmental Laws.** We successfully negotiated a settlement agreement that enables the United States Border Patrol, an agency of the Justice Department's Immigration and Naturalization Service, to maintain essential border control operations in southern Texas while complying with environmental laws. Launched in 1997, the Border Patrol's Operation Rio Grande is designed to upgrade the interdiction of undocumented aliens and illegal drugs in heavily trafficked areas near Brownsville and McAllen, Texas. The agency commenced its actions, including the installation of high-density lighting, without prior environmental review under the Endangered Species Act and the National Environmental Policy Act. Plaintiffs sued initially to enjoin all aspects of the Operation and to compel the Border Patrol to remove the lights. After intensive negotiations with the plaintiffs, the Border Patrol agreed both to consult with the U.S. Fish and Wildlife Service regarding impacts on endangered and threatened species (especially nocturnal ocelots and jaguarundi) and to prepare an



environmental impact statement to implement the Operation in the McAllen Sector. The settlement agreement limits the activities that the Border Patrol may take during the interim period pending completion of the NEPA and ESA processes, but avoids the need to remove upgraded facilities including the lighting, which the agency views as an effective deterrent to illegal border crossings.

**Appraisal Unit Accomplishments FY2000.** In support of the Division's litigation, the Appraisal Unit completed 908 appraisal reviews concerning 1,189 tracts with a total estimated value of \$465,730,648. The Unit also provided significant valuation assistance to a number of client agencies over the course of the year. Among the most notable efforts was the assistance provided to the United States Forest Service and the Council on Environmental Quality concerning valuation issues related to the Columbia River Gorge Project. Consulting assistance was also provided in *Alabama Coushatta Tribe of Texas v. United States*, *United States v. The University of Rhode Island*, and *The Cayuga Indian Nation of New York v. George Pataki*. Unit members also participated in presentations at the Valuation 2000 Appraisal Conference and at a number of national and regional meetings and seminars held by federal agencies such as the National Park Service, The Army Corps of Engineers, the Fish and Wildlife Service and the Forest Service.

The most significant single accomplishment of the past year was the revision of The Uniform Appraisal Standards for Federal Land Acquisitions (also known as "the Yellow Book.") The draft revision includes updating the case law, major additions to the text and improved organization of the material.

## **SUPPORTING THE DIVISION'S LITIGATORS**

The Executive Office supports the Division's environmental mission by providing the legal staff with the resources, information, and tools necessary to do their jobs, and by working on projects that further our mission throughout the Department and community. We worked to strengthen employees' professional skills, to make new technologies available, to enhance internal services and service delivery, and to improve the work environment for all Division personnel.

Providing modern technologies while preserving systems integrity and security was a priority for the Division. This year we provided technological enhancements with a successful conversion to the Justice Consolidated Network. This national data network is secure, cost-effective, and provides faster data communications than were previously available, resulting in more efficient litigation operations.

ENRD was the first DOJ litigating Division to complete the required Year 2000 Certification and Validation process for our computer systems. Other

Divisions used our plans as a template in completing their own certification and validation processes. This process assured that the start of the new millennium would not interrupt any of our record keeping, document production or active litigation operations.

Using automation to manage documents and evidence is a cornerstone of our support for the Division's major case work. This year the Office of Litigation Support introduced a pilot lab for in-house document scanning and database development services. We expect the lab to provide attorneys with new digital imaging technologies for case information and to reduce the need for expensive contract labor and document center space.

ENRD continued to emphasize the professional development of our employees. This year we completed training for our support staff on technological and legal skills as part of the Support 2001 initiative. We also arranged brown bag "roundtable" training sessions and discussions for managers. A number of other training courses were written and delivered specifically for Division paralegals, relying heavily on in-house expertise.

We took an active role in the Department's efforts to comply with the "Greening the Government" Executive Order, which includes facilities management initiatives and implementation of the new transit subsidies. As part of our outreach to the local community, we arranged and coordinated a course on environmental law at a local high school.