

UNITED STATES DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL RESOURCES DIVISION
FISCAL YEAR 2001
SUMMARY OF LITIGATION ACCOMPLISHMENTS

CONTENTS

DEFENDING VITAL FEDERAL PROGRAMS AND INTERESTS

PROSECUTING FRAUD AND THOSE WHO EXPOSE US TO
HAZARDOUS SUBSTANCES

PROTECTING OUR NATION'S AIR AND WATER

ENSURING CLEANUP OF HAZARDOUS WASTE

PRESERVING OUR NATURAL RESOURCES AND PUBLIC LANDS

ENFORCING WILDLIFE PROTECTIONS AND DEFENDING
WILDLIFE MANAGEMENT PROGRAMS

PROTECTING INDIAN RIGHTS AND RESOLVING INDIAN ISSUES

SUPPORTING THE DIVISION'S LITIGATORS

DEFENDING VITAL FEDERAL PROGRAMS AND INTERESTS

DEFENDING VITAL FEDERAL PROGRAMS AND INTERESTS

Promoting Military Preparedness and National Security. We prevailed in a number of challenges last year that threatened to disrupt and delay our national military training efforts. In *Malama Makua v. Secretary of Defense*, following several weeks of intense negotiations, we achieved a settlement agreement to lift a preliminary injunction and dismiss the case, allowing the U.S. Army immediately to resume live-fire training at Makua Valley, Oahu while it prepares an environmental impact statement. In *Rural Alliance for Military Accountability v. U.S. Air Force*, the plaintiffs dismissed their challenge to the Air Force's low-level flight training activities after a string of federal victories on discovery and procedural issues. Finally, we continued an unbroken record of wins in supporting live-fire military exercises at and around Vieques Island, Puerto Rico. For instance, in *Waterkeeper Alliance v. Department of Defense*, one of five cases challenging the Navy's training activities on Vieques Island, plaintiffs sought to enjoin the Navy's use of the island based on alleged violations of the Endangered Species Act, the Resource Conservation and Recovery Act, and the Equal Protection clause of the Constitution. We defeated plaintiffs' motion for a preliminary injunction to stop military exercises and obtained an order dismissing much of the case.

Continuing Defense of the Army's Chemical Weapons

Demilitarization Program. We continue to defend with success the Army's \$15 billion Chemical Weapons Demilitarization Program. Pursuant to the United States' treaty obligations, Congress has charged the Army with responsibility for destroying these stockpiles at their current locations. We are handling multiple pieces of litigation related to the destruction of chemical weapons in Alabama, Arkansas, Oregon and Utah. The largest stockpile of these chemical weapons is located at the Army's Tooele Chemical Weapons Depot, outside of Salt Lake City, Utah. In May 2000, we obtained a favorable judgment in *Chemical Weapons Working Group v. Department of the Army*, where, after a lengthy trial, the court rejected arguments under the Resource Conservation and Recovery Act to shut down the incinerator. The case was subsequently appealed to the Tenth Circuit, and we successfully defeated motions for a stay pending appeal,

thereby allowing the safe destruction of the Army's stockpile of chemical weapons at Tooele Depot to continue. In other litigation, the Alabama state court rejected a challenge to a permit issued to Anniston Army Depot in Anniston, Alabama, for a chemical munitions incinerator. In a related suit concerning the Anniston Army Depot, we appealed an adverse state court decision to the Alabama Supreme Court. We also successfully defended: 1) a state permit for the construction and operation of the Army's Umatilla chemical weapons incineration facility in Oregon; and 2) a challenge to the operation of the Pine Bluff Arsenal facility in Arkansas.

Expediting Construction of the World War II Memorial on the National Mall. With more than 1100 World War II veterans dying every day, Congress and the Administration have made the speedy construction of the World War II Memorial on the National Mall a top priority. Shortly after Congress enacted legislation to expedite construction of the Memorial, we successfully defended two suits seeking injunctive relief that, if granted, could have stalled construction of the Memorial for years. Construction of the Memorial is now underway.

Successfully Defending Construction of the Legacy Highway. We vindicated federal interests in proceeding with construction of the Legacy Parkway Highway Project near Salt Lake City in Utahns for Better Transportation and Sierra Club v. USDOT.

Emergency Eminent Domain Actions in Manhattan. In the wake of the September 11 attack, the Division has worked closely with the General Services Administration ("GSA") in its quest to provide substitute office space for agencies housed in the Twin Towers. In the week following the attack, we prepared pleadings on an emergency basis and coordinated the filing of an eminent domain action to acquire a leasehold interest in approximately 55,200 square feet of office space for use by the Customs Service. We continue to work closely with GSA, both as trial counsel and in an advisory capacity, in its effort to expeditiously acquire needed office space.

Appraisal Unit Accomplishments. In support of the Division's litigation, the Appraisal Unit completed 374 appraisal reviews concerning 419 tracts with a total estimated value of \$454,952,908. In addition to the appraisal reviews which are a primary responsibility, the unit 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 Navy concerning the Naval Air Station - Oceana and the Bureau of Land Management concerning the Gold Fields Case. Members of the unit also participated in presentations at a number of national and regional meetings and seminars held by federal agencies such as the Bureau of Land Management, the Fish and Wildlife Service and the Forest Service. The Unit's most significant single accomplishment of the past year was the completion and final approval of a revision of The Uniform Appraisal Standards for Federal Land Acquisitions. The revisions include updating the case law, major additions to the text and improved organization of the material.

Defending the Public's "Right-to-Know." We continue to successfully defend EPA's expansion of the coverage of the Toxic Release Inventory reporting program, a public information mechanism established by the Emergency Planning and Community Right-to-Know Act to metal and coal mining facilities.

PROSECUTING FRAUD AND THOSE WHO EXPOSE US TO HAZARDOUS SUBSTANCES.

Vessel Pollution Enforcement Effort. The Vessel Pollution Enforcement Initiative is an ongoing, concentrated effort to prevent pollution from ships into the oceans, the coastal waters and the inland waterways. Since 1990, there have been over 50 environmental prosecutions involving pollution from ships, and in the past year, the work of the Vessel Pollution Initiative has contributed to a number of important prosecutions. One of these was *United States v. Kiriakos Daioglou*, in which the captain of the T/V Neptune Dorado pled guilty to a knowing violation of the Ports and Waterway Safety Act growing out of his misrepresentations to the Coast

Guard and orders to the crew to falsify the ship's logs in an effort to conceal an explosive condition onboard the ship. Another such prosecution was a multi-district case, *United States v. Matson Navigation Company*, in which Matson Navigation Company entered guilty pleas in the federal judicial districts in California and Washington to multiple felonies based on an effort to conceal the deficiencies in the ship's pollution prevention equipment. The company was fined a total of \$3 million dollars, a portion of which was suspended conditioned upon the company financing environmental projects.

Laboratory 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 this role, maintenance of the integrity of laboratory sample tests, results, and reports is critical. As a result, the Lab Fraud Task Force was established to survey the problem of fraudulent laboratory testing and to determine how best to tackle it. During the last year, Division attorneys prosecuted several nationally significant investigations associated with the task force. These include *United States v. Kaminski, et al.*, in which three executives, two corporations, and six managers have pled guilty to various charges in connection with fraudulent testing of petroleum products, including reformulated gasoline, by Caleb Brett, Inc., a testing laboratory in Linden, New Jersey. This falsification scheme allowed approximately 224 million gallons of substandard gasoline to be sold in the New York metropolitan

area. Also, in July 2001, in case involving similar activities at Saybolt, Inc., a rival laboratory, three individuals pleaded guilty in federal district court New Jersey based on their roles in falsifying laboratory test results.

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. Division attorneys have prosecuted several cases under this initiative in the last year, including *United States v. James "Eddie" Adams, et al.*, a South Carolina prosecution involving James Edward (Eddie) Adams and Carolina Upgrading of South Carolina, Inc., a South Carolina contractor that performed testing services for owners and operators of USTs, who engaged in a scheme defrauding more than 400 UST owners in South Carolina, North Carolina, Georgia, Virginia, and Tennessee by conducting false tests at more than 1,500 UST facilities. Adams and Carolina Upgrading pled guilty in August 2001, to a 15-count indictment charging them with conspiracy to commit mail fraud, to make false statements and to submit false claims, as well as with separate charges for mail fraud and submission of false claims. Several former employees of Carolina

Upgrading had been previously sentenced in connection with this fraudulent scheme.

Hazardous Air Pollutant Emissions Prosecution. Koch Petroleum Group, L.L.P., owned and operated a petroleum refinery in Corpus Christi, Texas that generated wastewater containing benzene, a known carcinogen. In early 1995, it knowingly concealed its failure to conduct required tests that would have revealed the concentrations of hazardous air pollutants being discharged in its waste waters. It pled guilty to a false statement violation and agreed to pay a criminal penalty of \$20 million, \$10 million of which will go toward special projects to improve the environment in Corpus Christi. The plea agreement also requires that Koch successfully complete a five-year term of probation and adhere to a strict environmental compliance program.

Airbag Manufacturer to Pay \$17.6 Million in Fines for Illegal

Handling of Hazardous Waste. TRW Vehicle Safety Systems, Inc. (VSSI) resolved charges that it violated hazardous waste laws at its airbag manufacturing plant in Queen Creek, Arizona, under a civil settlement and criminal plea agreement reached in 2001. The agreement and plea resolved charges that VSSI knowingly sent sodium azide, a toxic and potentially explosive compound, to a landfill not authorized to accept this waste, and for storing sodium azide at its facility without a permit in violation of federal law. The plea agreement requires VSSI to pay a \$6 million criminal

fine each to the United States and Arizona, and establish environmental management systems at airbag facilities in Arizona and Nevada. The civil settlement, which resolves claims that VSSI failed to meet federal requirements for managing hazardous waste, requires VSSI to complete a comprehensive assessment of its facility and undertake any corrective action measures that are deemed necessary. VSSI is also required to pay a \$5.6 million civil penalty, contribute \$1.5 million to clean up the landfill where it sent the sodium azide waste, and perform environmental projects worth more than \$5.7 million. This case is the largest criminal-civil settlement under the Resource Conservation and Recovery Act in the country to date.

First Criminal Prosecution for Violation of the Lead Hazard

Reduction Act. In the first criminal prosecution in the nation for a violation of the Lead Hazard Reduction Act of 1992, David Nuyen pled guilty to obstruction of an agency proceeding, making false statements, and violating the Toxic Substances Control Act in connection with his failure to disclose lead paint hazards to tenants in Maryland and the District of Columbia, in spite of his knowledge of the hazards and his obligation to comply with the Lead Hazard Reduction Act. He had initially been contacted as part of the Department of Housing and Urban Development's civil initiative to determine compliance with the Lead

Hazard Reduction Act, but his obstructive and deceptive conduct led to a criminal prosecution.

Slaughterhouse Waste Processor and Company Officials Sentenced.

Central Industries, Inc., a Mississippi firm which processed millions of pounds of slaughterhouse waste from five chicken producers, discharged on almost a daily basis a half-million gallons of blood and offal into a tributary of the Pearl River. The company and four officials, including the president, vice-president, chief operating officer and a board member, pled guilty to violations of the Clean Water Act, and the company was ordered to pay a \$13 million criminal fine and an additional \$1 million in criminal restitution to the Mississippi Department of Environmental Quality for future environmental enforcement. Central was also ordered to publish a public apology. The company officials were fined a total of \$475,000, and were ordered to serve home confinement and perform community service.

Prosecuting Illegal Asbestos Abatement. Construction Personnel, Inc. (CPI), a labor contract service, hired unauthorized aliens from Mexico, Central and South America, many of whom were not properly trained in asbestos removal or had false training and health certifications, to work for contractors doing asbestos removal. The asbestos abatement classes that were provided were actually used to recruit workers who were known to be in the United States illegally. The company, its president, vice president and other employees pled guilty and were sentenced in connection with

this scheme in August. CPI has also forfeited over \$300,000, which will be used by the Agency for Toxic Substances and Disease Registry, with the U.S. Department of Health and Human Services, to track and treat former CPI employees who may have been exposed to asbestos.

Appellate Affirmations of Convictions and Sentences. The Ninth Circuit affirmed the longest prison sentence ever for an environmental crime. An Idaho jury had previously convicted a Wharton-educated businessman and attorney in connection with his acts placing others in imminent danger of death or serious bodily injury by illegal disposal of hazardous waste without a permit, and the court sentenced him to 17 years imprisonment and ordered him to pay millions in restitution to a 20-year-old employee who was left with permanent brain damage from cyanide poisoning. In another appellate matter, the Eleventh Circuit affirmed convictions and sentences of corporate executives and managers for a company that operated a chemical manufacturing plant in Brunswick, Georgia for conspiracy and for numerous violations of the Clean Water Act, the Resource Conservation and Recovery Act, and the Comprehensive Environmental

PROTECTING OUR NATION'S AIR AND WATER

Reducing Air Pollution from Coal-Fired Power Plants. During the past year, the Division continued to press enforcement actions to address Clean

Air Act violations by coal-fired electric power generating plants. These power plants' failure to install the best available emissions control technology during major plant upgrades has resulted in tens of millions of tons of air pollution, leading to detrimental effects on asthma sufferers, the elderly and children, and to forest degradation, waterway damage, reservoir contamination, and deterioration of stone and copper in buildings. We filed two more enforcement actions (in addition to the eight actions already on file), and reached two "agreements in principle," one with Cinergy Corp. and one with Virginia Electric Power Co., under which the utilities tentatively agreed to install and optimize pollution-control equipment to achieve significant reductions in pollution and to pay civil penalties of \$8.5 million and \$5.3 million, respectively.

Addressing Pollution at the Nation's Oil Refineries. As part of a national enforcement effort to address Clean Air Act violations at the nation's oil refineries, we entered into five major, multi-facility settlements with petroleum companies that together account for almost 40% of the nation's refining capacity. Through these settlements, the settling companies will reduce toxic emissions by more than 130,000 tons per year at 29 refineries, install pollution control equipment valued at \$1.3 billion, pay \$28 million in civil penalties, and perform supplemental environmental projects worth \$12 million. Eight states joined in these settlements. The settlements all require the defendants to install state-of-

the-art pollution control equipment. Reducing Ozone-Depleting CFCs at Facilities in 18 States. We achieved a groundbreaking Clean Air Act settlement with Air Liquide America Corp. under which it will eliminate refrigerant chemicals that destroy the earth's stratospheric ozone layer and replace them with environmentally friendly alternatives. Air Liquide had been illegally releasing ozone-depleting gases from industrial process refrigeration systems at 22 facilities located in 18 states. The agreement also obligates Air Liquide to pay a \$4.5 million civil penalty and fund environmental projects that will benefit a lower-income, minority community in Calcasiea Parish, Louisiana. The total value of the settlement is approximately \$17 million.

Reducing Air Pollution at 14 Steel Plants in 7 States. The Division's settlement with Nucor Steel, Inc., which resolves allegations that Nucor violated environmental standards regulating the release of pollutants into the air, water and soil and the management of hazardous waste produced by steel furnaces, will potentially result in the reduction of an estimated 9400 tons of air pollution over eight years. The agreement covers fourteen Nucor facilities in seven states, and calls for air pollution control technology that is expected to set a new standard in the steel industry for controlling air pollution from furnaces and paint operations. The company will also pay a \$9 million civil penalty and spend another \$4 million on continued emissions monitoring of hazardous pollutants and environmental

projects to benefit the communities where the facilities are located. Four states - Arkansas, Utah, South Carolina and Nebraska - joined the United States in this settlement.

Eliminating Airborne Pesticides in a Residential Neighborhood. After trial in June 2001, the defendants in U.S. v. Tropical Fruit, S.E. agreed to a settlement to resolve the government's claims under the Comprehensive Environmental Response, Compensation and Liability Act and the Federal Insecticide, Fungicide and Rodenticide Act at their fruit farm in Puerto Rico. The defendants applied pesticides to agricultural crops in such a manner that the pesticides drifted beyond the boundaries of the Farm into an adjacent residential neighborhood, in violation of the pesticide label requirements. The consent decree requires defendants to pay a civil penalty and undertake extensive measures to prevent future releases of pesticides into the community by creating a significant buffer zone along the perimeter of the farm; ceasing pesticide spraying in that part of the buffer zone adjacent to residences and converting to manual spraying in the remainder of the buffer zone; planting a vegetative barrier along nearly the entire perimeter of the buffer zone; and hiring an individual to monitor pesticide handling operations.

Upholding EPA's Standard-Setting Authority for Common Air Pollutants. The cornerstone of the Clean Air Act is its provision governing the setting of national ambient air quality standards for ubiquitous

"conventional" pollutants such as ozone and particulate matter. In 1999, ruling on challenges to EPA's newly-revised standards for ozone and fine particulate matter, the D.C. Circuit had issued an opinion holding that the standard-setting provision, as interpreted by EPA, violated the constitutional non-delegation doctrine. Working with the Solicitor General's Office, the Division appealed that decision to the Supreme Court and obtained a unanimous decision reversing the appellate court decision and upholding the constitutionality of the Act.

Reducing Interstate Contributions to Unhealthy Ozone Levels. In order to address the problem of pollution emissions in one state that contribute to unhealthy levels of ozone (smog) in states downwind, EPA imposed federal emission limitations on certain sources of air pollution in upwind states that significantly contribute to ozone problems in the Northeast. That action was challenged by industry and utility interests and seven of the upwind states in *Appalachian Power Co. v. EPA*. In May 2001, the Division obtained a favorable decision upholding EPA's approach to all of the significant statutory and policy issues presented, allowing EPA to move forward with implementing these vitally important emission reductions.

Addressing PCB Contamination in Rivers. General Electric Co. (GE) has agreed to spend more than \$250 million to resolve claims it polluted the Housatonic River with polychlorinated biphenyls ("PCBs"). PCBs are

found in the river from western Massachusetts, where GE manufactured transformers and other equipment containing PCBs, to its mouth in Long Island Sound. The settlement requires GE to clean up the contamination at its manufacturing facility in Pittsfield, Massachusetts, and carry out a "brownfield" plan to redevelop the facility and bring new commercial life to Pittsfield. The agreement also requires GE to clean up stretches of the Housatonic River over time, undertake several projects to improve wildlife habitat, and make a \$15 million cash payment to federal and state trustees for natural resource restoration projects. In a separate action, the Division defeated efforts to halt EPA's issuance of a record of decision that would require GE to remediate PCB-contaminated sediments in the Hudson River in New York.

Upgrading 172 Sewage Treatment Systems in Louisiana. In October 2000, the Division lodged a consent decree with Total Environmental Solutions, Inc. (TESI), that sets forth a comprehensive schedule for bringing into compliance with the Clean Water Act 172 sewage treatment plants formerly controlled by Johnson Properties and its numerous affiliates. Over several years, Johnson Properties did practically no maintenance on these plants, and nearly all of the plants regularly discharged large amounts of partially treated and raw sewage into local waterways, including drainage ditches in subdivisions. Johnson Properties had initially signed a consent decree agreeing to remedial measures, but it

soon became apparent that it was making no effort to comply with the agreement. We therefore moved for and secured the appointment of a receiver to manage the plants. The most recent settlement provides for transfer of the plants from the trustee to a responsible new owner who will bring them into compliance with the law.

Ensuring Safe Drinking Water in Puerto Rico. An October 2000 settlement with the Puerto Rico Aqueduct and Sewer Authority (PRASA) will bring 43 drinking water systems throughout the island into compliance with the Clean Water Act and Safe Drinking Water Act. We filed suit against PRASA after it failed to comply with numerous EPA administrative orders. The settlement requires PRASA to install sludge treatment facilities at drinking water plants and to filter the drinking water that comes from its public drinking water systems. PRASA's systems serve approximately 25,000 people. The settlement also requires PRASA to pay a \$550,000 penalty and undertake nearly \$500,000 in environmental projects.

Landmark Storm Water Settlements. In June 2001, we achieved two significant victories in the enforcement of the Clean Water Act's regulation of storm water discharges, which EPA has identified as a leading cause of impaired water quality. In one, we reached a settlement with Wal-Mart in the first federal judicial enforcement action against a single company for multi-state violations of the Act's storm water provisions. Under the

settlement, Wal-Mart will pay a \$1 million civil penalty, and establish a \$4.5 million environmental management plan to prevent construction-related pollution at the retailer's multiple construction sites throughout the country. In the other, we achieved a settlement with National Railroad Passenger Corporation (Amtrak), the nation's largest passenger rail operator, that resolved violations at Amtrak facilities in Massachusetts, Connecticut and Rhode Island. Storm water discharges from rail maintenance facilities can carry oil, grease and metals into storm drains, ultimately compromising the health and quality of streams and waterways. The settlement requires Amtrak to address past violations, implement a nation-wide compliance audit and a nation-wide environmental management system, pay a \$500,000 civil penalty, and undertake two environmental projects at an estimated cost of \$800,000.

United States Joins Three Citizen Groups to Alleviate Hog Waste in North Carolina. In July 2001, we joined with three citizen organizations to settle claims against the owners and operators of five hog farms for unlawful discharges of treated hog waste. The settlement requires defendants to pay a \$72,000 civil penalty and take specified measures to prevent future discharges of swine waste at these five farms in North Carolina.

Division Secures Largest Ever Civil Fine at a Single Facility. In October 2000, we achieved a settlement with Morton International, Inc.,

under which Morton will pay a penalty of \$20 million for violating six environmental statutes at its chemical manufacturing facility in Moss Point, Mississippi. The State of Mississippi was a full partner in our enforcement action and will receive one-half the penalty. The settlement requires Morton to conduct a full environmental assessment of its facility and to take corrective measures to address problems at the plant. Morton will also perform three environmental projects at an estimated cost of \$19 million. Additionally, the settlement provides that an independent audit will be conducted at 23 facilities formerly owned by Morton, but acquired by Rohm and Haas, and that any further environmental problems will be addressed by Rohm and Haas.

Settlements with Three Universities Result in Innovative

Environmental Management. In separate actions, both the University of Hawaii and University of Rhode Island resolved claims concerning the universities' violations of the Resource Conservation and Recovery Act (RCRA), the primary federal hazardous waste law. The settlements require each institution to conduct environmental compliance audits, rectify problems revealed in the audits, pay civil penalties of \$505,000 and \$250,000, respectively, and perform environmental projects valued at \$1.2 million and \$500,000 respectively. The settlement with Rhode Island also resolves claims under the Clean Water Act and Clean Air Act. We also arrived at a multi-media, predominantly RCRA settlement with the

Massachusetts Institute of Technology, which provides for the payment of a \$150,000 civil penalty and the institution of an environmental management system, and three creative environmental projects: development of an innovative storm water management system, a "virtual compliance" web-based compliance assistance program, and collaboration with the local public school system to develop and implement an environmental curriculum.

Defending Administrative Enforcement of PCB Disposal

Requirements. In November 2000, the Fifth Circuit upheld EPA's administrative penalty assessment of \$1.345 million against Newell Recycling Company for violations of PCB disposal requirements in the Toxic Substances Control Act.

Preserving Our Nation's Wetlands. The Division won three major victories for protection of our nation's wetlands this year. In one enforcement case involving more than 1000 acres of rare peat bog in Sanilac County, Michigan, the Division obtained a finding of liability for extensive violations of the Clean Water Act, and significant injunctive relief to address the destruction of these valuable resources. In another enforcement case involving California's rapidly vanishing vernal pool ecosystems, the Ninth Circuit affirmed the district court's award to the United States of a substantial civil penalty and order to the defendant to restore waters of the United States destroyed through deep plowing and

discing. Finally, we obtained a stipulated penalty of \$4,015,500 as a result of a developer's noncompliance with the terms of a prior settlement in a wetlands enforcement action in Indiana.

Record Recoveries to Result in Restoration of Damaged Natural

Resources. In December 2000, we reached a settlement with the remaining defendants in an action involving DDT contamination of the ocean off the coast of Los Angeles. The contamination resulted from the discharge of approximately 1800 tons of DDT from a Montrose Chemical Co. manufacturing facility into Los Angeles County sewers that empty into the Pacific Ocean, creating the largest known area of DDT contamination in the world. Under the settlement, defendants will pay \$73 million, of which \$30 million will be used to restore natural resources damaged by the contamination. This recovery, together with previous recoveries from other defendants, brings the total amount recovered for environmental restoration in this area to \$137.5 million. The funds will be used by federal and state trustees on projects such as artificial reefs to provide new habitat for fish and a program to reintroduce bald eagles and peregrine falcons to Santa Catalina and the other Channel Islands. The remaining \$43 million from the December settlement will be available to clean up the offshore contamination.

In October 2000, we achieved the largest natural resource damage recovery to date under the Park System Resource Protection Act when we reached a

settlement for damages arising out of the grounding of the vessel M/V Igloo Moon in Biscayne National Park off the coast of Florida. The grounding caused significant damage to the coral reef habitat in the Park. The \$1 million recovery will cover the full cost of primary restoration as well as other compensable costs. In another grounding case involving a barge carrying 1.5 million tons of oil that ran aground off the coast of Puerto Rico, we reached an agreement with the owners, operators and insurers of the barge to address the damages caused when the barge crushed the reef and spilled 800,000 gallons of oil. Much of the oil was discharged onto nearby land, affecting beaches and parklands in Puerto Rico. Under the settlement, \$60 million will be deposited in the Oil Spill Liability Trust Fund, which financed the clean up, and an additional \$23.5 million will be paid to settle the federal and state trustees' claims for natural resource damages. It is expected that the trustees' recoveries will be used to restore reef injured in the incident and to acquire land to enhance conservation, ecosystem preservation, habitat maintenance and recreational opportunities in the beach areas affected by the spills. Finally, in April 2001, we reached an agreement with Guide Corporation in which the company will pay more than \$10 million to settle a civil lawsuit over one of the largest fish kills in Indiana history. Guide, an automotive lighting manufacturer, discharged toxic wastewater from an automotive parts facility to the Anderson, Indiana sewage treatment plant which, in turn,

discharges into the White River. Under the settlement, Guide agreed to pay \$6 million into two White River restoration funds, \$2 million to reimburse the costs of agencies that responded to the fish kill, and \$2 million in civil penalties. In a related action, Guide also agreed to plead guilty to criminal violations of the Clean Water Act and pay more than \$4.1 million in criminal penalties, asset forfeiture, and restitution under a plea agreement, plus commence a comprehensive environmental compliance training program for all employees.

ENSURING CLEANUP OF HAZARDOUS WASTE

Record Cost Recovery from a Single Individual. In December 2000, we reached an agreement with Robert Friedland regarding the Summitville Mine Site in Colorado. We sued Friedland as an "operator" of the site due to his roles as financier, major stockholder, chairman, CEO and director of the owner corporation, Summitville Consolidated Mining Company, Inc. and its parent Galactic Resources Ltd. Pursuant to the settlement, Friedland will pay \$27,750,000 over a nine year time period to address arsenic contamination at this site. The settlement also provides that \$5 million will be spent to restore natural resources damaged by the contamination. The Environmental Protection Agency spent more than \$150 million mounting an emergency response action to address a 43-acre cyanide heap leach pad that was about to overtop its dikes when the owners declared bankruptcy in 1992 and abandoned the site.

Record Settlement to Cleanup One of the Nation's Most Toxic Waste Sites. The United States and California reached an agreement with Aventis CropSciences USA, Inc. that will fund cleanup costs that could approach \$1 billion at the Iron Mountain Mine Superfund Site near Redding, California. The settlement is one of the largest settlements with a single private party in the history of the federal Superfund program. Through the creation of a unique funding vehicle that will generate \$200-300 million over 30 years with a \$514 million balloon payment in year 30, the settlement assures that money is available each year for long-term operation of a pollution treatment and control system needed to prevent toxic discharges from the site. This site has been one of the largest point sources of toxic metals in the United States, and the source of the most acidic mine drainage in the world. Aventis will also pay federal and state trustees \$10 million for natural resource restoration projects.

Petrochemical Companies Agree to Pay Second Highest Superfund Recovery. In September 2001, we reached a \$120 million settlement with numerous oil refiners and petrochemical companies relating to contamination at the Sikes Disposal Pits Superfund Site located near Crosby, Texas. Under the decree, the United States will receive \$111.3 million, plus interest, toward reimbursement of costs it incurred to cleanup chemical and oil-based contamination at the Site. The State of Texas, which joined the settlement, will receive the balance of the proceeds.

Cleanup and Redevelopment of Niagara Falls Superfund Site. Under a settlement with Goodyear Tire & Rubber Co., a polluted, abandoned trailer park in western New York State will be cleaned up and redeveloped. EPA relocated residents in 1989 after discovering that residents of the mobile homes were living on top of and even playing with chunks of hazardous waste. Goodyear will clean up the site, reimburse the government for its costs and compensate for damages to natural resources resulting from the contamination.

Resolving Federal Liability to Ensure the Cleanup of Hazardous Waste. A significant portion of the Division's practice involves resolving the liability of federal agencies in connection with the cleanup of contaminated facilities under the federal Superfund statute, CERCLA. In September 2001, the Division finalized a unique CERCLA settlement that saved the United States tens of millions of dollars, while facilitating environmental remediation. The settlement involved the Marine Corps Air Station El Toro, in Irvine, California, which had released volatile organic compounds into shallow groundwater below the surface of the Air Station, and ultimately into an adjacent deeper off-base aquifer. The deeper aquifer was also contaminated by nitrates and total dissolved solids from the activities of other entities, and the Water Districts for Orange County and the Irvine Ranch had undertaken a long-term project to pump and treat the water from the deeper aquifer. Through the settlement agreement, the two

Water Districts will now be responsible for the long-term cleanup of both the off-base deeper aquifer and the on-base shallow groundwater, at a projected cost of \$97 million. In return, the United States will contribute \$27.25 million toward the cost of the cleanup. This arrangement results in a significant cost savings both to the United States and to the Water Districts due to the cost efficiency of constructing and operating a total treatment system for both of the contaminated areas.

Defending CERCLA's Constitutionality. The United States intervened in a Sixth Circuit appeal to defend the constitutionality of the Superfund statute. The defendant in a private cost recovery case asserted that application of retroactive liability under Superfund was an unconstitutional taking or due process violation, but we successfully argued that application of retroactive liability was constitutional. As a result, the first court of appeals to hear this issue has assisted in ensuring that toxic waste sites across the country are cleaned up and that the costs are shared fairly and equitably.

PRESERVING OUR NATURAL RESOURCES AND PUBLIC LANDS

Restoring the Everglades. A number of victories last year continued and advanced our unprecedented joint effort with the State of Florida to restore and protect unique South Florida ecosystems, including the Florida

Everglades, the largest subtropical wilderness in North America. For example, we secured the dismissal of a challenge to the historic, \$7.8 billion, 30-year Comprehensive Everglades Restoration Plan authorized by Congress, and, in another case involving intensive litigation, we obtained a ruling retroactively granting our motion to augment the surface water cleanup program and prolong provisions in a 1992 consent decree. The court declared the merits of our motion (filed jointly with the State) to be "abundantly clear," notwithstanding the opposition of numerous intervenors. We also continue to contribute to protection of the unique Everglades ecosystem by ensuring that acquisitions by eminent domain were effected as to approximately 2,500 tracts for inclusion within the Everglades National Park and Big Cypress National Preserve expansion. We have also begun preliminary work with the National Park Service on the acquisition of outstanding mineral interests in the park.

Defending the Forest Service's Management of the National Forests.

We continue to enjoy success in defending Forest Service decisions and actions related to the National Forests. We defeated an attempt to enjoin some 200 timber sales in 11 National Forests in the Sierra Nevada and also brought to successful conclusion the last challenge to the Northwest Forest Plan. We forestalled an attempt to reopen the spotted owl litigation in *Hanson v. Forest Service*, and the Ninth Circuit Court of Appeals granted our motion to dismiss an appeal concerning the revised Tongass Land

Management Plan. Collectively, these cases preserved the Forest Service's discretion to take the actions necessary to balance environmental protection with resource use and forest health concerns.

Protecting National Grasslands. The Eighth Circuit Court of Appeals upheld the Nebraska National Forest Supervisor's decision to modify the stocking level for cattle grazing pursuant to a federal permit on the Fort Pierre National Grasslands in South Dakota. The Court affirmed the methodology used by the Supervisor to establish the new stocking level, holding that the supervisor did not act arbitrarily or capriciously in arriving at his decision.

Wild Burro Management. The Ninth Circuit Court of Appeals rejected the State of Arizona's challenge to the Bureau of Land Management's authority to manage the wild burro population under the Wild Free-Roaming Horses and Burros Act in the Alamo Lake Wildlife Area, holding that it was barred by the statute of limitations.

Defending Presidential Authority Under the Antiquities Act. In two precedent-setting decisions, we defended the Presidential designation of two national monuments under the Antiquities Act of 1906. In the first case, the court upheld the constitutionality of the Antiquities Act and found that the President properly exercised his discretion in accordance with the Act's standards when establishing the Giant Sequoia National Monument

in California's southern Sierra Nevada to protect objects of historic and scientific interest within the Monument. In the second, the court upheld the establishment of the Grand Canyon-Parashant National Monument in Arizona, finding that plaintiffs lacked standing, had failed to state a claim for relief, and had not demonstrated any Constitutional infirmities in the Act.

Continued Stewardship of Rio Grande River Water. We represented the Department of the Interior, the Corps of Engineers and the Bureau of Reclamation in the complex litigation surrounding the use of the waters of the Rio Grande River and the protection of threatened or endangered species, most notably in Rio Grande Silvery Minnow v. Martinez, in which we negotiated an agreement with the State of New Mexico to provide an additional 30,000 acre-feet of water per year for the endangered silvery minnow for years 2001 through 2003.

Significant Water Rights Successes across the Western United States. Last year we protected important federal water rights through negotiation of mutually beneficial settlement agreements with state and private interests. In Arizona's general stream adjudication for the Little Colorado River, we negotiated agreements with all the major industrial users of ground water in the basin, with the City of Flagstaff, and with the State Lands Department. These agreements protect national forest lands and National Park Service lands at Grand Canyon and Petrified Forest National

Parks; Wupatki, Walnut Canyon and Sunset Crater National Monuments; and the Hubbell Trading Post National Historic Site. In Utah, we negotiated settlements recognizing reserved water rights for Rainbow Bridge National Monuments and Golden Spike National Historic Site. In California, we secured an agreement protecting flows in the Santa Margarita River needed by the United States Marine Corps for military and environmental purposes at Camp Pendleton. In addition to our continuing defense of federal management of Reclamation projects in western states including California, Oregon, and New Mexico, we negotiated agreements with two major irrigation districts in the State of Washington's adjudication for the Yakima River Basin. These agreements resolve disputes among the Bureau of Reclamation, the Bureau of Indian Affairs, the State, the Yakama Indian Nation, and the water districts, and provide sufficient water for crop irrigation while ensuring that the United States can meet its statutory conservation purposes and trust responsibility to the Yakama to protect fishery resources in the basin. Finally, we took important steps forward in water rights litigation. In the Klamath Basin Adjudication, we secured an administrative decision confirming that Crater Lake National Park has a reserved right for water necessary to fulfill reservation purposes, including preservation and protection of natural objects, timber, and game and fish; prevention and extinguishment of forest fires; and permitting tourism, including hotels and restaurants. We also obtained

favorable rulings from the Klamath hearing officer and the Idaho Supreme Court in the Snake River Basin Adjudication, confirming federal entitlement to reserved rights for flows sufficient to protect "outstandingly remarkable values" in designated Wild and Scenic rivers.

Resolving Miners' Claims in Denali National Park. In the first two Fifth Amendment Takings Clause cases brought by the holders of unpatented mining claims in Denali National Park, we have achieved favorable outcomes. The plaintiffs in these cases sought compensation from the United States based on an alleged prohibition on mining activities within the Park. A five-week trial in the first of these cases resulted in a district court award of less than five per cent of the plaintiffs' original demand, which success was instrumental in achieving a settlement in the second case.

Protecting the National Rails-to-Trails Program. In the first Fifth Amendment Takings Clause case involving the National Trails System Act, the Court of Federal Claims awarded the plaintiff less than one-third of the amount originally requested. This case, and the more than twenty other similar cases now pending involving thousands of claimants, result from federal legislation converting formerly unused railroad rights-of-way into a nationwide system of recreational trails enjoyed by millions of Americans. The Court's award in this and similar cases helps to protect both the public fisc and this valuable program.

Resolving Longstanding Claims under the "Forest In Lieu" Program.

This year we brought to closure numerous claims for compensation brought by individuals whose predecessors-in-interest conveyed property to the United States for the national forests, but who failed to receive anything in return. These claims date back to the late 1800s, and numerous attempts by Congress over the past century to resolve these claims have proven unsuccessful. Our settlement of all of these claims bring this long and complex saga to an end.

Protection against Loss of Substantial National Park Lands. After a two-week trial, the federal district court in Alaska denied plaintiffs' claim to 30,000 acres which included almost all of the Cook Inlet coastline of Lake Clark National Park. The case involved issues concerning the Alaska Native Claims Settlement Act and interpretation of a 1976 agreement between the Department of the Interior and Alaska Native corporations.

ENFORCING WILDLIFE PROTECTIONS AND DEFENDING WILDLIFE MANAGEMENT PROGRAMS

Three Appellate Victories in Criminal Wildlife Prosecution. Working with the Division, the United States Attorney's office in New York obtained a decision vacating the defendants' sentences and remanding for resentencing in a caviar smuggling case. Eugeniusz Koczuk and Wieslaw Rozbicki smuggled approximately 19,000 pounds of sturgeon roe into the

United States over an eight-month period shortly after sturgeon were listed as protected. In sentencing the defendants, the district court departed downward from the range prescribed by the Sentencing Guidelines on the ground that the Guidelines overstated the seriousness of the offenses. On appeal, the Court of Appeals rejected the district court's attempt to second-guess the Sentencing Commission. In another case, the Court of Appeals affirmed the conviction and sentence of Petros Leventis, who was convicted of two counts of illegal coral smuggling. Leventis had been sentenced to concurrent terms of 18 months imprisonment followed by 24 months supervised release and a \$5,000 fine, while his company was sentenced to concurrent terms of 60 months probation and a \$25,000 fine. In a third case, the Ninth Circuit Court of Appeals upheld the conviction of James Fejes, an Alaska based hunting outfitter/guide. Fejes was found guilty of violating federal law, which prohibits the taking of wildlife protected by state law, in connection with a caribou hunt undertaken in violation of Alaska law.

Wildlife Smuggling Kingpin Pleads Guilty. Keng Liang "Anson" Wong, a Malaysian wildlife dealer, arrested in 1998 in Mexico City after a three-year undercover U.S. Fish and Wildlife Service investigation into international trafficking in live endangered species, pleaded guilty to multiple felony counts related to the smuggling and sale of various highly endangered reptiles. Wong was sentenced to 71 months in prison and

ordered to pay \$64,000 in fines and assessments. Between 1995 and 1998 Wong lead a wildlife smuggling ring that illegally imported over 300 protected reptiles and amphibians worth in excess of \$5 million, including Komodo dragons and the rarest tortoise species, the Madagascan ploughshare tortoise, into the United States using commercial shipments, human couriers and FedEx packages.

Lobster Smugglers Convicted and Sentenced. Four defendants were convicted sentenced to record amounts of incarceration for smuggling \$18 million worth of spiny lobster into the United States harvested and exported in violation of Honduran laws intended to preserve a sustainable lobster fishery. Three defendants, David Henson McNab, Robert Blandford, and Abner J. Schoenwetter each received 97 months imprisonment (more than eight years). McNab was fined \$100,000 plus assessments, while the other two defendants were fined \$15,000 plus assessments. The Court also entered a final forfeiture order against the three men, forfeiting \$100,000 each from Blandford and Schoenwetter and \$800,000 from McNab, which represented proceeds from their illegal scheme. The fourth defendant, Diane Huang, was sentenced to 24 months imprisonment and fined \$10,000.

Prosecuting Endangered Species Act Violations. John Zentner, an environmental consultant in Emeryville, California, and his corporation, Zentner & Zentner, were prosecuted under the Endangered Species Act for

unlawfully taking threatened California Red-legged frogs at the site of a new housing project in Concord, California. Zentner and his company collected over 50 protected frogs and 500 tadpoles from the sole pond at the site, shrunk the pond by more than half in order to facilitate the development, and relocated the frogs into the remainder of the pond, which was no longer capable of sustaining them. The defendants failed to notify wildlife authorities of the existence of the frogs at the site despite the demonstrated concern of officials that the species were probably present. Zentner was sentenced to a \$10,000 fine, to serve 200 hours in community service as an unpaid environmental consultant to the Napa-Sonoma Marshes State Wildlife area, and three years of probation; the company was sentenced to a \$65,000 fine.

Defending Federal Construction and Operation Programs. The Division continued its successful defense of the operations of the major hydroelectric facilities and irrigation projects within the Snake and Columbia River basins. In *Trout Unlimited v. NMFS*, the court rejected plaintiffs' broad challenge to the Army Corps of Engineers and the Bureau of Reclamation's maintenance of flows in the Columbia and Snake River to protect listed salmonids. We also prevailed in a challenge to construction of a powerline for the international observatory located on Mount Graham near Tucson.

Defending the Commerce Department's Management of Ocean

Fisheries. The Division has defeated repeated attempts to shut down fishing operations in New England over concerns about the possibility that federal fisheries could contribute to the entanglement of endangered northern right whales. Instead, the National Marine Fisheries Service ("NMFS") will be given the opportunity to finalize and implement procedures to ensure that the fisheries will not harm right whales. The Division has also successfully defended numerous management actions taken by the Secretary of Commerce to regulate federal fisheries to promote both the economic well-being of the federal fishing industry and the overall long term viability of the fisheries, including the lobster, New England pelagic longline, and yellowfin tuna and shark fisheries.

Defending Constitutional Challenges to the Endangered Species Act.

Over the past year, the Division successfully defended two constitutional challenges to the enforcement provisions of the Endangered Species Act ("ESA"). One case involved a challenge to the ESA as applied to proposed commercial development activities in the habitat of several karst (cave-dwelling) invertebrate species that only occur in Texas. The other challenged the ESA as applied to proposed residential development in the habitat of the arroyo southwestern toad, which only occurs in California and Mexico. Both courts held that the proposed development projects are

activities substantially affecting interstate commerce, and hence, that they may be regulated.

Defending Government Decisions Regarding Listing of Species. In several cases, the Division prevailed against claims challenging decisions of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service regarding whether to list a species as threatened or endangered under the ESA. In *Center for Biological Diversity v. Badgely*, the court sustained the decision of the Fish and Wildlife Service that listing of the Northern goshawk in the western United States was not warranted where the best information reflected that there was not a population decline or significant curtailment of habitat. In *Cook Inlet Beluga Whale v. Daley* the court rejected plaintiffs' challenge to NMFS' determination that the Cook Inlet Beluga whale was not endangered or threatened. NMFS had concluded that the recent dramatic decline of the species' population was attributed primarily to overharvest by Alaska natives and took action under the Marine Mammal Protection Act to regulate the harvest. With authority to control the harvest in place, NMFS concluded that no other factor placed the population at risk of extinction, and the court agreed.

Opposing Emergency Motions Seeking to Enjoin Government

Programs. The Division has a constant flow of cases involving requests for emergency relief. Often, such motions seek to enjoin major federal projects or authorizations and the Division must defend on extremely short

notice. For example, the Division has successfully opposed a request for emergency relief in litigation concerning the reconstruction of the Wilson Bridge on the Washington, D.C. Beltway, and the operation of the Washington Aqueduct, which provides water to approximately one million customers in the District of Columbia and northern Virginia.

PROTECTING INDIAN RIGHTS AND RESOLVING INDIAN ISSUES

Courts Uphold Authority of Indian Tribes. The Seventh Circuit Court of Appeals upheld EPA's grant of authority to the Sokaogan (Mole Lake Band) Chippewa Community Reservation to regulate waters on their reservation under the Clean Water Act, in the face of a challenge to the Band's authority over the waters in question. In another matter in which we filed an amicus brief and presented oral argument, the Alaska Supreme Court ruled unanimously that Indian Tribes in Alaska have jurisdiction to accept transfer of child custody cases from state courts pursuant to the Indian Child Welfare Act (ICWA), without regard to the existence of Indian country. In so doing, the Alaska Supreme Court expressly overruled several previous decisions and reaffirmed the inherent sovereignty of federally-recognized Tribes in Alaska.

Supreme Court Affirms Tribal Ownership of Lake Bed and Streambanks. The Supreme Court affirmed that the Coeur d'Alene Tribe

is the beneficial owner of the beds and banks of the portions of Coeur d'Alene Lake and the St. Joe River that are within the boundaries of the Coeur d'Alene Indian Reservation in Idaho. The United States had brought this case on the Tribe's behalf to quiet title to the submerged lands in question. Affirming the decisions below, the Supreme Court took a broad, contextual approach to conclude that Congress recognized the reservation in a way that demonstrated an intent to defeat state title.

Indian Water Rights Settlements in Montana. The Division has devoted significant resources to settling water rights claims in several basins in Montana. Since January, we have settled or resolved 118 such claims. Also, in late August, the Montana Water Court approved the Fort Peck Compact, which the United States, the State, and the Sioux Tribes of the Fort Peck Reservation had negotiated as a comprehensive settlement of numerous water claims in four different Montana water basins.

Tribal Fishing Rights in Washington. In a sub-proceeding of an Indian treaty fishing rights case concerning the catch of whiting in the Pacific Northwest, the court granted the United States' motion for summary judgment on an issue pertaining to the quantification and allocation of the catch of this fish species between Indian and non-Indian fisherman. In another part of that case, the court, reversing a prior ruling, held that Washington's claims for declaratory and injunctive relief requiring the

United States, inter alia, to repair fish blocking culverts on federal lands, were barred.

Taking Land into Trust for Tribes. In a Nevada county's challenge to the Secretary's authority to take land into trust for the benefit of a tribe, the Court granted the United States' motion to dismiss on all counts in March. Specifically, the Court rejected the County's arguments that the Secretary abused its discretion in taking the land into trust and that the settlement act authorizing the trust acquisition was unconstitutional. The county has appealed to the Ninth Circuit.

Resolving Longstanding Indian Claims. We settled the longstanding land claims of the Pueblo of Isleta, a federally recognized Indian Tribe which claimed aboriginal title to more than 30 million acres of land in New Mexico and Texas. Litigated under special jurisdictional legislation that allowed the tribe compensation for lands lost during the last 140 years, together with interest over that time period, the settlement requires payment to the Pueblo of \$40 million.

New York Land Claims Litigation. The district court awarded the Cayuga Nation \$211 million in prejudgment interest (in addition to the \$37 million previously awarded by the jury) regarding its claim on lands in the state of New York. The United States took the lead role in the two trials in this action: one, a seven-week jury trial regarding economic evidence, and

the other a five-week bench trial regarding historical proof and economic theories of prejudgment interest.

SUPPORTING THE DIVISION'S LITIGATORS

E-SIP Extranet. Last year, the Division launched E-SIP, the Department's first extranet for sharing case documents with clients, co-counsel and experts in a secure web-based environment. E-SIP provides authorized users with secure web access to our litigation support databases.

Certification and Accreditation was accomplished in just over 8 weeks -- a process that typically takes 18 months. This system allows parties to take advantage of collaborative features of the database software, and yet is software independent because of its browser based environment, saving both time and money. The system also saves the Division a great deal of time and resources that previously were spent burning and mailing multiple copies of CD database libraries.

Electronic Litigation. We have laid the foundation for the Division's attorneys to move toward managing more electronic cases as this form of litigation practice grows. We have introduced the first on-line privilege review system; and, in a few select cases, we have begun working with opposing parties to coordinate fully electronic exchange of documents. We also enhanced our capabilities for providing litigation support in the

computer lab at the Division's Patrick Henry building, and added this in-house capability in the Denver field office.

Improved Litigation Support. We created a protocol for litigation support cost sharing agreements under which ENRD shares the cost of processing documents with other parties involved in our cases. The first of these agreements alone saved us over \$170,000, and we expect the savings to continue under similar agreements in the future. We participated as a voting member on the technical panel reviewing the MEGA 2 litigation support contract proposals. MEGA 2 is the sequel contract to MEGA 1 which will enable us to save money because services are collectively purchased in bulk at the Department level at rates less expensive than those we would be able to negotiate on our own.

Improved Business Practices. Using the recommendations of the Expert Witness Task Force, we have changed several aspects of the administration of our Expert Witness program so that it runs more smoothly. The EWU processed almost 1,000 expert contracts and contract modifications last year, roughly 25% of them in September alone. The streamlined procedures have made that task easier. The simplified forms and procedures have rated positive reviews from all concerned, and staff who are using the new EXTRA litigation support management system have been very pleased with it as well.