

# ENRD

## Accomplishments Report Fiscal Year 2017



United States Department of Justice  
Environment & Natural Resources Division

**ENRD  
SUMMARY OF DIVISION ACCOMPLISHMENTS  
FISCAL YEAR 2017**

**UNITED STATES DEPARTMENT OF JUSTICE  
ENVIRONMENT AND NATURAL RESOURCES DIVISION**



Browns Canyon National Monument, Colorado, Bureau of Land Management

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# Foreword

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Sonoran Desert National Monument, Arizona, Bureau of Land Management

## Foreword

It has been a true honor and privilege to serve as the Acting Assistant Attorney General for the Environment and Natural Resources Division (ENRD) since January 2017, under the leadership of Attorney General Jeff Sessions and alongside the extraordinary public servants of the Division. ENRD is a powerful force for good in our country — both through our enforcement of the environmental laws to protect clean land, clean air, clean water, and wildlife, and our defense of the rule of law and good governance by our client agencies. Every day I see firsthand the skill, integrity, and commitment of the Division’s attorneys and staff. The Accomplishments Report that follows provides but a glimpse of the important work we undertook together in fiscal year 2017 (FY2017).

At the outset, I want to express my sincerest appreciation to our Division’s front office leadership: Deputy Assistant Attorneys General Jean Williams, Bruce Gelber, Eric Grant, and Jonathan Brightbill, as well as Counsel and Chief of Staff Corinne Snow and former Counsel Brandon Middleton, for their tireless efforts throughout 2017 to lead ENRD in achieving our Division’s vital mission. I would also like to express appreciation for the valuable support ENRD receives from the Office of the Attorney General (OAG), Office of the Deputy Attorney General (ODAG), and Office of the Associate Attorney General (OASG), particularly the attorneys in those offices who have been the main points of contact for the work of our Division in 2017: Brian Morrissey (OAG); Andrew Goldsmith and Dan Loveland (ODAG); and Eric McArthur, Brian Murray, and Jeremy Bylund (OASG).

I also deeply appreciate our attorneys and staff who have been recognized for the great work they do. More details on their work is provided elsewhere in this report, but I would like particularly to recognize Karen Wardzinski, chief of ENRD’s Law and Policy Section, who received the 2017 Presidential Rank Award for her leadership on several cross-agency initiatives, and Josh Van Eaton, a senior attorney in our Environmental Enforcement Section, who won the prestigious Samuel J. Heyman Service to America Medal in 2017 for federal employee of the year for his work on the Volkswagen enforcement matter. I also would like to thank two of our staff members, Angeles Aponte and Jennifer Goldbetter, who volunteered to deploy to Houston and Miami, respectively, on detail assignments to the Federal Emergency Management Administration (FEMA) to assist with hurricane relief efforts.

This year, the Division has been focused on several key objectives: vigorously enforcing the environmental laws of the United States; promoting energy independence and economic growth by reducing regulatory burdens and supporting infrastructure development; strengthening national security; promoting cooperative federalism by partnering with states and tribes; and protecting the public fisc. We have conducted extensive engagement not just with our client agencies but also within the legal community, with state, tribal, and local entities, and the public at large. I have spoken to the National Association of Clean Water Agencies; the Association of Air Pollution Control Agencies; participants in the State Bar of Texas’s “Environmental Superconference”; and the American Bar Association’s Section of Environment, Energy, and Resources. ENRD leadership conducted site visits to Nogales, Arizona, to tour the existing border infrastructure and telecommunications center with Customs and Border Protection (CBP) agents; the Florida Everglades to tour the Loxahatchee National

Wildlife Refuge; Fort Lauderdale, Florida to attend a meeting of the 38<sup>th</sup> U.S. Coral Reef Task Force; and the Columbia River in the Pacific Northwest to discuss and see the area's fish hatcheries first-hand.

At the core of all we do is the impartial rule of law. Recently, Attorney General Sessions stated: "No greater good can be done for the overall health and well-being of our Republic, than preserving and strengthening the impartial rule of law." Deputy Attorney General Rosenstein also explained: "The rule of law is not just about words on paper. The words mean nothing without people who apply them. The rule of law depends upon the character of the people who enforce the law. If they uphold it faithfully, the result will be a high degree of consistency and predictability. Those features are among the primary reasons our nation has thrived." In keeping with rule of law principles, ENRD will take action to protect public health and the environment where the law has been broken and environmental harm ensues. In our enforcement role we follow the law and the facts of a case wherever they take us. Our duty is to enforce the laws of the United States as written. Our enforcement decisions also need to be made in a rational way, which includes looking at the actual environmental benefits that may be gained through the selected remedy.

The Division had many enforcement successes this year. We obtained a number of court orders requiring responsible parties to clean up hazardous waste and reimburse the government for cleanups conducted by the United States. We concluded landmark cases against Volkswagen AG, which used "defeat devices" to cheat our air emissions laws. We filed civil claims against Fiat Chrysler Automobiles, alleging it engaged in similar violations of the Clean Air Act and are continuing to work with our partner agencies to investigate other possible bad actors in the auto industry. We secured the largest-ever penalty for crimes involving deliberate vessel pollution — \$40 million — against Princess Cruise Lines, a subsidiary of the world's largest cruise company. In a settlement announced in October 2017, we required Denver-based PDC Energy to spend approximately \$19.7 million to reduce emissions of volatile organic compounds from 650 tank batteries and pay a \$2.5 million civil penalty. In another settlement agreement, we negotiated the cleanup of 94 abandoned uranium mines. We have also criminally prosecuted more than 20 wildlife traffickers who harmed protected species.

The change in Administration also brought changes in policy priorities for the agencies that we represent. Through our representation of the United States in legal challenges to new policy initiatives at agencies such as the Environmental Protection Agency (EPA), Department of Interior (DOI), and Department of Homeland Security (DHS), we have a critical role in paving the way for investments in infrastructure and energy security projects that will strengthen the U.S. economy, as well as facilitate more robust border control and military operations to protect our national security. For example, ENRD has defended the federal permits issued for several energy infrastructure projects, including the Keystone XL and Dakota Access Pipelines, and has resolved a number of critical cases to acquire land for improved border protection.

ENRD also works closely with the Department of Defense (DOD) to keep our nation safe, secure, and resilient. This work is central to our mission, and it includes land acquisition for the expansion of military bases, the defense of military programs aimed at ensuring our forces are

as prepared as possible, and the responsible management of our natural resources impacted by DOD activities.

The Trump Administration is undertaking an ambitious agenda of regulatory reform, and the Division supports this effort by advising client agencies on high-priority rulemakings and ensuring the effective defense of regulatory actions in court. The Division also is managing a number of cases challenging agency regulations promulgated under previous administrations that are under review pursuant to President Trump's Executive Orders. Notable examples are challenges to the Clean Power Plan and the Clean Water Rule. Our aim at ENRD is to avoid unnecessary litigation, support the integrity of the administrative process, and conserve the resources of the courts, the agencies, and other litigants, while also defending the rightful prerogative of the new Administration to review the costs and benefits of regulations and to chart a new direction where appropriate.

We also are working to support the Attorney General's recent policies that further the Administration's broader reform goals. For example, in the past some of our settlements included payments to third parties who were neither victims nor parties to the lawsuit. In June 2017 the Attorney General issued a memorandum restricting such settlement payments and emphasizing that penalties in enforcement cases should be sent to the Treasury for Congress to appropriate, rather than to third parties selected by unelected officials. We began implementing this policy immediately. While the memorandum does permit the use of third party payments in very limited circumstances to directly remedy environmental harm, those instances will not be routine. We agree with the Attorney General that any settlement funds should go first to victims and then to the American people, not to third party interests.


Finally, ENRD takes seriously our role in protecting the public fisc. In FY2017 ENRD worked on 3,943 cases and matters, while maintaining a robust docket of nearly 7,000 cases and matters. We obtained over \$4.8 billion in civil and criminal fines, penalties, and costs recovered. The estimated value of federal injunctive relief obtained—clean-up and pollution-prevention actions funded by private parties—exceeded \$18.7 billion. ENRD also estimates it has saved the government over \$360 million through the successful defense of claims brought against the government. In cases where we do not prevail, the Division has sought to limit payments of attorney's fees to the extent possible under applicable law. For example, in FY2017 the Division paid a total of approximately \$661,000 in attorney's fees under the fee-shifting provisions of the Clean Air Act (CAA), the Clean Water Act (CWA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), and the Resource Conservation and Recovery Act (RCRA); by contrast, in fiscal year 2016 the comparable total was \$3.1 million, and in fiscal year 2015 it was \$1.1 million.

In closing, I would like to point out a feature on the cover to this year's report—a new ENRD seal. This seal reflects the distinctive mission and rich history of ENRD, going back to the Division's origins in 1909, when it was established as the "Public Lands Division." In the background is a majestic landscape showing Wrangell-St. Elias National Park and Preserve in Alaska, derived from a photograph taken by a former ENRD attorney. Our new seal is meant to convey a sense of respect for the Division's mission within the broader Department of Justice

(DOJ) family, especially our role in the conservation of public lands and natural resources, as well as the protection of clean water and clean air. This new seal was developed by ENRD's Executive Office based on input from senior leaders in the Division. The new seal was approved by DOJ's Justice Management Division on April 5, 2018.

I am proud of ENRD's accomplishments this year. This Accomplishments Report discusses our Division's most important work and demonstrates the high level of dedication and professionalism among our attorneys and staff.

I am grateful for the opportunity to serve in ENRD in 2017 under the leadership of Attorney General Jeff Sessions, and I am immensely proud of the progress we have made together in achieving ENRD's mission. We are hopeful that the Senate will soon hold a vote to confirm nominee Jeff Clark to be Assistant Attorney General (AAG) for the Division. Once he is confirmed, I know that under AAG Clark's leadership the Division will carry forward with its proud tradition of protecting our nation's environment and natural resources in keeping with the Constitution and laws of the United States. Even as we look ahead, we also remain grateful for the tremendous contributions of past leaders of our Division. I want to express particular appreciation to John Cruden (AAG 2014-2017) and Ron Tenpas (AAG 2007-2008), both of whom have been a ready source of good advice to me over the last 16 months.

**Jeffrey H. Wood**   
**Acting Assistant Attorney General**  
**Environment and Natural Resources Division**  
**United States Department of Justice**  
**April 27, 2018**



# Overview of the Environment and Natural Resources Division

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Basin and Range National Monument, Nevada, Bureau of Land Management

## Overview of the Environment and Natural Resources Division

The Environment and Natural Resources Division was established in 1909, on the heels of the administration of President Theodore Roosevelt, who reminded us, “The Nation behaves well if it treats the natural resources as assets which it must turn over to the next generation increased, and not impaired, in value.” On November 16, 1909, Attorney General George Wickersham signed a two-page order creating “The Public Lands Division” of the Department of Justice to step into the breach and address the critical litigation that ensued. He assigned all cases concerning “enforcement of the Public Land Law” and relating to Indian affairs to the new Division and transferred a staff of nine—six attorneys and three stenographers—to carry out those responsibilities.

As the nation grew and developed, so did the responsibilities of the Division, and its name changed to the “Environment and Natural Resources Division” to better reflect those responsibilities. Over 108 years after our founding, ENRD is as mindful as ever of the strong legacy that we have inherited and the opportunities and challenges that lie ahead of us. The Division has a main office in Washington, D.C., and field offices across the United States. It has a staff of over 600 people, and is organized into ten sections. It currently has over 6,967 active cases and matters and has represented virtually every federal agency in connection with cases arising in all 50 states and the United States territories.

One of the Division’s primary responsibilities is to enforce federal civil and criminal environmental laws, such as the CAA, the CWA, the Oil Pollution Act (OPA), RCRA, and CERCLA. The main federal agencies that the Division represents in these areas are the EPA, the U.S. Army Corps of Engineers (Corps), the U.S. Coast Guard (USCG) and federal natural resource trustee agencies, such as DOI, the U.S. Department of Agriculture (USDA), and the National Oceanic and Atmospheric Administration (NOAA). The Division’s sections that carry out this work are the **Environmental Enforcement Section (EES)**, the **Environmental Defense Section (EDS)**, and the **Environmental Crimes Section (ECS)**. The Chiefs of these sections are Tom Mariani, Letitia Grishaw, and Deborah L. Harris, respectively.

A substantial portion of the Division’s work includes litigation under a wide array of statutes related to the management of public lands and associated natural and cultural resources. All varieties of public lands are affected by ENRD’s litigation docket, ranging from entire ecosystems, such as the nation’s largest sub-tropical wetlands (the Everglades) and rain forest (the Tongass), to individual rangelands or wildlife refuges, to historic battlefields and monuments. Examples of ENRD’s land and natural resources litigation include original actions before the U.S. Supreme Court to address interstate boundary and water allocation issues; suits challenging federal agency decisions that affect economic, recreational, and religious uses of the national parks, national forests, and other public lands; challenges brought by individual Native Americans and Indian tribes relating to the United States’ trust responsibility; and actions to recover royalties and revenues from development of natural resources, including timber and subsurface minerals. The Division primarily represents the land management agencies of the United States in these cases, including USDA’s Forest Service and the many

components of DOI, such as the National Park Service, Bureau of Land Management (BLM), and U.S. Fish and Wildlife Service (FWS). The **Natural Resources Section (NRS)**, led by Lisa L. Russell, is primarily responsible for these cases.

The Division's **Wildlife and Marine Resources Section (WMRS)** handles civil cases arising under the fish and wildlife conservation laws, including suits defending agency actions under the Endangered Species Act (ESA), which protects endangered and threatened animal and plant species; the Marine Mammal Protection Act, which protects marine mammals, such as whales, seals, and dolphins; and the Magnuson-Stevens Fishery Conservation and Management Act, which regulates fishery resources. The Chief of the Wildlife and Marine Resources Section is Seth Barsky. The **Environmental Crimes Section** brings criminal prosecutions under these laws and the Lacey Act against people who are found smuggling wildlife and plants into or out of the United States or across state boundaries. The main federal agencies that ENRD represents in this area are the FWS and NOAA's National Marine Fisheries Service (NMFS).

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

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

The Division's **Indian Resources Section (IRS)** litigates on behalf of federal agencies to protect the resources of federally recognized Indian tribes and their members; most of these resources are held in trust by the United States. This includes defending against challenges to statutes and agency actions that protect tribal interests, and bringing suits on behalf of federal agencies to protect tribal rights and natural resources. The Chief of the Indian Resources Section is Craig Alexander. The rights and resources at issue include water rights, the ability to acquire reservation land, and hunting and fishing rights, among others. In addition, the **Natural Resources Section** defends claims asserted by Indian tribes and tribal members against the

United States. The main federal agency that the Division represents in connection with this work is Interior's Bureau of Indian Affairs (BIA).

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

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

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

The **Office of the Assistant Attorney General (OAAG)** is a cadre of extraordinary attorneys who ensure the Division's work is accomplished in a timely and professional manner each day. Deputy Assistant Attorney General Eric Grant supervises the Appellate Section and Indian Resources Section. Jonathan Brightbill supervises the Environmental Defense Section. Career Deputy Jean Williams supervises the Natural Resources Section, the Environmental Crimes Section, and the Wildlife and Marine Resources Section. Career Deputy Bruce Gelber supervises the Environmental Enforcement Section, the Land and Acquisition Section, and the Law and Policy Section. In addition, Cynthia Ferguson is the Counselor for Environmental Justice, Andrea Berlowe is the Counselor for State and Local Matters, Daron Carreiro is the Counselor for Indian Affairs, and Sarah Himmelhoch is the Senior Litigation Counsel for E-Discovery. The Chief of Staff and Counsel is Corinne Snow, and Justin Heminger is the Counsel and Special Assistant.

# Recognizing Our Staff

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Department of Justice

## Recognizing Our Staff

In ENRD, we are proud of the work we do and the people who do it. Our attorneys and staff have been recognized for the great work they did in a number of areas this past year.

Josh Van Eaton of the Environmental Enforcement Section was awarded the Samuel J. Heyman Service to America Medal in 2017 for federal employee of the year, along with two individuals from the Environmental Protection Agency. Mr. Van Eaton, co-counsel Bethany Engel, and the rest of the EES team, working closely with EPA, halted a scheme by Volkswagen to evade emission standards with respect to approximately 590,000 diesel vehicles that were equipped with “defeat devices,” and helped secure precedent-setting relief, including up to \$15.9 billion to buy back or modify the vehicles and address the environmental harm from the violations, and a record \$1.45 billion civil penalty.

The 2017 Presidential Rank Award was presented to Karen Wardzinski, Chief of the Law and Policy Section. Ms. Wardzinski was recognized for her leadership of several innovative cross-agency projects involving important, emerging problems where ENRD previously did not have a leadership role. Her leadership and the work of her team has allowed ENRD to make substantial progress on several key Administration priorities, including wildlife trafficking, timber trafficking, and the protection of Native American families through the Indian Child Welfare Act.

ENRD presented its 2017 Muskie-Chafee Award to Jon M. (Jack) Lipshultz, Assistant Chief in the Environmental Defense Section. The Muskie-Chafee Award honors current or former federal employees who, through their work and dedication, have made significant contributions toward protecting our environment. Throughout his 25-year DOJ career, Jack Lipshultz has made enormous contributions to the development and defense of EPA’s regulatory program, particularly under the CAA. In his current position as Assistant Chief, he manages EDS’s petition for review practice, defending litigation challenging EPA’s regulatory initiatives under the pollution control statutes that often presents issues of substantial public interest and extraordinary technical complexity. The Muskie-Chafee Award recognized Mr. Lipshultz’s great contributions to the development of the Clean Air regulatory program.

The Attorney General’s Award for Distinguished Service – Yellow Book Team – was presented to Brian M. Holly, Chief Appraiser and Georgia Garthwaite, Acting Division Counsel for Title Matters in the Land Acquisition Section for their extraordinary work in revising the Uniform Appraisal Standards for Federal Land Acquisitions, commonly known as the Yellow Book.

The John Marshall Award – Support of Litigation – Enbridge Case Team was presented to Joseph Warren and Steve Willey, Senior Counsel in the Environmental Enforcement Section, for orchestrating a landmark settlement of CWA and OPA claims arising from two oil spills from pipelines operated by Enbridge Energy and affiliates. The settlement, embodied in two judicial consent decrees, includes \$62 million in civil penalties, an additional \$62 million in natural resource restoration work and damages, and sweeping improvements to Enbridge’s operation and maintenance practices.

The Attorney General presented the John Marshall Award for Asset Forfeiture to Mary E. Hollingsworth, a Trial Attorney in the Wildlife and Marine Resources Section, for her

instrumental role in developing and implementing a strategy for pursuing civil forfeiture actions of dogs seized as part of criminal raids of those suspected of engaging in illegal dogfighting ventures.

The Attorney General presented an Award for Outstanding Service in Freedom of Information Administration to Amber B. Blaha, an Assistant Section Chief in the Law and Policy Section, for showing foresight in planning and executing a series of innovations in the Division's Freedom of Information Act processing, including the use of electronic document review systems. She is a pioneer in training and educating ENRD litigators as to the potential effects of FOIA rules on ENRD litigation.

The Attorney General's Award for Excellence in Legal Support (Legal Assistance Category) was presented to Tawana S. McCoy-Smith, Legal Administrative Specialist in the Environmental Defense Section. Ms. McCoy-Smith has extraordinary legal support skills, and is the Section's expert in using the WebTA time and attendance system, as well as the go-to person for resolving travel issues regarding the complex and sometimes difficult-to-navigate travel application, E2 Solutions.

The Attorney General's Award for Excellence in Administrative Support (Secretarial Category) was presented to Gail P. Robinson, Legal Administrative Specialist in the Indian Resources Section for her ability to quickly embrace and develop expertise in new software systems and skillfully serve as the interface with other administrative services within the Department and Division.

Matthew Littleton and Jennifer Neumann of the Appellate Section, and Patrick Jacobi and Sonya Shea of EDS, received Bronze Medal Awards from EPA on November 8, 2017, for work on the successful appeal to the Fourth Circuit in the EDS matter known as *Murray Energy v. EPA*.

Kent Hanson and Austin Saylor of EDS were awarded EPA Bronze Medals for work on the PikeWood CWA section 404 enforcement case, *United States v. Greer Industries, et al.* (N.D. W. Va.), resolved via consent decree in early 2017.

Amy Dona, also of EDS, received the Assistant Administrator's Award for Regional Excellence for work with EPA Region 1, as a member of the Bayley Property Wetlands Case Team. The team was commended for their efforts to resolve a highly complex CWA section 404 enforcement case, restoring 65 acres of critical wetlands in Maine.

Senior ECS attorney Jennifer Blackwell received an Executive Office of U.S. Attorneys Director's Award for her work on the *Volkswagen* prosecution.

In July 2017, Christopher Witwer, a trial attorney with EES, received a Meritorious Service Medal for his work and leadership associated with multiple legal teams in the Army Reserve.

EES senior attorney Tom Benson received an award from EPA Region 5 for his work with an Assistant U.S. Attorney on a CWA case against American Commercial Lines. The case was settled after filing for a larger penalty than the team demanded before filing.

Rob Williams and Mary Hollingsworth of WMRS received DHS's 2017 Award for Fraud Investigation. This award was in recognition of their efforts in investigating and obtaining civil forfeiture of timber illegally harvested in the Peruvian Amazon and imported into the United States in violation of U.S. law.

The Division's Environmental Crimes Section received an award for outstanding investigative accomplishments from DHS for their work in targeting importers of illegally harvested timber.



# Vigorously Enforcing Our Environmental Laws

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Rogue River, Oregon, Bureau of Land Management

## **Vigorously Enforcing Our Environmental Laws**

Robust enforcement of our nation's environmental laws remains a high priority and a vital feature of the Division's mission. In pursuing our enforcement mission, we strive to adhere to the impartial rule of law, enhance cooperative federalism, exercise pragmatic decisionmaking by employing the full range of enforcement tools, coordinate and collaborate with lead agencies and U.S. Attorneys, and, as with all of our efforts, protect taxpayers and the public fisc. Our priorities include a focus on clean water, clean air, and clean land, and while maintaining the integrity of our environmental laws and programs. We fight fraud, recover taxpayer funds, fight violent and organized crime, and protect America's workers, competitiveness, and infrastructure. These principles and priorities are set forth in a March 12, 2018 memorandum from Acting Assistant Attorney General Jeffrey Wood.

The Division's Environmental Enforcement Section brings civil actions to enforce the nation's environmental laws — CERCLA, RCRA, the CAA, the CWA, the OPA and others — to ensure that all Americans enjoy clean air, water, and land. Civil enforcement results in the imposition of deterrent penalties, the recovery of costs government agencies incur responding to spills and contaminated sites, and injunctive relief — things like site cleanups and the installation of pollution-control equipment. The civil enforcement program also has a substantial bankruptcy practice.

The Division's Environmental Crimes Section is responsible for prosecuting criminal violations that arise under a wide variety of statutes. In addition to criminal prosecutions pursuant to the environmental laws mentioned above, criminal work also covers wildlife crime, worker safety crime, and animal welfare crime. Prosecutions often include general criminal violations such as conspiracy, false statements, obstruction of justice, smuggling, and wire fraud. We work cooperatively with U.S. Attorneys' Offices and a host of federal investigative agencies in prosecuting these cases. Our work this year included several successful multi-district, as well as transnational, prosecutions of great programmatic importance. During this time period, ENRD convicted 89 defendants in 56 cases. Those convictions yielded almost \$3 million in criminal penalties and 102 years of confinement.

### **Strong Enforcement Results**

As illustrated in the following pages of this report, 2017 was another successful year for the Division's environmental enforcement program.<sup>1</sup>

The Division secured \$1.57 billion in civil penalties in 2017—our second best year over the past 20 years. Much of that penalty amount came from the CAA defeat device case against

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<sup>1</sup> The statistics are based on annual periods from January 20, 2017 to January 19, 2018, and the same time periods for prior years (for example, January 20, 2016 to January 19, 2017).

Volkswagen, which the Division concluded in 2017. Excluding the Volkswagen penalty, the Division recovered \$121 million in civil penalties, which by itself is higher than the civil penalties the Division recovered in 12 of the last 20 years. We also obtained more than \$1 billion in injunctive relief under the Superfund law—more than the Division’s injunctive relief figure under that statute in all but two of the last 20 years.

At the same time, consistent with historical trends, the results secured by the Division continue to flow from relatively fewer civil enforcement complaints than in prior years. Twenty years ago (1997), the Division filed approximately 300 civil enforcement cases. Ten years ago (2007), we filed about 200 cases, and three years ago (2014), we filed about 130. In 2017 the Division filed 95 civil enforcement cases.

Many factors have contributed to this trend over the past two decades. For example, many civil enforcement cases that the Division has filed in recent years involve many more, and far more complicated, violations of law than was typical in cases filed 20 years ago. In addition, many recent cases address multiple facilities—an approach seen less often in prior decades.

Regardless of the number of complaints filed each year, our Division is focused on achieving effective enforcement results. The results that we seek are the strong and vigorous civil and criminal enforcement of our nation’s environmental laws, consistent with the rule of law and other sound enforcement principles.

### **Superfund: Requiring Cleanups and Recovering Government Expenditures**

By filing suits under CERCLA, the Division requires responsible parties to clean up hazardous waste and to reimburse the government for cleanups conducted by the United States. The Superfund program operates on the principle that those responsible for contaminating a site, not taxpayers, should pay for a site’s cleanup and primarily deals with contamination left behind by past operations. The Division also brings cases under RCRA, which primarily regulates the handling and disposal of hazardous wastes at on-going operations.

In FY2017, courts approved 38 CERCLA settlements negotiated by the Division, requiring more than an estimated one billion dollars of clean-up work and recovering over \$117 million in costs expended by government agencies.

In *United States v. Cyprus Amax Minerals Company* (D. Ariz.), the United States and the Navajo Nation entered into a CERCLA settlement agreement with two subsidiaries of a mining company for the cleanup of 94 abandoned uranium mines on the Navajo Nation. Under the settlement, which calls for cleanups estimated to cost over \$600 million, the companies will perform the work and the United States will contribute approximately half of the costs. The work will be conducted under the oversight of EPA, in collaboration with the Navajo Nation Environmental Protection Agency. The Navajo Nation — in the Four Corners area, within Utah, New Mexico, and Arizona — is rich in uranium, a radioactive ore used in nuclear weapons and nuclear-power generation. Many private entities, including the predecessors of the settling companies, mined

uranium ore on or near the Navajo Nation between 1944 and 1986. The federal government, through the Atomic Energy Commission (AEC), was the sole purchaser of uranium until 1966.

In *United States v. Pharmacia, LLC* (S.D. Ill.), the Division reached a settlement that requires three companies to clean up the six former waste disposal sites in the Sauget Area 1 Superfund Site in Sauget, Illinois. The estimated cost of the work required by the settlement is \$14.8 million. In addition, the companies reimbursed the United States for \$475,000 in EPA response costs. The site — in the American Bottoms region across the Mississippi River from St. Louis, Missouri — received industrial wastes from as early as 1931 until 1988. Taking into account work previously performed at the site, over \$50 million is being devoted to cleaning up the contamination.

### **Keeping Our Air Clean**

The CAA protects the nation’s air in several ways. Two related parts of the CAA — the new-source-review program and the prevention-of-significant-deterioration program — require large industrial facilities to obtain permits and install and operate state-of-the-art air pollution controls before the facilities make modifications that significantly increase emissions. A different part of the Act regulates cars, trucks, and other vehicles — “mobile sources” in the language of the statute. Another part of the CAA establishes national emission standards for hazardous air pollutants. Finally, part of the Act is aimed at preventing accidents and accidental releases of hazardous chemicals.

The Division brought a number of CAA cases against German automaker Volkswagen AG (VW) related to the vehicles’ use of “defeat devices” to cheat on emissions tests. A “defeat device” is illegal software that detects when a car is being tested for compliance with emissions standards and turns on full emissions controls only during the testing process. During normal driving conditions, the software renders certain control systems inoperative, greatly increasing emissions. We brought both civil and criminal charges against VW.

In *In re: Volkswagen “Clean Diesel” Marketing, Sales, Practices, and Products Liability* (MDL, N.D. Cal.), the Division entered into three consent decrees to conclude the United States’ civil case alleging that the automaker violated the CAA by selling nearly 600,000 cars equipped with defeat devices that lowered emissions during emissions tests, but allowed the cars to emit pollution significantly in excess of compliant levels during normal operation. Under the three decrees, the automaker agreed to pay \$1.45 billion to resolve EPA’s civil penalty claims, implement a number of corporate-governance reforms, test emissions while cars are in use, fix or buy back the cars on the road, and address associated environmental harm from the violations. The injunctive relief obtained in the consent decrees was estimated to cost up to \$15.9 billion.

The Division brought criminal charges against VW in *United States v. Volkswagen AG* (E.D. Mich.) in January 2017. VW was charged with and agreed to plead guilty to participating in a conspiracy to defraud the United States and VW’s U.S. customers and to violate the CAA. VW

committed these crimes by lying and misleading the EPA and U.S. customers about whether nearly 600,000 VW, Audi, and Porsche branded diesel vehicles complied with U.S. emissions standards, using cheating software to circumvent the U.S. testing process and concealing material facts about its cheating from U.S. regulators. VW was also charged with obstruction of justice for destroying documents related to the scheme, and with the separate crime of importing these cars into the United States by means of false statements about the vehicles' compliance with emissions limits. On April 21, 2017, VW was sentenced to pay a \$2.8 billion fine, complete a three-year term of probation, and implement an environmental compliance plan.

The Division also brought criminal charges against individual VW employees. Seven VW employees and one Audi employee were charged for their roles in the nearly ten-year conspiracy. Two of these employees entered guilty pleas and have been sentenced. Former VW engineer James Liang was sentenced on August 25, 2017, to 40 months' incarceration and ordered to pay a \$200,000 fine. Former VW general manager Oliver Schmidt was sentenced on December 6, 2017 to 84 months' incarceration and ordered to pay a \$400,000 fine.

The Division has been active in bringing other CAA actions as well. In *United States v. Vopak Terminal Deer Park, Inc.* (S.D. Tex.), the United States and State of Texas reached a settlement with a tank-storage company to reduce volatile organic compounds and hazardous air pollution at a chemical-storage terminal and a wastewater-treatment plant in Deer Park, Texas. Under the agreement, the company will install state-of-the-art air pollution controls at the plant and use infrared cameras to detect harmful air pollution from the facility's chemical-storage tanks. The company will also hire a third-party auditor to improve the company's waste management and evaluate compliance with the settlement. The company paid a civil penalty of \$2.5 million, split between the United States and the State of Texas.

In *United States v. Maynard Steel Casting Co.* (E.D. Wis.), the Division negotiated a settlement with a steel-casting company in Milwaukee, Wisconsin. The Division alleged that the company violated many provisions of the CAA, including permit limits on particulate-matter (PM) and manganese. The consent decree requires the company to evaluate the effectiveness of its air-pollution-control equipment and take corrective action as necessary; perform regular stack tests; conduct opacity monitoring using an innovative night-time monitoring protocol; install leak-detection systems on its baghouses; and perform air-dispersion modeling to evaluate compliance with the National Ambient Air Quality Standards (NAAQS) for PM<sub>10</sub>. The pollution-control measures are estimated to cost more than \$750,000. The company will also pay a civil penalty of \$25,000, based on an ability-to-pay analysis. The facility — located near a hospital, school, and public park — is in an area that is predominantly Latino and African American and in which nearly half of the residents live below the poverty level.

In *United States v. Harcros Chemicals Inc.* (D. Kan.), the Division reached a settlement that resolved claims that a chemical manufacturer violated provisions of the CAA aimed at preventing accidental releases of chemicals that can have serious consequences for public health and the environment. The company — which operates 31 facilities in 19 states —

brought the violations to the attention of the EPA. The company will audit 28 of its facilities to identify and correct any potential violations of either the risk-management regulation or the statutory duty to identify hazards and maintain a safe facility. Many of the facilities are located near minority and low-income communities. The first audits will be done at facilities near those communities. The company will also install enhanced fire-suppression equipment — foam-based sprinkler systems — at eight of its facilities. Finally, the company paid a \$950,000 penalty. The settlement, announced in July 2017, was approved by the court shortly after the close of the fiscal year.

### **Keeping Our Water Clean**

The CWA — the primary federal statute preventing water pollution — regulates pollution from both industrial and municipal facilities. The CWA also prohibits spills of oil and hazardous substances. OPA is specifically aimed at preventing oil spills.

Several statutes (the CWA, OPA, CERCLA, and others) authorize lawsuits to recover damages for injuries to natural resources (wildlife and habitat) when injuries will remain after the cleanup of a Superfund site or an oil spill.

### ***Ensuring the Integrity of Municipal Wastewater Treatment Systems***

Through enforcement of the CWA, the Division addresses one of the most pressing infrastructure issues in the nation — the discharge of untreated or poorly treated sewage from aging collection and treatment systems. Raw sewage contains organic matter, toxics, metals, and pathogens that threaten public health, contaminate fish, and deter recreational use of beaches, rivers, and streams. Untreated and poorly treated sewage often contains total suspended solids, nitrogen, phosphorus, and “biological oxygen demand” (organic matter that consumes oxygen as it is broken down by aquatic organisms). High levels of total suspended solids increase water temperatures, decrease oxygen levels, and, by blocking sunlight, inhibit photosynthesis. Too much nitrogen and phosphorus can cause algal blooms that contribute to the creation of hypoxic “dead zones,” where oxygen levels are so low that little can survive. Our work also helps to protect low-income and minority communities in older urban areas with serious infrastructure problems. In FY2017, courts approved seven major Division settlements, which collectively required an estimated \$525 million in infrastructure improvements and over \$725,000 in civil penalties.

One way the Division protects municipal wastewater treatment systems is by bringing actions against private entities called “indirect dischargers” that send harmful wastewater to publicly owned treatment works. In *United States v. EMD Millipore Corporation* (D.N.H.), the Division settled with a manufacturing facility in Jaffrey, New Hampshire, in March 2017. The Division’s complaint alleged that the manufacturing facility violated the CWA and the facility’s pretreatment permit when the facility introduced pollutants into the town’s treatment plant that caused the town’s plant to discharge illegal amounts of pollutants. Under the settlement,

the manufacturer will upgrade its private treatment plant, sample its wastewater on a prescribed schedule, and pay a \$385,000 civil penalty.

Overflows from municipal sewage collection systems often occur in areas used by the public, including children, and pose a significant threat to public health and remain a leading cause of water quality impairment. Our principal objective in negotiations in these cases is to reach agreement requiring the treatment works to achieve compliance with the CWA. The consent decree in *United States v. City of Haverhill* (D. Mass.) requires the city to identify and fix conditions in its collection system that cause overflows from its combined sewer system, conduct a comprehensive evaluation of its wastewater treatment plant and make needed upgrades, and eliminate illicit discharges to the city's separate storm sewer system. The work undertaken by the city will cost approximately \$95 million. In *United States v. Sanitary District of Hammond* (N.D. Ind.), the Division and the Indiana Department of Environmental Management reached an agreement with the Sanitary District designed to resolve long-standing violations of the CWA involving discharges of untreated sewage into the Grand Calumet and Little Calumet Rivers. At an estimated cost of \$240 million, the city will make significant infrastructure improvements and develop a long-term control plan to limit combined sewer overflows and prevent sewer backups.

### ***Protecting the Nation's Waters from Stormwater Runoff***

Stormwater often carries pollution and sediment from construction sites into local waterways, damaging water quality. Under the CWA, developers and contractors responsible for operations at construction sites one acre in size or larger are required to implement stormwater pollution prevention plans to keep soil and contaminants from running into nearby waterways. Stormwater typically carries soil and contaminants off of construction sites at a rate 10 to 20 times greater than the rate at which they run off agricultural lands. The pollution prevention plans can include measures such as sediment barriers and other means of reducing the flow of stormwater onto and off of the construction site. Many homebuilders, before starting construction activities, must obtain coverage under a stormwater permit (often by submitting a notice of intent to be covered by a "general permit").

In *United States v. NVR, Inc.* (D.N.J.), the Division entered into a settlement with a homebuilder that repeatedly ignored the permitting rules aimed at controlling and minimizing pollution from uncontrolled stormwater runoff at dozens of construction sites in New Jersey and New York. The builder paid a civil penalty of \$425,000 and will undertake — at all of its construction sites nation-wide — management, inspection, training, and other efforts to ensure future compliance.

### ***Protecting Our Oceans, Rivers, and Streams***

The CWA makes it unlawful to discharge oil or hazardous substances into or upon the navigable waters of the United States or adjoining shorelines in quantities that may be harmful to the environment or public health. The OPA makes parties responsible for vessels and facilities, like drilling rigs, liable for the costs and damages associated with discharges of oil, or threats of

discharges of oil, into or upon navigable waters or adjoining shorelines. Penalties paid for oil spills are deposited in the federal Oil Spill Liability Trust Fund, which is used to pay for federal first responders to oil spills and to compensate for oil-spill damages.

We have filed, and settled, a number of civil cases in this regard, securing significant penalties against violators. For example, in *United States v. Logan Oil, LLC* (S.D. Miss.), an oil-tank operator agreed to pay \$1 million to reimburse the United States for costs incurred responding to an oil spill from a tank battery that spread along ten miles of the Chickasawhay River near Shubuta, Mississippi.

In *United States v. Magellan Pipeline Company, L.P.* (N.D. Okla.), an oil-pipeline operator agreed to a settlement for alleged violations of the CWA related to three spills of gasoline, diesel, and jet fuel. The spills took place in Texas City, Texas (gasoline); Nemaha, Nebraska (diesel fuel and jet fuel); and El Dorado, Kansas (diesel fuel). The three spills combined released a total of approximately 5,177 barrels of petroleum products. The company agreed to complete approximately \$16 million of injunctive relief across its 11,000-mile pipeline system and pay a \$2 million civil penalty. The consent decree was entered in May 2017.

The Division also has a robust program for criminally prosecuting shipping companies and crew for the intentional discharges of pollutants from ocean-going vessels. In FY2017, criminal penalties imposed in these cases totaled more than \$52 million in fines and 18 months of confinement.

For example, in December 2016, Princess Cruise Lines Ltd. agreed to plead guilty to conspiracy, obstruction, and violations of the Act to Prevent Pollution from Ships Act (APPS) related to deliberate pollution of the seas and intentional acts to cover up its conduct, in *United States v. Princess Cruise Lines, Ltd.* (S.D. Fla.). The case against Princess related to illegal overboard dumping of oil-contaminated waste and falsification of official logs in order to conceal the discharges, which were found to have taken place on five Princess ships. Princess is a subsidiary of Carnival Corporation, which owns and operates multiple cruise lines and collectively comprises the world's largest cruise company. On April 19, 2017, Princess was sentenced to pay a \$40 million penalty – the largest-ever fine for crimes involving deliberate vessel pollution – and was also ordered to complete a five-year term of probation. During the period of probation, all of the related Carnival cruise ship companies trading in the United States are required to implement an environmental compliance plan that includes independent audits by an outside company and oversight by a court-appointed monitor. The court also ordered that \$1 million be awarded to the British engineer who first reported the illegal discharges to the British Maritime and Coastguard Agency, which in turn provided the evidence to the U.S. Coast Guard.

On August 31, 2017, the operator of a fishing vessel in American Samoa pleaded guilty to two counts of violating APPS by maintaining a false oil record book and a false garbage record book, in *United States v. Yuh Fa Fishery (Vanuatu) Co. Ltd.* (D.D.C.). The engineers aboard the F/V Yuh Fa No. 201 failed to document the illegal overboard dumping of oily bilge water into the South



Pacific. They also made several modifications to the vessel's piping system that allowed the vessel's oily bilge water and sludge to be discharged overboard. In addition, the ship's captains failed to accurately record the disposal of garbage generated during extended fishing trips. As a result, tons of discarded oil sludge, waste oil, oily bilge water, and garbage were unaccounted for. The company was sentenced to pay a \$1.875 million fine, make a \$625,000 community service payment to the National Marine Sanctuary of American Samoa, and serve a five-year term of probation, during which vessels owned or operated by the company are barred from entering any port or place of the United States.

The case *United States v. Aegean Shipping Management* (D.S.C.) also relates to the dumping of oily bilge water. During a Coast Guard inspection of the T/V Green Sky, three crewmembers reported multiple instances and methods of unlawful discharges of oily bilge water directly into the sea. During the inspection, the current chief engineer, Herbert Julian, denied having any knowledge of these discharges and also denied that the vessel had a sounding log. The crewmembers alleged that the current and prior chief engineers and the second engineer all ordered them to conduct the illegal discharges. The captain of the vessel pleaded guilty prior to indictment, and the operator of the vessel and three engineers were indicted for conspiracy, APPS violations, and obstruction. Upon pleading guilty to an APPS violation and obstruction, the ship's operator was ordered to pay a fine of \$1.7 million and make a community service payment of \$300,000 to the Gray's Reef National Marine Sanctuary Foundation. A jury convicted the two chief engineers of APPS violations and obstruction, and on August 10, 2017, they were sentenced to time served followed by a one-year term of supervised release, during which they are barred from entering any port or place of the United States.

### ***Protecting Wetlands***

Continuing our enforcement efforts under the wetlands-protection provision of the CWA, the Division reached a settlement with John Duarte and Duarte Nursery, Inc., which agreed to pay a large civil penalty and to preserve and restore creeks, streams, and wetlands to resolve violations of the Act on property located in Tehama County, California, in *Duarte Nursery, Inc. v. U.S. Army Corps of Engineers* (E.D. Cal.). Duarte agreed to pay \$1.1 million in civil penalties and mitigation for 22 acres of disturbed streams and wetlands and to permanently protect creeks on the property that are connected to the Sacramento River. The agreement follows a federal court determination in 2016 finding Duarte liable for violating the CWA. The court entered the consent decree on December 7, 2017.

On September 19, 2017, the Division obtained a favorable summary ruling in *Orchard Hill Building Company v. U.S. Army Corps of Engineers* (N.D. Ill.), which was a challenge by a residential developer to a CWA section 404 regulatory jurisdiction determination concerning a property in Tinley Park, Illinois. The Corps had found the presence of approximately 13 acres of jurisdictional wetlands on the property and found that the prior converted cropland exemption did not apply. The court upheld the Corps' finding that the wetlands on the site "significantly affect the physical, chemical, and biological integrity of the Little Calumet River," upholding as reasonable the Corps' findings regarding the site wetlands' impacts on flood reduction, storm

water storage, filtering, and retaining pollutants. It also upheld the Corps' finding that, despite the prior conversion of wetlands on the site to farming before December 1985, the wetlands had not been farmed since 1996, wetland conditions had returned, and therefore the prior converted cropland exemption had been abandoned.

### **Keeping Restricted-Use Pesticides out of the Home**

On March 23, 2017, Terminix International Company LP and U.S. Virgin Islands operation Terminix International USVI LLC pleaded guilty to illegally applying fumigants containing toxic methyl bromide in multiple residential locations in the U.S. Virgin Islands, in violation of the Federal Insecticide, Fungicide, and Rodenticide Act, in *United States v. Terminix Intl Company LP and Terminix Intl USVI LLC* (D.V.I.). The illegal applications included a March 2015 fumigation of a St. John condominium resort complex that caused devastating injuries to a family of four staying above a fumigated unit. As part of the plea agreement, Terminix ceased all use of methyl bromide. On November 20, 2017, Terminix was sentenced to pay a total of \$10 million in criminal fines, community service, and restitution payments. Specifically, Terminix, USVI will pay \$4 million in fines and \$1 million in restitution to the EPA for response and clean-up costs at the St. John resort. Terminix LP will pay a fine of \$4 million and will perform community service related to training commercial pesticide applicators in fumigation practices and conduct a separate health services training program.

### **Preventing Renewable Fuel Fraud**

Through the Energy Policy Act of 2005 and the Energy Independence and Security Act of 2007, Congress obligated fuel producers and importers to produce specific annual volumes of renewable fuel, or in the alternative, to purchase credits (called Renewable Identification Numbers or RINs) representing renewable fuel made elsewhere. EPA is responsible for developing and implementing regulations to ensure that transportation fuel sold in the United States contains a minimum volume of renewable fuel. RINs can be traded or sold to refiners and fuel importers or exporters to help them comply with the renewable fuels program. Exporters of renewable fuels must retire their associated RINs because the fuel is no longer available in the United States. A robust market for RINs has developed, and while prices fluctuate, a single RIN (representing approximately 2/3 of a gallon of fuel) is often worth a dollar or more. Ensuring the integrity of this program is a Division priority.

In *United States v. Chemoil Corporation* (N.D. Cal.), the Division alleged that a fuel-trading company exported at least 48.5 million gallons of biodiesel from 2011 to 2013 without retiring the more than 72 million RINs that were associated with the fuel. The settlement approved by the court required the exporter to retire 65 million renewable fuel credits. Those RINs, along with an additional 7.7 million RINs retired by the company leading up to the settlement, had a market value at the time of the settlement of more than \$71 million. The company also paid a \$27 million civil penalty, the largest in the history of the EPA's fuel programs.

Our criminal attorneys, in partnership with U.S. Attorneys' Offices and criminal investigators from the EPA, the Secret Service, the Internal Revenue Service, Department of Transportation, and the Federal Bureau of Investigation have successfully prosecuted several individuals and corporations involved in RIN fraud in FY2017. Eight defendants were sentenced to lengthy prison terms (totaling 694 months' imprisonment) and ordered to pay over \$107 million in restitution for various multistate schemes to defraud RIN buyers and U.S. taxpayers by fraudulently generating and selling RIN credits and claiming tax credits.

### **Restoring Injuries to Natural Resources**

When discharges of oil or releases of hazardous substances injure natural resources such as wildlife or habitat, the United States, states, and Native American tribes can sue under CERCLA, the OPA, the CWA, and other statutes for "natural resource damages" (NRD). The statutes specify that recoveries for NRD claims must be used to restore, replace, or acquire the equivalent of the resources that were injured by the oil or hazardous substances.

Funds resulting from NRD claims have been used to restore fish hatcheries, for example. In *United States v. E.I. du Pont de Nemours and Company* (W.D. Va.), releases of mercury from a former industrial facility in Waynesboro, Virginia, affected over 100 miles of river and thousands of acres of floodplain and riparian habitat. The former owner of the facility and the natural resource trustees — the U.S. Fish and Wildlife Service and Commonwealth of Virginia — worked cooperatively to identify potential restoration projects to benefit the affected natural resources. On July 28, after an evidentiary hearing and supplemental briefing, the district court approved the settlement negotiated by the Division and Virginia. The former owner agreed to pay the trustees just over \$42 million and fund the design and implementation of renovations at the Front Royal Fish Hatchery, estimated to cost up to \$10 million.

NRD funds also have been used to protect coral reefs. After an oil tanker ran aground near Puerto Rico and damaged over 3,000 square meters of coral-reef habitat, the Division negotiated a settlement with the vessel's owner and operator under which the two companies paid a total of \$1.9 million: \$1.7 million for restoration projects and \$192,000 in government assessment costs in *United States v. Suez Shipping North America LLC* (D.P.R.). The restoration money will be used for rebuilding reefs and propagating coral.

NRD funds further have been used to restore Superfund sites. In an \$8.2 million settlement announced in FY2017 and approved by the court in early FY2018, the United States, the State of Minnesota, and the State of Wisconsin resolved their claims for NRD against three companies that the governments alleged were responsible for discharges of polycyclic aromatic hydrocarbons (PAHs) at the 255-acre "St. Louis River / Interlake / Duluth Tar" Superfund Site near Duluth, Minnesota. PAHs were identified in river sediments throughout the site at concentrations high enough to injure many types of natural resources, including vegetation, fish, and birds. Under the settlement in *United States v. XIX, LLC* (D. Minn.), \$6.5 million will be spent on restoration activities. The three companies previously paid approximately \$80 million to clean up the Superfund site under agreements with the Minnesota Pollution Control Agency.

## **Protecting Environmental Obligations During Bankruptcy Proceedings**

The Division also takes actions in bankruptcy cases to protect environmental obligations owed to the United States when a responsible party goes into bankruptcy. During FY2017, the Division obtained 11 agreements or other resolutions in bankruptcy proceedings under which debtors or parties in interest in bankruptcy cases were obligated to pay over \$46.8 million. In addition, debtors paid over \$2.2 million during FY2017 under bankruptcy agreements concluded by the Division in prior fiscal years. Of the total approximately \$49 million in obligations imposed, \$40.1 million reimbursed the Superfund, over \$4 million was for the cleanup of hazardous waste sites, and \$4.6 million was for natural resource damages.

In the largest bankruptcy matter of the year, *In re: Peabody Energy Corp.* (Bankr. E.D. Mo.), the Bankruptcy Court approved a September 2017 settlement resolving 35 proofs of claim of the United States, five states, and seven Native American tribes against two debtor mining companies at multiple Superfund sites in Illinois, Oklahoma, Kansas, Missouri, Montana, Arizona, and Washington. Under the settlement, approximately \$43 million will be made available, with funds allocated to the sites with the most urgent need for cleanup. The settlement is a favorable outcome that maximizes the recovery for environmental liabilities. The settlement agreement allocates the payments among special accounts established for each site.

## **Protecting Wildlife through Enforcement**

Federal criminal enforcement of wildlife protection statutes is a critical factor in deterring the illegal killing and commercialization of wildlife, fish, and plants, and augments the wildlife protection efforts of states, tribes, and foreign governments. Criminal prosecutions for these violations focus on both individual and corporate perpetrators, and result in fines, imprisonment, community service, and restitution to help mitigate the harm caused by the violations, as well as forfeiture of the illicit profits and instrumentalities used to commit the crimes.

The American eel is in high demand due to the decline of global eel stocks, causing their value to surge to as much as \$2,500 per pound. Eels will not reproduce in captivity and must be caught in the wild. Therefore, the current commercial demand centers on the eel in its juvenile stage, known as a “glass eel” or “elver,” when it is more amenable to cultivation in aquaculture facilities. Elvers illegally harvested in the United States are often shipped to Asia, where they are raised to adulthood in ponds, processed for meat, and sold internationally. This illegal trade undercuts lawful fisheries businesses and harms our nation’s fish stocks. During FY2017, as part of a multi-district undertaking known as Operation Broken Glass, the Division successfully prosecuted 19 individuals in Maine, New Jersey, and Virginia for poaching American eels. Combined, these defendants illegally trafficked 4,826 pounds of elvers – approximately 9.7 million individual eels – worth more than \$7 million dollars. Sentences for these defendants include up to two years’ incarceration.

Operation Crash, an ongoing nationwide effort led by FWS and ENRD in conjunction with U.S. Attorneys' Offices to investigate and prosecute those involved in the black market trade of rhinoceros horns and other protected species, continues to produce numerous successful prosecutions. (A "crash" is a herd of rhinoceros). At the end of FY2017, 50 individuals and companies had been charged as part of Operation Crash. The sentences imposed totaled more than 36 years' incarceration, over \$2.1 million in fines, and forfeiture and restitution in the amount of \$5.7 million. All rhinoceros species are protected under United States and international law, and the black rhinoceros is listed as endangered under the ESA.

In *United States v. Fengyi Zhou* (E.D. N.Y.), Fengyi Zhou, the owner of a New York business that specialized in Asian works of art, purchased five uncarved rhinoceros horns from another Asian art dealer in New York. Along with the horns, Zhou was given an "Endangered Species Bill of Sale," which informed him that four of the horns were purchased in Texas and unlawfully transported to New York. Zhou sold the horns to an associate in China for more than \$130,000. In November 2016, Zhou pleaded guilty to illegally trafficking in horns from black rhinoceros in violation of the Lacey Act. On September 18, 2017, Zhou was sentenced to 24 months' incarceration, followed by three years' supervised release, and to pay a \$5,000 fine and \$112,133 in restitution.

In *United States v. Michael Hegarty* (S.D. Fla.), Irish national Michael Hegarty fraudulently facilitated the transportation and concealment of a rhinoceros horn libation cup. In April 2012, Hegarty and co-conspirators purchased a libation cup made from the horn of an endangered rhino at an auction in North Carolina. The cup was later smuggled out of the United States and one of Hegarty's co-conspirators was arrested in London while attempting to sell it to a Hong Kong native. In January 2017, Hegarty was arrested in Belgium pursuant to an INTERPOL Red Notice and extradited to the United States, where he pleaded guilty to a smuggling charge based on the transportation and concealment of the cup. Hegarty was sentenced to 18 months' incarceration, followed by three years of supervised release. His co-conspirator was convicted on unrelated charges in England, is currently incarcerated there, and will face wildlife trafficking charges in Florida.

From time to time the Division also handles cases involving the smuggling of narwhal tusks. In *U.S. v. Gregory Logan* (D. Me.), a retired member of the Royal Canadian Mounted Police smuggled approximately 250 narwhal tusks, made of ivory and worth more than \$2 million, from Canada into the United States, over the course of a decade. To do this, he custom-fit his vehicle with false compartments to conceal the tusks, which he had purchased from tribal cooperatives in Northern Canada. Once he smuggled the tusks into the United States, Logan used a shipping store in Maine both to send them to his American buyers and to receive payments from those buyers. He also established an account at a bank in Bangor, Maine, into which payments were wired directly by customers. Logan transported the funds he obtained through his smuggling operation to Canada by forwarding the checks he received at the shipping store and by withdrawing funds from his Maine bank account in Canada. Logan was extradited from Canada after pleading guilty to violating Canadian wildlife laws. Thereafter,

Logan pleaded guilty in the District of Maine to conspiracy to launder money and substantive money laundering violations. On September 20, 2017, he was sentenced to 62 months' incarceration, after which he will be deported to Canada.

Working with colleagues at the DHS's Customs and Border Protection and Homeland Security Investigations Division (HSI), ENRD also has pursued several civil forfeiture investigations of timber that had been illegally harvested in Peru and then imported into the United States in violation of U.S. law. These efforts yielded dividends with the seizure and forfeiture at the Port of Houston of multiple shipments of timber illegally harvested in the Peruvian Amazon. For these efforts, ENRD received the Department of Homeland Security Investigation Division's 2017 award for fraud investigations.

### **Protecting Animal Welfare**

ENRD has oversight of six animal welfare statutes and has continued its efforts to pursue civil forfeiture claims of dogs seized from criminal dogfighting ventures in violation of the Animal Welfare Act. ENRD civil attorneys have obtained the forfeiture of more than 80 dogs seized from suspected dog fighting operations around the country, resulting in significant taxpayer savings and more humane treatment for the dogs. In addition, 12 criminal defendants have now been charged in dog fighting cases in North Carolina, New Jersey, New Mexico, Washington, and Indiana. Recent search warrants have brought the number of pit bull-type dogs seized through these investigations to over one hundred. Six of these defendants have been convicted, with proceedings ongoing for the others. Division attorneys also presented at two law enforcement animal fighting trainings, one in Valdosta, Georgia, and one in Raleigh, North Carolina.

### **Protecting Worker Health and Safety**

The Division is responsible for enforcing provisions in the environmental laws that address worker safety, as well as laws and regulations administered by the Occupational Safety and Health Administration (OSHA), which aim to protect health and safety in the workplace.

In *United States v. Black Elk Energy Offshore Operations* (E.D. La.), the company was sentenced on eight felony violations of the Outer Continental Shelf Lands Act and one misdemeanor count of violating the Clean Water Act for events causing an explosion on an offshore oil production platform in the Gulf of Mexico that resulted in the deaths of three workers and injuries to several others. In a related case, *United States v. Wood Group PSN* (E.D. La.), Wood Group, which also conducted operations on the platform, was ordered to pay \$7 million for falsely reporting over several years that personnel had performed safety inspections on the offshore facilities.

In *United States v. DNRB, Inc.* (W.D. Mo.), the company was found guilty of violating an OSHA regulation and causing the death of an ironworker. OSHA regulations require workers engaged in certain steel erection activities to be protected from fall hazards by safety systems such as

guardrails or safety nets. No fall protection equipment had been provided by the company. The company was sentenced to pay a fine of \$500,000, the maximum penalty for the offense.

### **Enforcing Federal Criminal Laws Internationally**

In addition to criminal prosecutions in the U.S. federal courts, ENRD also implements a robust program of international activities that advances the goals of President Trump's Executive Order on Enforcing Federal Law with Respect to Transnational Criminal Organizations and Preventing International Trafficking. First, and most importantly, the Division successfully prosecutes cases involving wildlife trafficking and other transnational environmental crimes in order to thwart criminal organizations and persons engaged in illicit activities that present a threat to public safety and national security. Division attorneys also provide critical training for law enforcement partners in other countries to better enable them to work effectively with us in investigating and prosecuting transnational environmental crimes.

Attorneys from the Division further participate in negotiation and implementation of trade agreements and international environmental agreements, to ensure they promote effective environmental enforcement. For example, the Division has supported the Administration's work to renegotiate the North American Free Trade Agreement and incorporate provisions addressing illegal trafficking in wildlife, fish and timber.

Division attorneys also provide leadership in international law enforcement organizations. For example, we work with groups such as INTERPOL that promote international efforts to combat transnational criminal organizations. ENRD also represents the Department on the Presidential Task Force on Wildlife Trafficking, which the Department co-chairs along with the Departments of State and the Interior. This year, we worked closely with the other federal agencies on the Task Force to implement the requirements of the Eliminate, Neutralize, and Disrupt (or END) Wildlife Trafficking Act and develop new reports to Congress that analyze global challenges to combatting wildlife trafficking and provide a new, country-specific focus to our ongoing efforts.

Through the Division's capacity-building efforts, Division attorneys work to help law enforcement partners, particularly in countries where illegal poaching of wildlife and deforestation occur, to strengthen their evidence-gathering abilities and improve their judicial and prosecutorial effectiveness. These training programs also foster positive relationships with prosecutorial counterparts, thereby increasing the Division's ability to prosecute U.S. criminal laws such as the Lacey Act and Endangered Species Act.

In the last fiscal year Division attorneys provided training on combatting wildlife trafficking and associated financial crimes, for prosecutors, magistrates, and judges – often at the request of the State Department -- in countries across the globe including countries in West and Central Africa, Nepal, Indonesia, and Cambodia. Many of these courses were done in conjunction with the United Nations Office on Drugs and Crime.

We also provided similar training assistance focused on illegal logging crimes for partners in Africa and Central and South America, including training programs for magistrates, prosecutors,

and investigative officials from Gabon and four other Congo Basin countries, as well as prosecutors and investigators in Puerto Maldonado in the Peruvian Amazon and for Central American prosecutors at the State Department's International Law Enforcement Academy in El Salvador.

Prosecutors from the Division are now leading pollution enforcement workshops at the International Law Enforcement Academies in El Salvador and Bangkok. ENRD also hosted prosecutors from Colombia visiting Washington, D.C., providing them with training regarding the enforcement of pollution and natural resource laws through on-site sessions as well as follow-up webinars for approximately 80 prosecutors and in-house investigators.

### **Supporting Crime Victims**

ENRD is committed not just to bringing perpetrators of crime to justice, but also to ensuring victims of crime are treated with dignity and respect, pursuant to the Crime Victims' Rights Act and other victims' rights laws. ENRD, in partnership with the EPA, has developed the nation's first federal Environmental Crime Victim Assistance Program to ensure that victims of environmental crimes are supported from the opening of an investigation through final adjudication. Funding for this program is provided by the Crime Victims Fund, which is financed by fines and penalties paid by convicted federal offenders, not from taxpayer dollars.



# Supporting Infrastructure Development and Energy Security and Independence

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Trans-Alaska Pipeline, Wikipedia

## **Supporting Infrastructure Development and Energy Security and Independence**

ENRD's work supports our nation's investment in infrastructure development and energy security. In the spring of 2017 the President first announced his plans for an Infrastructure Initiative, the details of which were recently released. The Division worked closely with an interagency group to develop this Initiative, which is focused on rebuilding and modernizing the nation's infrastructure. Rebuilding the nation's infrastructure is a critical part of the President's agenda to promote job creation and grow the U.S. economy.

ENRD has also assisted client agencies as they advance the goals of the January 24, 2017 Executive Order on Expediting Environmental Reviews and Approvals for High Priority Infrastructure Projects and the March 28, 2017 Executive Order on Promoting Energy Independence and Economic Growth. As discussed below, through our litigation and counseling support we have helped various federal agencies expeditiously proceed with critical projects related to these Executive Orders.

### **Defending Permits for Oil Pipelines**

In *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers* (D.D.C), the Division aided in the successful implementation of the January 24, 2017 Presidential Memorandum Regarding Construction of the Dakota Access Pipeline. A number of plaintiffs brought extensive litigation aimed at shutting down the Dakota Access Pipeline; ENRD was ultimately successful in largely defeating motions for summary judgment and other efforts to vacate the Army Corps' decisions that authorized pipeline construction. The pipeline has been operational since June 2017.

ENRD also continues to defend against challenges to the approval of the Presidential Permit for the Keystone XL Pipeline, issued after the President's January 2017 Memorandum inviting TransCanada to reapply for the Permit.

### **Supporting Water Supply Management**

In *Manitoba v. Salazar* and *State of Missouri v. Department of the Interior* (D.D.C.), the Division prevailed on NEPA challenges brought by the Government of the Province of Manitoba and the State of Missouri to the Northwest Area Water Supply project, a Bureau of Reclamation water supply project in North Dakota, which will transfer water from a reservoir on the Missouri River to areas of North Dakota within the Hudson Bay basin. The court upheld the NEPA analysis in a Supplemental Environmental Impact Statement (EIS) and also dismissed the state's claims for lack of standing. The court noted that Missouri expressly asserted standing as *parens patriae* on behalf of its residents, but held that such an assertion was not permissible for claims asserted against the United States, as the superior "parent of country."

## **Defending Resource Extraction Decisions on Federal Land**

ENRD continues to defend the Department of the Interior's coal program in numerous cases involving challenges to the BLM's issuance of coal leases and the Office of Surface Mining's (OSM's) approval of mining plans. Most recently, in *High Country Conservation Advocates v. Bureau of Land Management* (D. Colo.), the Division successfully defended against a motion to temporarily restrain exploration drilling pertaining to the West Elk Mine in Colorado, following the BLM's issuance of coal lease modifications and its approval of an exploration plan. The Division also successfully defended OSM's approval of mining plans pertaining to the El Segundo Mine in New Mexico, in *WildEarth Guardians v. Jewell* (D.N.M.).

## **Promoting Nuclear Energy**

In *Beyond Nuclear v. U.S. Dep't of Energy* (D.D.C.), the Division prevailed in litigation brought by environmental and anti-nuclear plaintiffs groups that challenged a plan to transport certain highly enriched nuclear material in liquid form by truck from Ontario, Canada, to the Department of Energy's (DOE's) Savannah River facility in South Carolina. The groups had alleged violations of NEPA, the Atomic Energy Act, and the Department of Energy Organization Act of 1977.

# Strengthening National Security

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U.S. Fighter F-18, United States Air Force

## **Strengthening National Security**

ENRD's work advances the missions of the DOD and DHS to keep our nation safe, secure, and resilient. Our work defends DOD's environmental compliance efforts in their siting of military operations. Our work further assists DHS and other agencies as they implement the January 25, 2017 Executive Order on Border Security and Immigration Enforcement Improvements.

### **Supporting Military Operations**

In *Zbitnoff v. James* (2nd Cir.), ENRD successfully argued that the court should reject the plaintiffs' NEPA challenges to the Air Force's decision to base a squadron of F-35 aircraft at Burlington International Airport in Vermont. The court of appeals rejected the plaintiffs' contention that NEPA requires a broad assessment of economic costs and benefits apart from any connection with the project's environmental effects. The court also held that the EIS was not required to address state or local noise controls because they were preempted by federal law, although the court noted that the EIS did address increased noise and effects on housing in any event.

In *United States v. 1.647 Acres of Land, More or Less, Located in San Diego County, State of California, et al.* (S.D. Cal.), the Division successfully settled a time sensitive matter on behalf of the U.S. Navy to allow for the construction of the Navy's Broadway Complex Redevelopment Project in San Diego, California. The litigation was viewed as potentially delaying construction of the project which is valued at \$1.3 billion. The project will result in a new regional headquarters at no cost to taxpayers in exchange for granting use of the remainder of the site to a developer for commercial development.

ENRD has also filed a number of cases in the Central District of California on behalf of the U.S. Navy to allow for the expansion of the Marine Corps Air Ground Combat Center located in Twentynine Palms, California. These acquisitions will enable Marine Expeditionary Brigade training for three battalions using air and ground live fire. The Division successfully negotiated a settlement in one of the larger cases in late November shortly before trial. The settlement was reached after extensive discovery and motions practice on terms that reflect fair and just compensation for the land and will likely serve as a measurement for potential resolution of the remaining cases as well as the numerous other cases the Division anticipates it will file in 2018 in support of this project.

### **Increasing Security along the Southern Border**

ENRD has worked closely with DHS, CBP, as it addresses NEPA, ESA, waiver, and other issues related to southern border fence construction and enforcement efforts, including the expeditious construction of border barriers and roads.

In early 2017, ENRD successfully settled four land acquisition cases on behalf of CBP in the District of Arizona. The land was acquired for the installation and operation of surveillance towers, access roads, and associated structures to secure the United States/Mexico border.

ENRD also favorably settled a large group of land acquisition cases in Texas on behalf of CBP in connection with the El Paso Water Improvement District. The acquisitions secured access rights for the United States and allowed it to build crossings over the District's canals for border security purposes. Settlement with the District was for the amounts initially proposed by the United States (only \$7,000) after extensive title work and subsequent litigation demonstrated the land was owned by the United States and that the District enjoyed a mere easement over the land for its water works. The District had argued it was the sole owner of this land and was owed compensation in the millions of dollars. This result is significant as a matter of precedent for the United States due to the anticipated need for future land condemnations to ensure implementation of the 2017 Border Security Improvements.

# Defending Federal Programs and Supporting the Administration's Regulatory Reform Agenda

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The Continental Divide Wilderness Study Area, New Mexico, Bureau of Land Management

## **Defending Federal Programs and Supporting the Administration’s Regulatory Reform Agenda**

ENRD also defends the United States in litigation challenging agency actions involving the public lands, wildlife and marine resources, and pollution control, among others. Our defense of these cases and our legal counsel allow our client agencies to accomplish their missions efficiently and effectively. ENRD also supports the Administration’s prerogative to set its own policy agenda by vigorously defending the federal agencies’ decisions with respect to policy prioritization and assisting those agencies as they work to implement the President’s regulatory reform agenda.

## **Defending Agency Decisions to Restore Natural Resources**

In *Gulf Restoration Network v. Zinke* (D. Ala.), the plaintiff challenged the allocation of funds obtained from BP for the restoration of natural resources following the Deepwater Horizon oil spill in 2010. The plaintiff had successfully challenged the decision of four federal agencies and the State of Alabama to use a portion of those funds for the construction of a lodge and various public access amenities at the Gulf State Park in Alabama. Following that adverse decision, ENRD worked closely with the federal agencies to prepare a new decision based on a more robust NEPA analysis, and later defended that new decision in a second lawsuit. The parties ultimately settled the litigation on favorable terms that leave the challenged decision intact, thus allowing the project to move forward without further delay.

## **Defending Against Challenges to Indian Land Management Decisions**

The Division continued to have considerable success in defending decisions by DOI to take land into trust for the benefit of tribes under the Indian Reorganization Act (IRA), following the Supreme Court decision in *Carcieri v. Salazar*. In *Carcieri*, the Supreme Court held that the Secretary’s authority to acquire land in trust was limited to those tribes that were “under Federal jurisdiction” in 1934. This year the Division continued to adhere to the *Carcieri* precedent and prevailed in its defense of six trust acquisitions by DOI, affecting multiple tribes.

In *Western Refining Southwest, Inc. v. DOI* (D.N.M.), ENRD is defending two DOI decisions to deny a request to renew a right-of-way across Indian lands on the basis that the requestor failed to obtain sufficient landowner consent. We successfully opposed a motion to dismiss the case on the basis that the Navajo Nation is a necessary and indispensable party to the suit.

ENRD also successfully defended DOI’s acceptance of Washington’s partial retrocession of civil and criminal jurisdiction over the Yakima Reservation in *Klickitat County v. Interior* (E.D. Wash.).

## **Facilitating Responsible Ocean Fisheries Management**

ENRD successfully defended various fishery management actions necessary to meet the objectives of the Magnuson Stevens Fishery Conservation and Management Act (MSA) and other related statutes that charge the NMFS with managing ocean commercial fishing to provide for sustainable fishing while, at the same time, optimizing fishing yield. Of particular



note was ENRD's victory in *Alfa International Seafood Inc. v. Ross* (D.D.C.), involving a challenge to NMFS's seafood traceability rule. The rule establishes import requirements for certain stocks of fish to prevent seafood fraud and fish from illegal, unreported, and unregulated fishing from entering the U.S. seafood market. In a case of first impression, ENRD attorneys successfully turned back constitutional and statutory challenges to the rule, thereby leveling the playing field for the U.S. fishing industry.

ENRD also successfully defeated a challenge to NMFS's final rule implementing the Standardized Bycatch Reporting Methodology Omnibus Amendment in *Oceana v. Ross* (D.D.C.). This significant decision upheld NMFS's balanced approach to at-sea monitoring as applied to multiple significant fisheries along the Atlantic coast.

### **Protecting Wildlife Habitat**

ENRD has helped facilitate the development of new Greater Sage-Grouse Management plans by the BLM and the Forest Service. The plans are intended to assist with the conservation of the habitat for this bird species. We have negotiated stays in the 11 cases where plaintiffs ranging from industry groups to environmental interests challenged the Sage-Grouse plans implemented by the prior administration, and we are providing legal advice to the agencies as they amend the plans.

### **Defending Clean Water and Clean Air Permitting Decisions**

In litigation proceeding to the merits in *Tin Cup v. United States Army Corps of Engineers* (D. Alaska), the Division won a favorable ruling on a challenge to a CWA permit issued by the Corps of Engineers, where the plaintiff alleged that permafrost on the plaintiff's site in North Pole, Alaska, was not a wetland because it does not meet the hydrology parameter of the Corps' 1987 Wetlands Delineation Manual. On September 26, 2017, the district court issued a favorable opinion, granting our motion for summary judgment, and rejecting plaintiff's argument that language in 1992 and 1993 appropriations acts barred the Corps from relying on its Alaska Supplement to the 1987 Manual.

The Division also won a favorable ruling in *In re Sierra Club* (1st Cir.), on a petition for writ of mandamus alleging that EPA had unreasonably delayed issuing revised CWA permits for two coal-fired power plants, the Schiller Station in New Hampshire, and the Mt. Tom Station in Massachusetts. In a judgment issued on April 19, 2017, the court of appeals ruled that mandamus was not warranted because EPA had issued draft permits and had adequately explained the reason for the time it was taking to finalize those permits. Therefore, the court ruled Sierra Club had not met its burden of showing that the court should step in to reprioritize the EPA's work.

ENRD also prevailed on multiple challenges to EPA's Federal Implementation Plans (FIPs) for the CAA regional haze requirements in Arizona and on the Navajo reservation. On March 20, 2017, the Ninth Circuit issued decisions in *Hopi Tribe v. EPA* (9th Cir.) and *Yazzie v. EPA* (9th Cir.), upholding the FIP setting emission limits for the Navajo Generating Station, a coal-fired power plant on the Navajo reservation. And on April 3, 2017, the court issued a decision in *Arizona v.*

EPA (9th Cir.), rejecting state and industry petitions for review of portions of EPA's regional haze FIP for Arizona, including EPA's "reasonable progress" FIP for the state and a Best Available Retrofit Technology plan for two copper smelters.

In *Sierra Club v. Pruitt* (D.D.C.), an environmental group sought to compel EPA to respond to petitions seeking objections to CAA Title V permits issued to two coal-fired plants operated by Duke Energy Progress in North Carolina. While EPA conceded that it had failed to meet the statutory deadline, the parties disagreed on a reasonable time for EPA to take action, and thus filed cross-motions for summary judgment on remedy. On March 2, 2017, the court granted EPA's motion for summary judgment, finding that the declaration submitted with EPA's summary judgment brief supported EPA's proposed deadline and demonstrated that the plaintiff's proposed deadline was unattainable.

The Division obtained a favorable ruling in *Sierra Club v. EPA* (D.C. Cir.), dismissing for lack of jurisdiction a petition for review of an EPA guidance document under the CAA addressing particulate matter "hotspot" issues for transportation conformity determinations. On October 24, 2017, the court issued a decision finding first that petitioners had not articulated an adequate basis for standing to challenge the fine particulate matter aspects of the guidance. Second, while the court noted that the standing question was a closer call as to the coarse particulate matter part of the guidance, the court found that portion also unreviewable for lack of "final" action. Accordingly, the court dismissed the petition in its entirety for lack of jurisdiction.

### **Defending Federal and Tribal Interests in Water**

The Division also defends the federal water rights of tribes, which the United States holds in trust. The preferred approach is to resolve these matters through complex, multi-party settlements involving tribes, states, water users, and the United States. These settlements bring neighbors together in an effort to share a critical common resource. In fall 2017, Secretary Zinke signed an historic settlement between the Pechanga Band of Luiseno Mission Indians, southern California water districts, and the United States. This settlement brings to a close over 50 years of litigation in *United States v. Fallbrook Public Utility District* (S.D. Cal.), confirming the Tribe's water rights and providing a strong foundation for the Tribe and the water districts to engage in water management and planning for future needs.

### **Defending Agency Findings on Pesticides**

On July 18, 2017, the court of appeals issued a decision rejecting a mandamus petition in *In re Pesticide Action Network North America* (9th Cir.). Petitioners originally filed an administrative petition with EPA in 2007 seeking to revoke all food tolerances and cancel all registration of the pesticide chlorpyrifos. In 2014, EPA had not acted on the petition, so the petitioners sought mandamus relief in the Ninth Circuit to force EPA to respond. In August 2015, the court ordered EPA to issue either a proposed or final revocation or a full and final response to the petition. On March 29, 2017, EPA denied the petition. The petitioners sought further mandamus relief in the Ninth Circuit, arguing that EPA's denial was inadequate. The court rejected that argument, finding (as we had argued) that the mandamus case only controls the timing, not the substance,

of EPA's action, and that EPA unquestionably took final action here. The court also noted that EPA has an administrative objections process that is a prerequisite to substantive judicial review of the petition denial.

### **Defending Federal Hazardous Waste Clean-Up Activity**

ENRD vigorously defends against litigation that would interfere with federally selected actions to clean up contaminated sites. In two related cases, *Giovanni v. United States* (E.D. Pa.) and *Palmer v. United States* (E.D. Pa.), individuals living near Naval Air Station Joint Reserve Base, Willow Grove, and the Naval Air Warfare Center, Warminster, Pennsylvania, sued the United States in state court, alleging that toxic chemicals from the federal facilities have polluted public and private drinking wells from which they obtain their drinking water. In fact, the facilities are on the National Priorities List, and a federal response action is ongoing. We removed the case to federal court and moved to dismiss. In July and August 2017, the court issued orders granting our motions to dismiss both cases, finding that the plaintiffs' suits presented a challenge to remedial action that is barred by Section 113(h) of the CERCLA.

### **Defending Important Principles of Administrative Law**

In *Murray Energy Corp., et al. v. Administrator of EPA* (N.D. W. Va.; 4th Cir.), a group of coal companies claimed that EPA was not complying with a continuous duty under the CAA to evaluate the potential employment impacts – particularly on the coal mining industry – of administration and enforcement of the Act, and sought to compel performance of particular studies before EPA could issue new regulations, which could have resulted in the diversion of significant agency resources to this task. After several years of litigation in district court, including burdensome discovery and an adverse district court decision, the Division obtained a favorable ruling on appeal on June 29, 2017, holding that the relevant provision of the Act “fails to offer such clear instructions that could serve as a solid basis for judicial review,” and therefore ordering the case be dismissed for lack of jurisdiction. The Supreme Court denied certiorari on January 8, 2018.

In *Gulf Restoration Network v. EPA* (E.D. La.), an environmental group challenged EPA's denial of a rulemaking petition that asked EPA to establish numeric nutrient criteria for waters in at least ten states and as many as all 50 states – a task that also would have required an overwhelming commitment of agency resources. EPA denied the petition, explaining that it intended to continue its efforts working with states to develop their own criteria. On December 15, 2016, the district court entered summary judgment for EPA, holding that EPA's reasoning was adequately grounded in the statute. The court rejected the plaintiffs' contention that EPA had improperly substituted policy concerns for scientific and technical analysis, explaining that the relevant provision of the CWA “draws upon the entire body of the [Act], which itself is a broadly worded statutory scheme,” and one that by design gives primacy to states. A denial of the petition based on a conclusion that continuing to partner with states was a more effective approach than developing federal criteria was therefore “not based on reasons divorced from the statutory text of the CWA.”

## **Supporting Regulatory Review Efforts**

To assist our client agencies in implementing the January 30, 2017 Executive Order on Reducing Regulation and Controlling Regulatory Costs, ENRD worked with EPA, DOI, and other agencies to facilitate the effective review of regulations that are at issue in pending cases. In numerous cases – including such high-profile matters as challenges to the Clean Power Plan, the 2015 revised ozone NAAQS, BLM’s hydraulic fracturing rule, BLM’s waste prevention rule, and the land use management plans of BLM and the Forest Service – ENRD has secured continuances and abeyances of litigation to allow the Administration time to review existing regulations subject to ongoing litigation. ENRD has further prepared numerous filings for the D.C. Circuit to assure continued abeyance of litigation, including immediately apprising the court of significant administrative developments.

Attorney General Sessions also has directed DOJ to “develop a centralized understanding of the extent, nature, and impact of the Department’s regulatory activity.” As a result, ENRD is undertaking a comprehensive internal review of its operations. To that end the Department has sought comment on various “actions” undertaken by Department components. ENRD has reviewed a wide range of Division guidance documents, directives, regulations, memoranda and other documents to determine whether they impose any binding requirements on any person or entity outside the federal government.

## **ENRD in the Supreme Court**

Although the Division did not have any cases in the Supreme Court in which the United States was a party during the fiscal year, we did file amicus briefs in two cases that fell within ENRD’s purview. The first, *Lewis v. Clarke*, involved the issue of whether a tribal employee could be sued in his individual capacity in state court for a tort committed during the scope of his employment. The employee, who was a chauffeur at a tribally-owned casino, was responsible for a car accident which injured the state-court plaintiffs when he was driving casino patrons home. The Connecticut Supreme Court had held that the employee could invoke the tribe’s sovereign immunity even though he had only been sued in his individual capacity and the accident had occurred off-reservation. We filed an amicus brief explaining the differences between individual capacity and official capacity suits, and the history behind federal, state, and foreign sovereign immunity doctrines. The Supreme Court, following the lead in our brief, held that a tribal employee sued in his individual capacity because of an off-reservation tort could not invoke the tribe’s immunity.

The second case in which we filed an amicus, *Murr v. Wisconsin*, involved a Fifth Amendment takings claim. Plaintiffs owned in common two adjacent riverfront recreational lots. Pursuant to state laws for the protection of scenic rivers, the local county had adopted a regulation prohibiting the sale of any adjacent lot in common ownership that had less than one acre of developable property. The landowners sued, alleging this amounted to a regulatory taking of the one undersized lot. At issue was whether the taking claim should be judged taking into account only the one undersized lot or both of the adjacent lots as they were in common ownership. Our amicus brief set out a test for consideration which the Supreme Court largely

followed in concluding that the taking claim should be assessed against the value of both lots, not just the single undersized lot.

The Division also prepared briefs in opposition to petitions for certiorari filed in 23 Division cases. The petitions were denied in all of those cases, including two petitions that challenged DOI decisions to take land into trust for the Oneida Indian Nation of New York and the Cowlitz Tribe in Washington State, and one petition asserting that states and counties had the right to go onto Forest Service land over the Forest Service's objection, to remove trees or other vegetation in order to protect themselves from wildfires.

# Focusing on Our Internal Operations

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Earth Day, Department of Justice

## **Focusing on Our Internal Operations**

While we assist our client agencies in their actions to advance the President's policy agenda, the President, through the March 13, 2017 "Executive Order on a Comprehensive Plan for Reorganizing the Executive Branch," has directed us to look internally and review our own operations to examine how we can identify activities that could be improved, realigned, or eliminated in order to save money, gain efficiencies, and better serve the American people.

### **Making Efficient Use of Our Resources**

By memorandum dated April 4, 2017, the Attorney General asked components to conduct their own internal reviews to identify opportunities to make the best use of the Department's limited resources in alignment with Department priorities to strengthen national security protections and counter-terrorism efforts, among other objectives. As detailed in its April 12, 2017 memorandum, the Office of Management and Budget (OMB) further envisioned that these proposals would eliminate activities, restructure or merge operations, or improve organizational efficiency and increase effectiveness. In response to the President's Executive Order and the memoranda from the Attorney General and OMB, ENRD is undertaking a comprehensive internal review of its operations.

### **Updating the U.S. Attorney's Manual**

The Office of the Deputy Attorney General has asked all DOJ components, including ENRD, to review and revise sections of the U.S. Attorney's Manual (USAM) relevant to the Division. ENRD has proposed revisions that would delete outdated material or processes and correct erroneous or unnecessary references, better reflecting current day-to-day practices (especially vis-à-vis U.S. Attorneys' Offices), and simplify text when possible. These revisions will make our work with the U.S. Attorneys' Offices more effective and efficient.

### **Training Our Staff**

The Division provides training to its staff tailored to need. In 2017, there were 57 unique courses sponsored by ENRD with 1,960 attendees at these courses. Trainings included skills courses, professional responsibility courses, managerial courses, and courses on e-discovery. This fiscal year also marked the third consecutive ENRD Academy event series, which offers a wide range of professional development opportunities for Division personnel. These courses are internally developed and delivered by Division experts on a variety of topics. The Division also continued its ten-day training program for new honor grad attorneys in September which provides CLE credit and practical advice and guidance on many topics.

### **Promoting Diversity**

The Division's Diversity Committee sponsored trainings and events on topics of workforce diversity, employee engagement, and recognizing unconscious bias for all ENRD staff. Topics ranged from caring for elderly relatives to addressing sexual harassment in the workplace. Additionally, the committee recommended best practices for the trial attorney hiring process to

enhance effectiveness, transparency, fairness, and consistency. These practices were codified into a memorandum and distributed to all ENRD staff. The Division also continues to be an active participant in the Department's Diversity Inclusion and Dialogue Program, which facilitates a deeper understanding of diversity and inclusion issues among DOJ employees. Further, the Division continued its efforts to achieve geographic diversity in the hiring process through the successful ENRD Ambassadors Program. The Program facilitates relationships between Division attorneys and faculty at 189 law schools across the country.



# Snapshots from Fiscal Year 2017 Award Ceremonies



Josh Van Eaton of the Environmental Enforcement Section awarded Samuel J. Heyman Service to America Medal, Partnership for Public Service



Presidential Rank Award presented to Karen Wardzinski, Chief of the Law and Policy Section, ConnellyWorks, Inc.



ENRD's Muskie-Chafee Award presented to Jon M. Lipshultz, Assistant Chief in the Environmental Defense Section, Department of Justice



Attorney General's Award for Distinguished Service presented to Brian M. Holly, Chief Appraiser, and Georgia Garthwaite, Acting Division Counsel for Title Matters in the Land Acquisition Section, Department of Justice

# Snapshots from Fiscal Year 2017 Award Ceremonies

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John Marshall Award presented to Joseph Warren and Steve Willey, Senior Counsel in the Environmental Enforcement Section, Department of Justice



Mary E. Hollingsworth, Trial Attorney in the Wildlife and Marine Resources Section, awarded the John Marshall Award for Asset Forfeiture, Department of Justice



Attorney General's Award for Excellence in Legal Support presented to Tawana S. McCoy-Smith, Legal Administrative Specialist in the Environmental Defense Section, Department of Justice



Attorney General's Award for Excellence in Administrative Support presented to Gail P. Robinson, Legal Administrative Specialist in the Indian Resources Section, Department of Justice