

2012 Explanatory Notes
Office of the General Counsel

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OFFICE OF THE GENERAL COUNSEL

Purpose Statement

The Office of the General Counsel (OGC) was established in 1910, (70 Stat. 742) as the law office of USDA. The mission of OGC is to provide legal services necessary to support activities of the USDA. OGC provides legal services primarily to the Secretary of Agriculture and officials at all levels of USDA as well as members of Congress concerning the programs and activities carried out by USDA.

Description of Programs:

OGC determines legal policy and directs the performance of all legal work conducted by USDA. All Department legal services are centralized within OGC and the General Counsel reports directly to the Secretary.

The office provides all necessary legal advice and services for the Department's ongoing programs. The headquarters legal staff is divided into six sections: (1) Marketing, Regulatory and Food Safety Programs; (2) International Affairs, Commodity Programs and Food Assistance Programs; (3) Rural Development; (4) Natural Resources; (5) Legislation, Litigation, and General Law; and (6) Civil Rights.

The General Counsel is the chief law officer of USDA and is responsible for providing legal services for all programs, operations, and activities of USDA. A Deputy General Counsel and six Associate General Counsels, each of whom is responsible for a portion of the legal work of USDA, assist the General Counsel. In 1982, USDA Law Library transferred from the National Agricultural Library to OGC.

Legal Advice. OGC provides legal advice, both written and oral, to all agency officials of USDA. That advice takes the form of oral advice, written opinions, review of administrative rules and regulations for legal sufficiency, review of agency agreements and contracts and review and advice concerning any other agency activities that involve legal issues.

Legislation and Document Preparation. The office also prepares legislation, patent applications arising out of inventions by USDA employees, contracts, agreements, mortgages, leases, deeds and any other legal documents required by USDA agencies.

Administrative Proceedings. OGC represent USDA in administrative proceedings for the promulgation of rules having the force and effect of law and in quasi-judicial hearings held in connection with the administration of various USDA programs.

Federal and State Court Litigation. OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation is defensive litigation. The office serves as liaison with DOJ and assists in the preparation of all aspects of the government's case. OGC makes referrals of matters that indicate criminal violations of law have occurred and assists DOJ in preparation and prosecution of criminal cases. In some instances, OGC attorneys represent USDA as Special Assistant United States Attorneys, both in civil and criminal matters.

By delegation, the Associate General Counsel for Legislation, Litigation, and General Law represents the Department in certain classes of cases before the United States Courts of Appeals.

Geographic Location. The work of this office is carried out in Washington, D.C., and four regions which include 17 offices as follows:

Eastern Region:

Atlanta, Georgia
Columbus, Ohio
Harrisburg, Pennsylvania
Milwaukee, Wisconsin
Montgomery, Alabama

Central Region:

Kansas City, Missouri
Chicago, Illinois
Little Rock, Arkansas
St. Paul, Minnesota
Temple, Texas

Mountain Region:

Denver, Colorado
Albuquerque, New Mexico
Missoula, Montana
Ogden, Utah

Pacific Region:

San Francisco, California
Juneau, Alaska
Portland, Oregon

As of September 30, 2010, the office had 306 permanent full-time employees. There were 155 permanent full-time employees located in Washington, D.C., and 151 permanent full-time employees in the field.

OGC did not have any Office of Inspector General or Government Accountability Office evaluation reports during the past year.

OFFICE OF THE GENERAL COUNSEL

Available Funds and Staff Years
2010 Actual and Estimated 2011 and 2012

Item	Actual 2010		Estimated 2011		Estimated 2012	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Salaries and Expenses	\$43,392,673	284	\$43,551,000	289	\$46,058,000	298
Lapsing Balances.....	158,327	--	--	--	--	--
Total, Salaries and Expenses....	43,551,000	284	43,551,000	289	46,058,000	298
<u>Obligations under other</u>						
<u>USDA appropriations:</u>						
Hazardous Materials						
Management Program	1,514,598	10	1,700,000	11	1,700,000	11
FS Non-Litigating Sprt.....	136,832	--	130,000	--	130,000	--
Details						
CCC	250,000	2	100,000	1	100,000	1
FSIS	50,000	--	75,000	1	75,000	1
Civil Rights Reimbursable.....	795,799	7	673,000	5	673,000	5
GIPSA Reimbursable.....		--	234,000	3	234,000	3
AMS User Fees	643,430	4	795,000	6	795,000	6
APHIS User Fees	571,760	2	535,000	2	535,000	2
GIPSA User Fees.....	4,340	--	6,500	--	6,500	--
FSA User Fee	15,000	--	15,000	--	15,000	--
FSIS User Fees	21,000	--	21,000	--	21,000	--
Total, Other USDA						
Appropriations	4,002,759	25	4,284,500	29	4,284,500	29
Total, Office of the General Counsel	47,553,759	309	47,835,500	318	50,342,500	327

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff-Year Summary
2010 Actual and Estimated 2011 and 2012

Grade	2010			2011			2012		
	Wash DC	Field	Total	Wash DC	Field	Total	Wash DC	Field	Total
Executive Level	1	--	1	1	--	1	1	--	1
Senior Executive Service	16	4	20	16	4	20	17	4	21
GS-15	39	29	68	35	25	60	36	26	62
GS-14	60	64	124	65	61	126	70	64	134
GS-13	8	2	10	11	6	17	8	4	12
GS-12	5	4	9	8	8	16	5	6	11
GS-11	13	12	25	4	5	9	9	5	14
GS-10	2	--	2	2	--	2	2	--	2
GS-9	6	10	16	8	10	18	8	11	19
GS-8	13	20	33	10	24	34	10	24	34
GS-7	4	14	18	6	9	15	6	11	17
GS-6	2	--	2	--	--	--	--	--	--
Total Permanent Positions	169	159	328	166	152	318	172	155	327
Unfilled Positions End-of-year.....	14	8	22	--	--	--	--	--	--
Total Permanent Full-time Employment, End-of-year.....	155	151	306	166	152	318	172	155	327
Staff-Year Estimate.....	157	152	309	166	152	318	172	155	327

OFFICE OF THE GENERAL COUNSEL

Appropriation Language

For necessary expenses of the Office of the General Counsel, \$46,058,000.

SALARIES AND EXPENSES

Annualized Continuing Resolution, 2011.....	\$43,551,000
Budget Estimate, 2012	<u>46,058,000</u>
Change in Appropriation	<u>+ 2,507,000</u>

SUMMARY OF INCREASES AND DECREASES

(On basis of appropriation)

<u>Item of Change</u>	<u>2011 Estimated</u>	<u>Program Changes</u>	<u>2012 Estimated</u>
Legal Services	\$43,551,000	+\$2,507,000	\$46,058,000

Project Statement

(On basis of appropriation)

	<u>2010 Actual</u>		<u>2011 Estimated</u>		Increase or Decrease	<u>2012 Estimated</u>	
	<u>Amount</u>	<u>Staff Years</u>	<u>Amount</u>	<u>Staff Years</u>		<u>Amount</u>	<u>Staff Years</u>
Legal Services.....	\$43,392,673	284	\$43,551,000	289	+\$2,507,000	\$46,058,000	298
Unobligated Balance...	<u>158,327</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>
Total Appropriation.....	<u>\$43,551,000</u>	<u>284</u>	<u>43,551,000</u>	<u>289</u>	<u>+ 2,507,000</u>	<u>\$46,058,000</u>	<u>298</u>

OFFICE OF THE GENERAL COUNSEL

Justification of Increases and Decreases

(1) An increase of \$2,507,000 for the Office of the General Counsel consisting of:

(a) An increase of \$1,550,000 to maintain current staff.

During the last several years, OGC have been unable to fill key positions as they became vacant which has strained agency staff. OGC has been able to engage in modest hiring in fiscal year 2011 to accommodate key priority positions in the organization. It is vital that OGC will be able to support and maintain current staffing levels in order to ensure that client agencies and the Department receive necessary predecisional legal advice and critical services in connection with USDA litigation and rule making. Approximately 94 percent of OGC's budget is in support of personnel compensation, which leaves little flexibility for absorbing salary adjustments. A staff reduction would result in backlogs and delays in reviewing and clearing agency rulemakings and correspondence, and in providing legal advice within requested periods for client agencies and the Department.

This request would also allow OGC to increase funding for litigation travel, law library purchases and computerized legal research. Litigation travel undertaken in support of OGC's core activities is essential to provide services to client agencies and the Department. Litigation related functions include taking depositions and interviewing of witnesses. Currently, OGC attorneys are faced with litigation in Federal courts and before administrative bodies and litigation related travel is critical in order for OGC to provide effective legal service.

OGC Law library must invest in legal periodicals, legal encyclopedias, State codes, State court decisions, the United States Code, Federal regulations, court decisions and computerized legal research services. These services allow OGC attorneys to stay abreast of new developments in their respective areas of law and to access current laws and regulations. Computerized legal research provided OGC attorneys electronic access to legal materials that are not affordable to purchase or maintain in hard copy.

(b) An increase of \$957,000 and nine staff years for increased legal services.

Immediate Office (1 Staff Year). The Office of the General Counsel requires a new career Deputy General Counsel position in order to ensure a smooth flow and transition of operations. Currently, the front office of OGC consists of only two managers, both of whom are political appointees: a General Counsel and a Deputy General Counsel. Nearly every other General Counsel's office in the government provides for one or more career deputies, in addition to a cadre of political appointees. A career Deputy General Counsel is needed to help the existing front office personnel manage a large staff of Washington and field-based personnel. OGC's current workload and range of operations is simply too large to be effectively managed by only two front-office managers. Moreover, a career Deputy would ensure vital continuity of operations and maintenance of institutional knowledge during periods of transition.

Mountain Region - Denver Office (1 Staff Year). The Mountain Region of the Office of the General Counsel, based in Denver, Colorado, requires a Deputy Regional Attorney to support the Regional Attorney in managing all aspects of the Region's operations. Currently, the only OGC regional office not served by a permanent Deputy Regional Attorney is the Mountain Region. The managerial responsibilities of the Mountain Region include conducting performance reviews of the Denver staff, managing a region-wide budget, assigning cases, interacting with agency managers and officials at all of the various USDA client agencies, managing relationships with the various United States Attorneys' offices in the Mountain States, hiring and training personnel, maintaining building space, and many other duties. Ordinarily, these duties are divided between two front office personnel, including the Regional Attorney and a Deputy Regional Attorney. However, largely for budgetary reasons, OGC has not been able to fill a vacant Deputy Regional Attorney position for more than two years. In order for the Mountain Region to function effectively, a permanent Deputy Regional Attorney, is required. Without a Deputy Regional Attorney, the Regional Attorney has had to cover the duties of both a first-line and second-line supervisor for all of the staff of the Denver office. This has reduced the flexibility of the Regional Attorney to travel, or otherwise be absent from the office.

The lack of a Deputy Regional Attorney has also made it more difficult for OGC management to be responsive to senior managers of all of USDA's client agencies since there has been only one manager (the Regional Attorney) available to handle management level issues. Finally, the lack of a Deputy Regional Attorney has made it very difficult for OGC to manage the day-to-day affairs of the Denver office staff.

Marketing Division (1 Staff Year). The enforcement of the National Organic Program (NOP) is a top priority of the Department, and enforcement of the program is vital to the credibility and growth of organic agriculture. OGC attorneys play a critical role in this effort by providing advice to agency officials on a myriad of legal questions, reviewing evidence to ensure its legal sufficiency, preparing legal pleadings, and serving as trial attorneys in enforcement proceedings. Demand for legal services to support the NOP is increasing dramatically as the program matures and expands. This is particularly true with respect to enforcement actions, which is an NOP and Department priority. Previously, the Marketing Division received only two or three requests for enforcement actions a year. This is expected to increase to twenty or thirty a year, each of which will require substantial attorney resources. In addition, NOP rulemaking actions and requests for legal advice are also increasing, further straining the division's legal resources. In order to keep pace with this additional demand for legal services, it is requested that the Marketing Division be authorized to hire one additional attorney to support the NOP program.

Civil Rights (1 Staff Year). The Civil Rights Policy, Compliance and Counsel Division (CRPCCD) requires an additional attorney for fiscal year 2012. With the impending resolution of the four nationwide program class actions, there will be a greater demand for the proactive services and compliance counseling that CRPCCD provides. In addition, the Assistant Secretary for Civil Rights (ASCR) has instituted a resolution initiative for EEO matters that has significantly increased the demand on CRPCCD for representation during mediations and for drafting and reviewing settlement agreements. The ASCR has also established a backlog initiative to drastically reduce the backlog of individual program discrimination cases which has resulted in an increasing number of Final Agency Decisions requiring CRPCCD's legal sufficiency reviews. Currently, these demands have forced the Assistant General Counsel to carry a full case workload in addition to supervisory duties. A focus on management responsibilities provides value by allowing the Assistant General Counsel for CRPCCD to (1) ensure quality and consistency in civil rights policy and practice across the Department; (2) provide oversight for the development of national training modules on civil rights issues; and (3) standardize compliance efforts among all of USDA's agencies. An additional attorney would allow the Assistant General Counsel to focus more attention on management responsibilities.

Food and Nutrition Division (1 Staff Year). The Food and Nutrition Division provides legal services to the Food, Nutrition and Consumer Services (FNCS) mission area programs of the Department, including the Supplemental Nutrition Assistance Program (SNAP, formerly the Food Stamp Program), National School Lunch Program, Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). These programs consume vast human and financial resources (approximately \$100 billion in annual appropriations) and constitute a major portion of the "social safety-net" which separates the neediest Americans from malnutrition. These programs also generate a variety of complex and challenging legal issues. OGC envisions a significant increase in the Division's workload in fiscal year 2012 and subsequent years. The Child Nutrition Programs reauthorization process and implementation of the resulting program requirements will overlap with the legislative demands resulting from the reauthorization of SNAP in the 2012 Farm Bill process. In addition, The Healthy, Hunger-Free Kids Act of 2010, P.L. 111-296, enacted December 13, 2010, (the Act) amended provisions of the Richard B. Russell National School Lunch Act and the Child Nutrition Act of 1966 and reauthorized the Nation's Child Nutrition Programs through the end of fiscal year 2015. Among the Department's domestic nutrition programs reauthorized and amended were WIC, the Summer Food Service Program, the State Administrative Expense Program and the WIC Farmers' Market Nutrition Program. Additionally, the Act amended provisions of the National School Lunch Program, the School Breakfast Program, and the Child and Adult Care Food Program, all of which are permanent law. We anticipate we will provide significant leadership in publication of proposed, interim and final regulations, statutorily mandated issuances of Federal guidance and handbooks for the programs' grantee and subgrantee stakeholders, as well as inter- and intra-Departmental collaboration among senior policy officials and counsel in a number of Federal agencies. Additional statutorily driven implementation activities meriting guidance and oversight will include Federal/stakeholder consultation; demonstration project initiation; and grant award criteria establishment. Finally, many of the non-discretionary provisions of the Act are time-sensitive with immediate impact. Several were

effective beginning at the beginning of fiscal year 2011 and a number take effect at the beginning of the School Year 2012 (July 1, 2011). Given the expected increase in workload, the hiring of one additional attorney is critical to meeting the needs of our clients.

Rural Utilities (1 Staff Year). The work of the Rural Utilities Division includes all of the activities of the Rural Utilities Service-telecommunications programs, electrification programs, and water and waste programs. An additional position would be responsible for becoming directly involved in some of the sensitive matters of Division. Currently these sensitive matters would include the greenhouse gas environmental issues of the electrification programs, the Recovery Act activities of the RUS (Broadband and water) including the impact of Davis-Bacon and Buy American requirements of the Recovery Act, and the renewable energy activities of the electrification program.

International Affairs and Commodity Programs Division (1 Staff Year). The International Affairs and Commodity Programs Division (IACP) is largely responsible for all of the legal work emanating from both Titles I and III of the 2008 Farm Bill, in addition to significant issues arising from Title IX. In fiscal year 2012, in addition to the significant continuing legal work arising in these areas, including, in fiscal year 2012, the development of new regulations for each of the Emerging Markets Program, Technical Assistance for Specialty Crops Program, and Foreign Markets Development Program, this division expects to be engaged in major initiatives within the Administration and with Congress in the development of legislation to succeed the current Farm Bill, which expires at the end of fiscal year 2012. Furthermore, in addition to the dozens of agreements that USDA enters into each year with other governments to provide data, germplasm, or technical expertise, this division expects to review and revise lots of new international agreements between various USDA agencies and government agencies in Pakistan and Afghanistan, to be entered into and administered by the Foreign Agricultural Service (FAS), implicating tens of millions of dollars from the U.S. Agency for International Development, as the U.S. Government increasingly emphasizes sustainable development in these countries as part of its long-term foreign policy and national security goals. An additional attorney is necessary to absorb these demands alone. In addition, the division requires additional expertise in commercial banking and finance, as FAS intends to embark on a major effort to promulgate regulations and reinvigorate the Facilities Guarantee Program, which is a program under which the Commodity Credit Corporation (CCC) guarantees loan transactions involving capital goods, to facilitate exports of U.S. agricultural commodities. Under the CCC export credit guarantee program, IACP is becoming increasingly involved in the negotiation and restructuring of multi-million dollar foreign private sector financial institution debt owed to CCC. No staff attorney has the requisite expertise in this area.

Paralegals (2 Staff Years). The Chicago and Little Rock Branch offices presently have five attorneys each. OGC is requesting two paralegal positions in each office to handle a large quantity of routine legal work. This work has now shifted to the attorneys. The client agencies provide almost no paralegal support for administrative litigation, so the role of paralegals in discovery, witness preparation, and trial preparation is key. These routine legal tasks require time and resources to be diverted from other complex legal work, and it is not cost-effective to use attorney time in this manner. In many cases, the lower-level legal tasks formerly handled by the paralegals have had to be handled by the attorneys as lower priority work, due to deadlines for litigation. When this happens, the client agencies are not served in a prompt and efficient manner, and their programs are impacted. In addition, because the Chicago and Little Rock offices have also lost lower support staff personnel, the higher-level collateral administrative tasks, formerly handled by the paralegals, such as case tracking, retrieving, printing, and distributing documents from Pacer and the U.S. District Courts, maintenance of the law library and other administrative duties, must now be handled by attorneys, which is not a cost-effective use of attorney time.

OFFICE OF THE GENERAL COUNSEL

Geographic Breakdown of Obligations and Staff Years
2010 Actual and Estimated 2011 and 2012

	2010		2011		2012	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Alabama	\$585,738	5	\$600,180	5	\$621,541	5
Alaska	505,888	4	583,525	4	604,293	4
Arkansas	1,049,394	7	1,085,961	8	1,085,961	9
California	2,339,554	14	2,776,261	16	2,875,069	16
Colorado	1,932,859	13	1,827,823	11	2,079,847	12
District of Columbia ...	24,269,114	140	22,810,621	144	24,276,462	150
Georgia	2,204,373	17	2,396,783	17	2,482,086	17
Illinois	876,768	6	910,860	6	1,003,425	7
Minnesota	800,228	6	937,615	7	970,985	7
Missouri	1,307,180	11	1,394,458	11	1,444,087	11
Montana	922,808	7	999,884	7	1,035,470	7
New Mexico	650,401	6	748,766	6	775,415	6
Ohio	457,338	7	500,361	4	518,169	4
Oregon	1,636,596	12	2,004,036	12	2,075,360	12
Pennsylvania	1,248,245	11	1,294,977	11	1,341,066	11
Texas	955,256	7	959,023	8	993,155	8
Utah	535,511	4	510,775	4	528,953	4
Wisconsin	1,115,422	7	1,209,632	8	1,252,683	8
Subtotal, Available or Estimate.....	43,392,673	284	43,551,000	289	46,058,000	298
Unobligated balance ...	158,327	--	--	--	--	--
Total, Available or Estimate.....	<u>43,551,000</u>	<u>284</u>	<u>43,551,000</u>	<u>289</u>	<u>46,058,000</u>	<u>298</u>

OFFICE OF THE GENERAL COUNSEL

Classification by Objects
2010 Actual and Estimated 2011 and 2012

	<u>2010</u>	<u>2011</u>	<u>2012</u>
Personnel Compensation:			
Washington, DC.....	\$16,437,741	\$16,546,612	\$17,314,486
Field.....	<u>15,793,123</u>	<u>15,897,725</u>	<u>16,635,487</u>
11 Total personnel compensation	32,230,864	32,444,337	33,949,973
12 Personnel benefits	8,050,946	8,290,165	8,715,529
13 Benefits for former personnel	<u>6,180</u>	<u>6,180</u>	<u>6,180</u>
Total pers. comp. & benefits	40,287,990	40,740,682	42,671,682
Other Objects:			
21 Travel and Transportation of persons	327,415	250,000	375,000
22 Transportation of things	4,304	27,000	27,000
23.3 Communications, utilities and misc. charges	806,417	806,417	806,417
24 Printing and reproduction	62,509	62,509	62,509
25.2 Other services	1,085,413	1,045,767	1,057,767
26 Supplies and materials	566,250	566,250	959,250
31 Equipment	<u>252,375</u>	<u>52,375</u>	<u>98,375</u>
Total other objects	<u>3,104,683</u>	<u>2,810,318</u>	<u>3,386,318</u>
Total direct obligations	<u>43,392,673</u>	<u>43,551,000</u>	<u>46,058,000</u>
Position Data:			
Average Salary, ES positions	\$167,630	\$169,614	\$171,611
Average Salary, GS positions	\$105,375	\$106,614	\$112,603
Average Grade, GS positions	13.64	13.91	14.17

OFFICE OF THE GENERAL COUNSEL

STATUS OF PROGRAM

Current Activities: The Office of the General Counsel (OGC) serves as the legal advisor and counsel for the Secretary and provides legal services for all agencies of the Department. These services include, but are not limited to, the following:

- rendering opinions on legal questions;
- preparing or reviewing rules and regulations;
- preparing or interpreting contracts, mortgages, leases, deeds, and other documents;
- preparing briefs and representing the Department in judicial proceedings and litigation;
- representing Departmental agencies in non-litigation debt collection programs;
- processing applications for patents for inventions by the Department's employees;
- representing Departmental agencies in State water rights adjudications;
- considering and determining claims by and against the United States arising out of the Department's activities;
- representing the Department in formal administrative proceedings;
- assisting the Department of Justice (DOJ) in the preparation and trial of cases involving the Department; and
- representing the Secretary of Agriculture and the Commodity Credit Corporation before the Federal Maritime Commission and the International Trade Commission.

Selected Examples of Recent Progress:

Highlights of OGC's fiscal year (FY) 2010 operations are described below:

ADMINISTRATION AND RESOURCES MANAGEMENT

OGC continues to focus on the development of shared resources for the electronic exchange of data nationwide. In fiscal year 2010, OGC enhanced the SharePoint portal to manage electronic correspondence and work items. Each office will have a workplace for document sharing and the capability to record work assignments. There will be an OGC-wide brief bank that will provide search capability of electronic data which will include briefs, opinions and other critical documents. In addition, during FY 2010, OGC purchased computer workstations, laptops and printers to facilitate obsolete replacements nationwide.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders: OGC attorneys reviewed approximately 75 rulemaking actions, as well as many other documents relating to marketing orders, and provided daily legal advice to client agencies in connection with a wide variety of matters. These activities included assistance in connection with formal and informal rulemaking actions, and with the enforcement and defense of the programs.

Animal Welfare and Horse Protection Acts: OGC expended substantial resources in connection with the Animal Welfare and Horse Protection Act programs. OGC attorneys serve as agency counsel in administrative enforcement actions brought under these two statutes and in FY 2010, OGC initiated 28 enforcement cases and 17 decisions were issued in ongoing cases. In addition, OGC reviewed and provided drafting assistance to the Animal and Plant Health Inspection Service in connection with a number of rule making actions.

National Organic Program: OGC provided legal assistance to Agriculture Marketing Service (AMS) in connection with its rulemaking to define access to pasture requirements for livestock, reviewed agency decisions on appeals from proposed revocation or suspension of certification by accredited certifying agents and represented AMS in administrative enforcement actions brought by the agency.

Perishable Agricultural Commodities Act (PACA): In FY 2010, OGC's Trade Practices Division devoted significant resources to the provision of legal services in support of the Perishable Agricultural Commodities Branch

of the Agricultural Marketing Service. OGC received 17 new referrals that were ready for administrative action from the PACA Branch, and filed 21 new administrative complaints alleging violations of the fair trade requirements of the PACA, many for the violation of failure to pay timely for produce in interstate or foreign commerce. Violations of the PACA may result in a civil penalty, or suspension or revocation of license, and individuals found to be responsibly connected to a violating entity are subject to employment sanctions. In FY 2010, attorneys in the division assisted the PACA Branch in investigating whether several responsibly connected individuals were affiliating with PACA licensees in violation of their employment sanctions. When sufficient evidence to prove affiliation was gathered, OGC filed administrative complaints against the individual and the licensees. Attorneys closed 14 PACA enforcement actions after resolution of the case, and PACA collected \$300,000 in civil penalties from one licensee and several responsibly connected individuals as a result of a negotiated settlement of an unlawful employment action. In FY 2010, attorneys acting as presiding officers issued 50 decisions on the merits or on motions of the parties, with regard to PACA reparation cases in which private parties seek damages as a result of violations by a PACA licensee. In total, OGC reviewed 83 reparation cases in which decisions were written either after hearing or as a result of written procedure as provided in the PACA rules of practice. A total of \$1,736,716 was at issue in those decisions. In addition, OGC reviewed 2 rulemaking dockets for amendment of existing PACA regulations. In particular, attorneys worked with the PACA Branch on a rulemaking proposal to allow unpaid sellers of produce to maintain their status as beneficiaries of the statutory trust when they agree, after default on payment, to accept payments over time.

Packers and Stockyards Act: In FY 2010, OGC also dedicated considerable resources to the Grain Inspection, Packers and Stockyards Administration (GIPSA) in the enforcement of the provisions of the Packers and Stockyards Act. In this fiscal year, P&S Program referred 92 administrative cases to OGC. These referrals seek the issuance of an administrative complaint for the enforcement of the requirements of the Packers and Stockyards Act, legal review of agency action, or help with an investigation. The Trade Practices Division filed 29 new administrative enforcement complaints under the Packers and Stockyards Act in FY 2010, with 14 administrative cases concluded with orders and the assessment of civil penalties. The P&S Program also sent OGC 13 requests for referral to DOJ of violations of a Secretary's order or failures to file annual reports. For these cases OGC attorneys draft a complaint and draft order and prepare a legal analysis of the violation, and then refer the case to the appropriate U.S. Attorney's office for action. In FY 2010, the Trade Practices Division referred 12 cases to U.S. Attorneys' offices around the country. Thirteen DOJ referrals were resolved for penalties totaling \$90,195. The P&S Act also provides authority, incorporated from the Federal Trade Commission Act, for the issuance of investigatory subpoenas. The attorneys in the division review these subpoenas for legal sufficiency and, in the case of a failure to comply, refer the matter to DOJ for enforcement proceedings. During this fiscal year, a division attorney worked with a U.S. Attorney's Office to enforce an investigatory subpoena issued by GIPSA's Deputy Administrator. Additionally in support of the P&S Program, OGC reviewed and assisted in drafting several rulemaking dockets, most notably, GIPSA's proposed rule to implement amendments to the P&S Act made by the 2008 Farm Bill. GIPSA published a proposed rule that includes not only the specific regulatory provisions required by the Farm Bill, but also includes regulatory provisions intended to address unfair, deceptive and anticompetitive practices. GIPSA has received over 57,000 comments on this significant proposed rule. Trade Practices Division has provided legal advice and counsel to the P&S Program regarding the rulemaking process, how to address inquiries from the public and members of Congress and review of Congressional testimony to be given by Department officials. OGC also continued to act as liaison for the Department with the Antitrust Division of the Department of Justice.

INTERNATIONAL AFFAIRS, COMMODITY PROGRAMS AND FOOD ASSISTANCE PROGRAMS NATURAL RESOURCES

Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Domestic Commodity-Related Program Activities:

- OGC continues to assist in the implementation of the commodity program provisions of the 2008 Farm Bill, a process which has produced more than two dozen major rules. Recently these efforts helped with inducing the publication of the controversial final rule for the Biomass Crop Assistance Program (BCAP) which will involve several hundred millions of dollars of public outlay in the next several fiscal years and implementation of an additional \$500 million of activity under the Crop Assistance Program. With respect to the latter, OGC was instrumental in the development of a complex multi-state grant program to provide over \$60 million of disaster assistance under section 32 of the Act of August 24, 1935. OGC continues to

address complex issues arising under the Supplemental Revenue Assistance Program, (SURE), including additional stimulus relief in connection with Hawaiian producers of sugar cane and has also assisted with the development of a rule that implemented provisions of the farm bill that provided support for “geographically-disadvantaged” farmers in the insular areas of the United States.

- In addition, the office continues to provide the necessary and complicated support needed to continue the solid operation of the so-called tobacco buyout program. That program is a ten-year, \$10 billion program, and OGC continues to assist the agency with the handling of contentious litigation involving the manner in which assessments are made against cigars and other tobacco products to fund the “buyout” and to handle clarifying regulations that concern complicated calculation of what portion of the total assessment each category of tobacco products must bear. To that end, OGC has also been instrumental in enforcement actions to collect payments from parties not fulfilling their assessment obligations.
- OGC was also instrumental in the development of regulations and procedures for delivery of the new Trade Adjustment Assistance for Farmers program. OGC continues to provide critical input on other vital programs this year, including the agency’s various support programs and the Farm Service Agency’s massive Conservation Reserve Program. OGC provided significant assistance with respect to the procurement of large quantities of commodities, and associated ocean freight, for international feeding and developmental programs. OGC also provided similar advice with respect to the procurement of commodities for use in domestic feeding programs. This year, OGC assisted in several admiralty cases with respect to CCC freight loss and damage claims arising from the shipments of food commodities under various international food aid donation programs.

Foreign Agricultural Service (FAS) and CCC International Activities: During this past fiscal year, OGC supported the work of the Department in the implementation of a number of major international trade and foreign assistance initiatives:

- OGC attorneys provided extensive assistance to FAS and the Office of the United States Trade Representative (USTR) in a number of World Trade Organization (WTO) disputes. First, in the Brazil-Cotton matter, OGC attorneys participated significantly in the negotiation and drafting of a Framework Agreement between the United States and Brazil to stave off over \$1 billion of retaliatory tariffs and infringement of intellectual property rights, which would have severely adversely affected U.S. exports to Brazil and at the same time assist in the development of options for programming of the GSM 102 export credit guarantee program for FY 2010 and FY 2011 to continue to facilitate U.S. agricultural exports.
- Second, OGC attorneys participated extensively in the WTO poultry case brought by China (WTO China Poultry) against the United States challenging the “DeLauro Amendment,” a provision in the FY2009 appropriations bill prohibiting the Food Safety and Inspection Service from implementing any FSIS regulation allowing poultry imports from China. OGC also provided extensive input to Congresswoman DeLauro’s office on her proposed amendment to the FY2010 Appropriations bill related to imports of poultry from China.
- Third, with respect to the formal WTO dispute brought by Canada and Mexico over the United States’ new retail “country of origin” labeling laws for meat and fresh and frozen fruits and vegetables (COOL) and the AMS implementing regulations, OGC attorneys provided leadership within USDA and significant and substantial support to USTR and USDA agencies, including management of the USDA litigation support teams, research into factual and legal issues, development of legal strategy, and drafting of portions of U.S. submissions. OGC attorneys also drafted voluminous responses to questions submitted to the United States in connection with this dispute.
- OGC attorneys contributed significantly in the accomplishment of major international food assistance initiatives. OGC developed new templates for and made major revisions of food aid agreements for the McGovern-Dole International Food for Education and Child Nutrition Program and Food for Progress Programs. In addition, OGC attorneys drafted the initial agreements to implement the initial applications of the Local and Regional Food Aid Procurement Pilot Project (PPP). OGC attorneys reviewed a record number of food aid agreements, reviewing and revising over 30 in the month of September alone.

Nutrition Assistance Programs (FND): During this past fiscal year, OGC assisted in furthering the program and policy objectives of the nutrition assistance programs.

- Child Nutrition Reauthorization. Reauthorization of the USDA's Child Nutrition Programs, including the Special Supplemental Nutrition Program for Women, Infants and Children (WIC), the School Meals Programs and the Summer Food Service Programs, was enacted as the Healthy, Hunger-free Kids Act of 2010. FND attorneys assisted in the drafting and review of many provisions of the bill which reauthorizes and expands USDA's domestic nutrition programs via increases in funding and eligibility. Major initiatives include expansion of year round access to meal service in schools, child care settings and other locations; establishment of nutrition standards for foods sold in schools but outside of meal service times and areas; and elimination of paperwork and enhancement of universal free meal availability for students in high-poverty areas. The Administration made expansion of USDA's Child Nutrition Programs a top priority, proposing a \$10 billion increase in program funding over the next 10 years.
- State SNAP Quality Control Liabilities. The Supplemental Nutrition Assistance Program (SNAP), formerly The Food Stamp Program, measures State error rates in certifying applicant households for each fiscal year under the quality control (QC) provisions of the Food and Nutrition Act of 2008 (the Act). State's payment error rates are compared to the national performance measure (national average payment error rate). Under the Act, a liability amount for a State agency is established when, for the second consecutive fiscal year FNS determines that there is a 95 percent statistical probability that a State's payment error rate exceeds 105 percent of the national performance measure for payment error rates. For FY 2009, FNS determined that the States of Texas, Maryland, Indiana and Iowa had payment error rates for the second consecutive year that exceeded 105 percent of the national performance measure. Therefore, these States were notified that liability amounts and claims for collection had been established for FY 2009. The State agencies for Texas and Maryland have filed appealed their liability amount determinations for FY 2009 (Texas \$3,959,293; Maryland \$742,238). These appeals are heard by the USDA Office of Administrative Law Judges. Both Texas and Maryland agreed to settle their FY 2009 liability amounts and their appeals were dismissed by the ALJ.

RURAL DEVELOPMENT

Community Development Division (CDD): CDD provides legal advice to the Rural Housing Service (RHS), the Risk Management Agency (RMA), the Rural Business-Cooperative Service (RBS), and the farm lending arm of the FSA. CDD works with these agencies on debt collection, credit questions under direct and guaranteed loan programs, grants/cooperative agreements, and environmental issues.

- Farm Loan Programs of FSA: CDD was substantially involved in the resolution of Departmental complaints civil rights litigation involving Farm Loan Programs, including *In re Black Farmers Discrimination Litigation* and *Keepseagle v. Vilsack*. CDD continued to provide legal advice and review of the 2008 Farm Bill's new and revised Farm Loan Programs, many affecting socially disadvantaged farmers and of high priority to the Administration.
- Rural Development (RD): CDD continued to assist RD in the implementation of complex Farm Bill energy programs (9003, 9004, 9005, 9007, and 9009) and the Rural Microentrepreneur Assistance Program. CDD assisted in the defense of RD in the *Dreyfus v. Vilsack* litigation challenging the 9005 Advanced Biofuels Program and in 13 new prepayment litigation cases involving the multi-family housing loan program. The division further assisted RHS in expanding its single family housing foreclosure mitigation procedures in coordination with Treasury's Home Affordable Modification Program.

RMA and the Federal Crop Insurance Corporation (FCIC): CDD provided substantial assistance in the renegotiation of the Standard Reinsurance Agreement. CDD assisted the Department of Justice in the final settlement of the *Ace Property and Casualty v. FCIC* litigation. CDD continued to assist the FCIC Board of Directors in considering many new and unusual products as a result of the 2008 Farm Bill provisions.

Rural Utilities Division (RUD): RUD provides most legal services required for the administration by the Rural Utilities Service (RUS) of Rural Development's Electric, Telecommunications, Broadband, and Water and Waste Disposal Programs.

- Major 2010 Issues: During FY 2010, RUD continued to provide legal advice and assistance to the Rural Utilities Service (RUS) in implementing American Recovery and Reinvestment Act of 2009 (ARRA). RUS was responsible for implementing, \$8.6 billion in new broadband loan and grant authority and \$3.3 billion in

additional water and waste loan and grant authority. RUS required a broad range of legal services in able to establish and deliver the new Broadband Initiatives Program (BIP). RUD attorneys provided substantial legal assistance to RUS in developing standards and procedures for assuring compliance with ARRA's requirements and also provided crucial legal support and assistance to RUS in successfully awarding 100% of its ARRA funding during this period. RUS requires ongoing legal assistance in closing these hundreds of loans and grants and administering its ARRA portfolio.

- Farm Bill Regulations: RUS has increased its focus on implementing two important Farm Bill provisions. RUD attorneys have provided substantial legal advice and assistance in both of these. RUD attorneys have also been substantially involved in the development by RUS of an initiative authorized by Section 6105 of the Farm Bill which added section 306F to the RE Act. Section 306F authorizes an initiative to improve the delivery of all RUS programs to communities in Substantially Underserved Trust Areas (SUTA). RUS attorneys provided substantial legal assistance in developing a process for conducting the consultations on SUTA implementation which Section 306F requires RUS to do and which must conform to President Obama's *Memorandum on Tribal Consultation* executed November 5, 2009.
- Environmental Tensions: RUD attorneys increasingly provide legal counsel to RUS in defensive litigation and National Environmental Policy Act compliance. The inherent tension between producing reliable and affordable energy and the increasing importance being placed on preserving the environment involve RUS in litigation and threats of litigation, especially when financing base load electric generation projects. RUS also finances renewable energy projects but these projects face their own environmental challenges, e.g. wind turbines are frequently controversial due to such characteristics as bat mortality, noise and visual impacts. In addition, since abundant renewable energy resources tend to be located in rural areas the construction of the high voltage transmission lines to deliver this energy to the population centers which need it also generates legal controversies.

NATURAL RESOURCES

Forest Service Programs: OGC provided advice regarding compliance with Federal environmental and administrative laws governing the management of the 193 million acre National Forest System.

OGC counsels the Forest Service regarding compliance with administrative and environmental laws, such as the Administrative Procedure Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA), and assists in the defense of regulations, policies, plans and projects. OGC has provided assistance in:

- Planning. OGC has been assisting the Forest Service in developing a new planning rule.
- Administrative appeals. OGC continues to advise the Forest Service regarding the application of the agency's administrative appeal regulations.
- Litigation. As of September 30, 2010, approximately 162 cases involving APA, NEPA, NFMA, ESA, and other issues were pending, including cases concerning timber salvage, fuels reduction projects, Roadless Area management, range management, Sierra Nevada forest plan amendments, travel management, minerals, and energy corridors.

OGC has continued to provide substantial legal services in the forest management program area:

- OGC provided legal assistance on the defense of lawsuits seeking tens of millions of dollars based on challenges related to timber sales.
- OGC provided a three-day contract law course; and representation in numerous suspension, debarment proceedings, and bid protests.
- OGC provided advice regarding implementation of stewardship contract projects to achieve needed project activities.
- OGC provided substantial legal advice to the Forest Service on its draft Stewardship End Results Contract (SERC).
- OGC provided legal assistance on several Forest Service regulations aimed at providing relief to the timber industry in light of severely declining timber market conditions.
- OGC provided substantial legal advice on Forest Service rule governing the disposal of forest products to the general public and to Indian tribes.
- OGC provided advice and assistance to the Forest Service concerning implementation of 2008 Farm Bill provisions on tribal access to forest products for traditional and cultural purposes.

- OGC provided legal advice on implementing the Secure Rural Schools and Community Self-Determination Act of 2000.
- OGC provided substantial legal advice and assistance to the Forest Service concerning implementation of the USDA rule governing debarment and suspension, and in response to an OIG audit on the same issue.

In support of the Forest Service Lands and Recreation Programs, OGC performed several significant tasks:

- OGC drafted directives on dam safety and design, operation, and maintenance of recreation sites on NFS lands.
- OGC provided assistance with administrative appeals and litigation involving designation of routes and areas for motor vehicle use on NFS lands; litigation involving recreation fees charged for high-impact recreation areas on NFS lands; and administrative appeals involving expansion of a ski area and new outfitting and guiding permit fees in the Alaska Region of the Forest Service.
- OGC provided support to a USDA/DOI legal and policy working group on visitor capacity under federal statutes.

In real property matters, OGC works closely with USDA agencies that manage real property assets, on a variety of legal issues relating to landownership transactions and stewardship responsibilities, including the Forest Service, Natural Resources Conservation Service, and Agricultural Research Service. OGC provides legal services regarding access and rights of way to public lands, title claims and disputes, treaty rights, land appraisal and survey, and other issues incident to the ownership and management of real property assets of the government.

In the minerals area, OGC has provided extensive advice regarding withdrawals of land from the United States mining laws, the Forest Service's authority to regulate locatable mineral operations, and oil and gas leasing issues.

OGC continues to provide substantial legal assistance and litigation support regarding Federal laws such as those concerning American Indian treaty rights and religious freedom, and historic and archaeological resource protection.

OGC provided assistance in drafting legislation and in reviewing a variety of pending legislation, including several bills addressing landscape scale restoration.

OGC provided assistance to the Forest Service regarding hydroelectric licensing projects on National Forest System lands, and is working with an interagency group to draft final regulations for trial type hearings and alternative licensing conditions. In climate change matters, OGC continues to expand its legal services in this area by providing legal advice related to federal cap and trade proposals, ecosystems services, and carbon offsets to both the newly created Office of Ecosystem Services and Markets and the reorganized Climate Change Program Office.

NRCS Programs: OGC provided legal advice and services to the NRCS in support of programs for natural resource conservation on private or non-Federal lands, including programs authorized by the Food Security Act of 1985. OGC assisted the agency in the administration of, the Conservation Stewardship Program, Environmental Quality Incentives Program, the Farm and Ranch Lands Protection Program (FRPP), the Grassland Reserve Program, Wetland Reserve Program, Wildlife Habitat Incentives Program, and the Healthy Forest Reserve Program, including:

- Providing legal counsel and training to NRCS field staffs at two regional training conferences on conservation easement acquisition, management, and protection.
- Advising on the tracking and reporting of ARRA funding under the Emergency Watershed Protection Program.
- Assisting NRCS, Office of Inspector General/USDA and the Department of Justice investigate improper funding arrangements by participating entities in the FRPP.
- Advising NRCS on response actions under the Oil Pollution Act and other authorities to address natural resource protection in the Gulf of Mexico during and following the Deepwater oil spill event.

Pollution Control: The OGC Pollution Control Team (PCT) in support of the Hazardous Materials Management Program, provided legal services for all USDA agency matters related to the Resource Conservation and Recovery Act and Comprehensive Environment Response, Compensation, and Liability Act. The PCT obtained substantial contributions to cleanup costs of more than \$24.6 million. OGC also provided advice on compliance with pollution control standards concerning USDA programs and facilities, and provided advice on hazardous materials liability in real property transactions. Examples included:

- Negotiating the Holden Mine site cleanup, estimated to cost approximately \$100 million, by the responsible party and preparing a cleanup Plan to be issued for public comment during FY2011.
- Committing significant resources in the Tronox LLC bankruptcy matter, recovering over \$8 million in cash and a contingent claim of up to \$80 million in additional recovery by bringing a fraudulent conveyance action against Tronox's parent, Anadarko Petroleum.

LEGISLATION, LITIGATION AND GENERAL LAW

Legislation: During FY 2010, OGC reviewed 100 legislative reports on bills introduced in Congress or proposed by the Administration, and cleared for legal sufficiency written testimony of 615 witnesses testifying on behalf of the Administration before Congressional committees. The Division provided assistance to USDA policy officials in drafting and analyzing legislative proposals and amendments, and reviewed and coordinated the legal review for USDA in the clearance of legislation and ancillary legislative materials. The Division drafted or provided technical assistance in the preparation of bills and amendments for the Secretary, members of Congress, Congressional committees, Senate and House Offices of Legislative Counsel, and agencies within USDA, including the continuing resolutions for the FY 2011 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, the Child Nutrition Reauthorization Act, and the rewrite of portions of the Packers and Stockyards Act.

Litigation: The Litigation Division, in coordination with attorneys from the Department of Justice and other divisions in OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2010, the Litigation Division handled approximately 300 such appellate matters, including 105 new matters opened during this period.

The Litigation Division's responsibilities include reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court and circuit courts. In FY 2010, DOJ and USDA obtained a favorable decision from the Supreme Court in Monsanto Co. v. Geertson Seed Farms, a case involving the Plant Protection Act and the National Environmental Policy Act (NEPA). The decision makes it more difficult for litigants to obtain broad injunctions that impinge upon federal agencies' discretion to take interim action in response to court decisions vacating those agencies' prior regulatory determinations. In addition, DOJ and USDA successfully opposed certiorari in a number of Supreme Court cases, including Rose Acre Farms, Inc. v. United States, a long-running case culminating in a Federal Circuit decision rejecting an egg producer's claim that by imposing regulatory restrictions on the producer to control the spread of Salmonella enteritidis in eggs in the early 1990s, USDA had engaged in a "regulatory taking" of the producer's property, thereby entitling the producer to millions of dollars in compensation under the Fifth Amendment.

The Litigation Division also assisted DOJ in preparing an interlocutory appeal to the Third Circuit in Minard Run Oil Co. v. USFS. The issue on interlocutory appeal is whether the Forest Service, in order to protect surface resources in the National Forest System, has the authority to delay approval of drilling proposals submitted by owners of subsurface mineral rights until after the Service has conducted environmental analysis under the NEPA. Holders of private oil, gas, and mineral rights on the Allegheny National Forest persuaded a district court judge in Pennsylvania to enter a preliminary injunction requiring the Service, without preparing any environmental analysis, to issue Notices to Proceed. Briefing before the Third Circuit is complete and oral argument is scheduled.

The Litigation Division assisted DOJ in successfully appealing Precision Pine & Timber, Inc. v. United States to the Court of Appeals for the Federal Circuit. Precision Pine & Timber (PP&T) filed a \$13 million claim alleging that the Forest Service breached fourteen timber sale contracts held by the corporation when the Forest Service suspended sale operations pursuant to a district court order requiring the Forest Service to consult with the Fish and Wildlife Service pursuant to the Endangered Species Act (ESA). The Federal Circuit reversed the trial court's judgment of liability and vacated the damages award on 13 of the contracts. The Court held that the terms of the ESA were not incorporated into the timber sale contracts, and that the contracts did not warrant that the Forest Service had complied with the ESA's requirements. The Court further held that the plain terms of the contracts expressly gave the Forest Service authority to suspend the contracts to comply with a court order. The Litigation Division assisted DOJ in opposing PP&T's petition for certiorari, which is pending.

Moreover, with the assistance of the Litigation Division, the United States appealed successfully in United States v. Casita Enterprises, persuading the Fifth Circuit to reverse the district court's sua sponte dismissal of the United States' claims against the defendants for damages arising from a fire on a national forest.

The Litigation Division also defends all USDA Judicial Officer decisions enforcing the Packers & Stockyards Act (P&S Act), the Perishable Agricultural Commodities Act (PACA), the Animal Welfare Act (AWA), and the Horse Protection Act. Litigation Division attorneys personally brief and argue these cases before the U.S. Courts of Appeals. During FY 2010, the Litigation Division handled 9 such cases, obtaining favorable results in one, and a favorable decision on the merits and an adverse decision on the sanction in a second. One case was dismissed. Six cases remain pending.

The cases handled by the Litigation Division in FY 2010 include Todd Syverson, d/b/a Syverson Livestock Brokers v. USDA, a P&S Act case in which the Eighth Circuit issued a published decision upholding the Secretary's determination that the petitioner, acting as a livestock market agency and dealer, violated the P&S Act by committing unfair and deceptive practices when he engaged in a practice of undisclosed self-dealing designed to inflate the selling price of cattle he sold on consignment. The Litigation Division also defended USDA in two cases arising out of the PACA. In Perfectly Fresh Farms, Inc., et al. v. USDA, the Litigation Division defended the Secretary's determination that the corporations violated the prompt payment provisions of the PACA, and that the corporations' officers and directors were responsibly connected to the corporations at the time of the violations. The case is fully briefed before the Ninth Circuit. Additionally, the Litigation Division defended USDA in Taylor v. USDA, a PACA case that has been briefed and argued in the D.C. Circuit. The Secretary had determined that the petitioners were responsibly connected to a PACA licensee during the period when the licensee willfully violated the PACA by failing to make full payment promptly for produce purchases. A decision from the court of appeals is pending.

The Litigation Division also is responsible for preparing USDA's official recommendations to DOJ on whether to appeal adverse decisions of various lower courts, or to participate as amicus in Supreme Court or other appellate cases. In FY 2010, the Litigation Division's attorneys prepared 38 such recommendations.

General Law Division (GLD): GLD is responsible for handling on behalf of all of the agencies and offices of the Department the legal work and litigation that arise under the many statutes and regulations that apply generally to all agencies of the Federal Government. These include, but are not limited to, the following: the Federal Tort Claims Act (FTCA), FOIA, the Privacy Act, Federal Advisory Committee Act (FACA), the personnel laws and regulations, the Federal Service Labor-Management Relations Statute, Federal procurement statutes and regulations, and Federal intellectual property statutes. Attorneys in GLD addressed a much larger number of issues concerning the Privacy Act and handled significantly more FOIA cases than in the prior fiscal year. Attorneys provided Privacy Act advice to agency personnel relating to proposed new programs. Significant time was spent advising agency employees tasked with updating and creating new systems of records, including for the forthcoming Agricultural Marketing Service (AMS) Web-Based Supply Chain Management system. The FOIA cases handled by division attorneys were significant because of the increased number and complexity of the cases. The Department prevailed in its interpretation of an Exemption 3 statute (7 U.S.C. 8791(b)) and the withholding of information from the requester pursuant to that statutory provision in Central Platte N.R.D. v USDA, Civ. Action No. 09-3198 (D. Nebraska). That case is currently on appeal before the 8th Circuit Court of Appeals.

Issues associated with e-discovery have increased the work of division attorneys significantly during FY 2010, an area that will grow significantly in FY 2011. GLD hired one new staff attorney with experience in e-discovery issues. GLD has managed e-discovery issues for several cases, including a major case involving employees and contractors from across the Department. Presently, GLD estimates that final production of electronic documents will involve 1000-1500 Department employees. We have also spent a good deal of our time advising on several other e-discovery issues including: the collection and preservation of data for several pending legal matters involving the Forest Service (FS), the implementation of a Department-wide enterprise e-mail system, and general consultation with IT and records management staff throughout the Department regarding strategy and procurement. In October 2010, a congressional panel convened in Pasadena, California, to hear testimony concerning the Forest

Service's (FS) initial response to the 2009 Station Fire. GLD was tasked to provide an attorney as one of the principal advisors to the FS officials, whom the panel summoned to testify. Over the course of several weeks before the hearing, GLD worked very closely with the FS officials to prepare them and to protect the agency's legal position in potential, multi-million dollar FTCA claims.

A substantial amount of legal assistance was provided to USDA agencies giving advice related to the administration of the Fair Labor Standards Act (FLSA), including advice related to a class grievance under the FLSA by a union of USDA employees, and in providing litigation support to the Department of Justice in civil actions under the FLSA against the United States. Significant attorney resources were devoted to giving advice on employment law matters, including labor relations, compensation, scheduling and hiring issues, and in providing litigation support to the Department of Justice in civil actions against USDA involving such issues. GLD also provided significant effort reviewing Departmental regulations and other policy questions in support of the Secretary's cultural transformation initiative and assisting the Office of the Assistant Secretary for Administration in revising the Department's delegations of authority to reflect the Departmental Management reorganization.

GLD spent a great deal of time assisting the National Institute of Food and Agriculture (NIFA) in implementing its numerous program areas. For example, GLD drafted memoranda on the Sun Grant Program, the Biomass Research and Development Program, and use of unobligated funds for the 1890 Institution Capacity Building Grants Program. GLD also reviewed and revised multiple subparts of 7 CFR part 3430 (including review of the Agriculture and Food Research Initiative (AFRI) and Veterinary Loan Repayment Program subparts, and AFRI requests for applications). It also worked on the final rule establishing NIFA and on the Departmental Regulation governing the Continuity of Operations. Further, GLD prepared a memorandum on Dairy Price Mandatory Reporting by the National Agricultural Statistics Service (NASS). The memorandum was followed by meetings with Hill staff to discuss the interplay between NASS and AMS responsibilities.

GLD also supported the Administration's and the Department's commitment to increase the use of prizes and challenges as tools for promoting open government, innovation, and other national priorities. Accordingly, GLD provided advice on the following contests: Apps for Healthy Kids, Recipes for Healthy Kids, and End Childhood Hunger Now. GLD also provided legal review and drafting assistance on the Secretary's Memorandum of Agreement with the National Football League (NFL) to partner for the NFL's "Fuel Up to Play 60" program. GLD provided advice on the intellectual property aspects of Departmental initiatives, including Biopreferred, The Peoples' Garden, Know Your Farmer / Know Your Food, and Apps for Healthy Kids, use of the USDA acronym and symbol, and the renaming of the Food Stamp program as SNAP.

GLD assisted the Litigation Division with USDA's recommendations to DOJ in regard to appellate cases with significant intellectual property issues: Association for Molecular Pathology v. U.S. Patent and Trademark Office (the "Myriad case"), involving the patenting of DNA; and, Stanford University v. Roche Molecular Systems, involving a significant interpretation of the Bayh-Dole Act. GLD also invested significant resources in its successful motion to dismiss novel legal claims against the United States in *Delano Farms Company v. The California Table Grape Comm'n.*, (E.D. Ca.).

CIVIL RIGHTS

The Civil Rights Litigation Division (CRLD) defends USDA in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other Federal statutory and regulatory authorities before the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB), USDA Administrative Law Judges or Federal district court.

The Civil Rights Policy, Compliance & Counsel Division (CRPCCD) is responsible for providing advice and counsel prior to the request for a hearing in employment matters before EEOC. CRPCCD also prepares formal legal opinions on a wide variety of civil rights matters and has the primary responsibility for working with the Office of Adjudication and Compliance to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. CRPCCD also functions as a proactive civil rights office suggesting changes to agency practices in order to reduce discrimination complaint activity, developing action plans in response to compliance reviews, and anticipating areas in which civil rights issues may arise.

In FY 2010, CRLD worked on pending employment class actions such as Clifford Herron, et al., v. Vilsack, Jody Smith, et al., v. Vilsack, Darrell Harley, et al., v. Vilsack, and Joe Sedillo, et al., v. Vilsack. The Jody Smith class action was withdrawn during this fiscal year.

CRLD also defends USDA in Section 741 cases, administrative program discrimination cases, before Administrative Law Judges. During FY 2010, CRLD litigated and settled, respectively, Richard Pearson v. Vilsack and Charles McDonald v. Vilsack, two program discrimination cases before USDA Administrative Law Judges. CRLD continues to coordinate the defense of USDA with Department of Justice (DOJ) in a myriad of program individual cases with numerous plaintiffs and class action cases brought by plaintiffs who allege discrimination in the delivery of USDA direct loan and other programs:

- Chiang, et al., v. Vilsack - Dismissal of class complaint affirmed by the 3rd Circuit;
- Garcia, et al., v. Vilsack, and Love, et al. v. Vilsack - Cases alleging discrimination by FSA against Hispanic and Women farmers and ranchers, respectively; the U.S. Supreme Court denied the petitions for writ of certiorari challenging the D.C. Circuit Court of Appeals and the District Court decisions regarding the denial of class certification; USDA is in the process of creating a claims process to address these and other long standing allegations of discrimination in loan making and loan servicing by women and Hispanics;
- Keepseagle v. Vilsack - In November 1999, Native American farmers and ranchers filed a class action against the Department alleging discriminatory treatment in USDA loan programs and a systematic failure to investigate civil rights complaints. In Keepseagle, the United States District Court certified the case as a class action for injunctive relief purposes. After many years of litigation, plaintiffs and the United States achieved a comprehensive and historic settlement of this action. The settlement agreement provides for a non-judicial adjudication process similar to the model used in the Pigford II agreement, debt relief and loan servicing provisions that will allow successful claimants to continue operating on ancestral lands, and programmatic relief that changes the way that USDA provides services to the current and next generation of Native American borrowers.
- Implementation of the April 14, 1999, consent decree in Pigford/Brewington, the class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs, continues to require significant effort by CRLD. As of December 8, 2010, 69 percent of the 22,721 eligible claims filed to date were decided in favor of the claimant. The government has paid over \$1 billion to prevailing Track A claimants and provided approximately \$40 million in debt relief.

Twenty-four lawsuits (In Re Black Farmers Litigation) with approximately 35,000 plaintiffs have been filed and consolidate in the D.C. District Court (Pigford II) in response to the 2008 Farm Bill, Public Law No. 110-246, § 14012(j)(1), 122 Stat. 1651, 2212 (2008). The Pigford section provides that individuals, who were not allowed to file claims under the Pigford Consent Decree because of untimeliness and have not had decisions on the merits, to seek relief in Federal court. Parties signed a Pigford II settlement agreement on February 18, 2010, and legislation was passed and signed into law on December 8, 2010, appropriating \$1.15 billion for settlement purposes only. The parties must now modify some of the settlement agreement terms in accordance with the legislation, and the settlement agreement will then require Court approval.

Pursuant to Secretary Vilsack's vision to improve USDA's record on civil rights and move USDA into a new era as a model employer and premier service provider, CRLD is working to settle major program and employment civil rights cases including several of the ones identified above.

REGIONAL OFFICES

OGC currently has four regional and thirteen branch offices which provide legal services to numerous USDA agencies with field organizations. Attorneys in the field locations advise USDA officials who have been charged with program implementation duties at the regional, State and local level. Examples of types of litigation and other matters handled by the field include the following:

Eastern Region

American Recovery and Reinvestment Act (ARRA). ARRA funds had a major impact on the work of the Eastern Region. As a result of increased funds in various programs, the Eastern Region saw a significant increase in its legal work, particularly in the following programs:

Rural Development. Eastern Region attorneys provided significant legal resources to assist RD in delivering these funds to provide essential community funding and stimulate the economic development of rural communities.

RUS and RBS. Eastern Region OGC offices assisted with rural infrastructure development and job creation for the American economy by reviewing grant and loan proposals and preparing closing instructions to guide the agency through the legal completion of these transactions.

NRCS. Eastern Region attorneys handled a substantial number of acquisitions under the Emergency Watershed Protection Flood Plain Easement and Wetland Reserve Programs both of which received significant funding from ARRA. This year Eastern Region attorneys received numerous proposed or completed acquisitions of easements from private landowners, for review, negotiation of partial releases, subordination of existing title impediments, resolving title and right-of-way problems and preparing preliminary and final title opinions.

Civil Rights. Eastern Region attorneys continued to provide assistance to all USDA agencies in the Eastern United States in the defense of personnel actions pending before the EEOC and cases filed under Title VII in various Federal district courts. Employment discrimination and programmatic discrimination claims constituted a large and growing segment of the cases handled by the Eastern Region attorneys.

Single-Family Housing. A significant portion of RHS's single-family housing loans are in States served by the Eastern Region. Considerable OGC Eastern Region resources were spent on servicing and liquidating these loans.

Multi-Family Housing. Eastern Region attorneys also dealt with a number of Rural Development's Multi-Family Housing Loan Program issues. The majority of the multi-family housing related legal work done by the Eastern Region offices is reviewing loan proposals and preparing closing instructions to guide the agency through the legal completion of these transactions.

Forest Service Litigation. Eastern Region attorneys served as USDA legal counsel on numerous litigation matters. Many of these cases dealt with challenges to the Forest Service's plan implementations pursuant to the NEPA, NFMA and ESA. In 2010, Eastern Region attorneys successfully settled or won multiple challenges to FS projects brought by Habitat Education Center, Inc., including a challenge to a Canadian pipeline permit.

Oil and Gas and Energy Issues. In FY 2010, Eastern Region attorneys continued to advise and assist the Forest Service with significant decisions involving the ownership of oil, gas and mineral estates. OGC attorneys are assisting in defending multiple challenges to the Forest Service authority to regulate oil and gas activities on national forest lands in Pennsylvania which has the potential to result in a landmark ruling in the area of Federal Supremacy and agency authority under the Property Clause of the Constitution.

Other Forest Service Issues. As urban areas continue to expand towards and interface with National Forests, the Eastern Region continues to see an increase in boundary line disputes, trespasses, title claims and access disputes. OGC attorneys advised the FS on its response to a request to intervene in Vicary et al., v. The Town of Awendaw, a wrongful annexation case in which the Town of Awendaw annexed FS land. Eastern Region also continues to see an increase in the number of applications for special use permits, including permits to locate electrical transmission lines on National Forest System lands.

Farm Program Legal Advice and Litigation. Eastern Region attorneys again provided daily assistance to FSA by processing foreclosure referrals, and reviewing program eligibility criteria and drafting detailed closing instructions for loans administered or guaranteed by those agencies. Attorneys also assisted in defending suits involving farm programs.

RMA. Eastern Region attorneys have continued to see an increase in requests by this agency to assist in its defense in numerous RMA large claim crop loss cases. Derwood Stewart d/b/a Stewart's Nursery & Farm et al. v. FCIC, et al., I and II are two such RMA catastrophic insurance large claim cases involving crop damages and punitive damages of \$6 million and \$3.5 million, respectively.

FNS. Eastern Region attorneys have also seen an increase in debarment cases brought against store owners violating the SNAP regulations by illegally trafficking program benefits. Each office in the Eastern Region has seen an increase in these cases pending in FY 2010. In An Juman Ara and Riaz Ali Shah, d/b/a Food Stop v. United States of America, OGC successfully defended the agency's permanent debarment of a violating retailer. In addition, the Atlanta Regional Office is working with a Task Force in South Carolina that was formed to address criminal violations of SNAP.

Central Region **RMA Litigation**

In a multi-year crop insurance case, a U.S. District Court Judge for the District of Kansas issued an opinion establishing a precedent for defining Good Farming Practices, based upon an argument submitted by a Central Region Attorney (*U.S. v. Miller*). The 8th Circuit ruled favorably on a false claims act case, remanding a summary judgment dismissal of the case to the U.S. District Court for the Southern District of Iowa for trial (*U.S. v. Hawley*). This decision has nation-wide impact allowing use of the False Claims Act against a crop insurance agent who sells federal crop insurance.

FSA/CCC Complex Litigation

A False Claims Act case was filed in connection with 2002 and 2003 Non-Fat Dry Milk drought relief programs (*U.S. v. Carter, Goodwin, et al.*). This case is now in the discovery stage. Potential damages exceed \$5 million. NAD appeals continued to require resources. In a Nebraska CRP contract termination case (*Gadeken*), the agency seeks to recover over \$350,000 in prior contract payments, while denying the producer future participation in USDA programs, based upon the producer's proven history of unauthorized grazing.

NRCS Cases and issues

In a Kansas case, the Agency sought enforcement of its easement rights when a pipeline company installed its line over the easement. Settlement discussions are proceeding, with the NRCS considering whether modification of the easement is authorized if the landowner substitutes other property, or whether the violation can be cured only by removal of the pipeline (*U.S. v. King Farms*). In an Iowa FTCA case, a landowner sought damages for defective design/construction of a dam project constructed by a local watershed district contractor based upon plans designed by NRCS (*Soap Creek*). The U.S. is seeking a dismissal of the case.

With the increased number of NRCS wetlands easements authorized by Congress, the Central Region has seen a large increase in workload in this area of practice. Attorneys from Branch Offices in Little Rock and Temple have assisted NRCS with national training relating to easement acquisition, and OGC attorneys in Kansas City and St. Paul have provided training and oversight for new NRCS Easement Specialists located in those offices.

Rural Development

AARA funding for rural projects greatly increased loan closing review workload for Rural Development. One of the Region's larger projects, for example, was Crosby Hospital in North Dakota which received a \$5.8 million loan. The State of Nebraska was one of the leading lenders in the guaranteed rural housing loan program, with \$93 million loaned in 2009. This portfolio increased demand for legal services in connection with servicing and collection. RUS loan-making and servicing issues also continued to increase, and troubled district delinquencies required extensive legal advice for servicing borrowers with complex municipal financing documents and little real estate security. Multi-Family Housing Rehabilitation Loans continued to increase, and many transfers and assumptions of MFH projects required significant time and OGC resources.

Mountain Region

Roadless Rule Issues. In FY 2010, Mountain Region attorneys continued to assist with the development and negotiation of the Colorado Roadless Rule. Mountain Region attorney's have spent significant time advising the Rocky Mountain region of the Forest Service on handling the oil and gas leases in inventoried roadless areas as well

as in submitting request for Secretarial approval for activities in inventoried roadless areas. Mountain region attorneys have been directly involved in developing litigation positions in Wyoming and California to clarify the applicability of the 2001 roadless rule in the Rocky Mountain States.

Travel Management. Mountain Region attorneys have spent considerable time advising the Forest Service on travel management decisions and responding to administrative appeals. The Forest Service has a deadline for transitioning to the new rule, and this is generating considerable work for both them and OGC. Implementation of the 2005 travel management rule has been controversial in this Region, and there are currently eight lawsuits pending in Utah and Idaho filed by both motorized vehicle user groups and environmental groups. In addition, there are administrative challenges to travel management plans in Colorado, Wyoming, Nebraska and South Dakota. The Denver office is defending a claim by the South Dakota Attorney General that public highways exist along all section lines in the State and cannot be closed to motorized use. The Missoula office is representing the Forest Service in a lawsuit involving an R.S. 2477 assertion by Shoshone County, Idaho. This lawsuit is being pushed by mining companies who want an old road restored to accommodate mining traffic. The Forest Service has constructed an alternative route to the site as the contested road is in an environmentally sensitive area.

Land Exchanges. Mountain Region attorneys have been extensively involved in advising the Forest Service in several legislated land exchanges. These include the Sandia Pueblo Land Exchange settlement with the pueblo over title to approximately 10,000 acres of land on the west side of the Sandia Mountain and the Yavapai Ranch Land Exchange legislation was passed in 2003 and has still not been accomplished. During the past year Mountain Region attorneys have advised the Forest Service on the issue of control over the appraisal process.

NEPA. Mountain Region attorneys continued to handle a wide range of legal issues arising under NEPA. Examples include challenges to Forest Service travel management plans, e.g., Wildlands CPR v. Tidwell; timber sale projects involving extensive NEPA and NFMA challenges, e.g., Alliance for the Wild Rockies v. Cottrell; and wildlife management, e.g., Alliance for the Wild Rockies v. USFS.

Water Rights. Mountain Region attorneys continued to represent the Forest Service in water rights issues. Water rights and water resource developments are also contentious issues in this Region, especially with the number of fish species listed as threatened or endangered under the ESA. The Region has a number of pending civil and administrative water rights cases, and several pending lawsuits concerning water facilities on NFS lands. Some cases challenge regulation of private water facilities by facility owners, and others challenge compliance with environmental laws for Forest Service authorization of such facilities. The Court of Federal Claims recently awarded nearly \$10 million in compensation for an alleged taking of water rights and water facilities as a result of Forest Service regulation. This case is presently on appeal to the Federal Circuit Court of Appeals. The Region also has several outstanding disputes regarding relicensing of hydropower projects and implementation of terms to protect NFS lands.

Energy Development. The four Forest Service regions in the Mountain Region of OGC have substantial programs in mining and oil and gas development. The Ogden office is currently advising the Forest Service regarding two controversial large mines in Idaho (one phosphate mine and one cobalt mine) in the vicinity of large remediation efforts directed at releases from previous mines. Mountain region attorneys are also advising the Forest Service regarding controversial proposed oil and gas development in Colorado, Utah and Wyoming, and coal development in Utah. Several of these minerals projects are in litigation. The Forest Service's Southwestern Region (Region 3) has historically had substantial activity in copper and uranium mining and oil and gas development. The Albuquerque office is currently advising the Forest Service regarding two proposed large copper mines in Arizona (one will be the subject of a legislated land exchange) and the reinitiation of uranium mining in the vicinity of the Grand Canyon in Arizona and traditional cultural properties in New Mexico. Mountain Region attorneys have also spent significant time advising the Rocky Mountain Region of the Forest Service on handling the oil and gas leases in inventoried roadless areas.

Mining. Mountain region attorneys conducted a two week trial in US v. Kelly Armstrong, i.e., the Copar Pumice Mining contest, which challenges the last remaining mining claim in the Jemez National Recreation Area on the Santa Fe National Forest. In another Copar related case which went to the 10th Circuit Court of Appeals, certain mining regulations were interpreted in a case first impression.

Grazing. Livestock grazing is a significant and controversial program in the Forest Service's Intermountain Region (Region 4). Several lawsuits are pending challenging Forest Service authorization of livestock grazing, alleging violation of NEPA, NFMA and the ESA. The Mountain Region of OGC also advises on many challenges from grazing permit holders disputing Forest Service actions to administer their permits, or other actions that reduce opportunities for livestock grazing. The Payette National has recently issued a decision to substantially curtail domestic sheep grazing to avoid risk of disease transmission to bighorn sheep, and National Forests in several states are expected to follow suit. Lawsuits by industry and environmental groups are pending. The Forest Service's Southwestern Region has experienced a series of years with lower than normal precipitation, and has had a large number of challenges to the reauthorization of grazing permits. That region is also currently in litigation in both Arizona and New Mexico over how it is managing grazing related to the critically endangered Mexican wolf. The management of this species in coordination with the U.S. Fish and Wildlife Service is also of great concern to grazing permittees.

Fire. The four Forest Service regions served by the Mountain Region of OGC have active wildland fire programs, which lead to a large number of claims for collection of suppression costs and damages. There are numerous pending suits for collection and several more ongoing investigations. Several million dollars have been recovered in recent years. In Region 4 alone, there are 5 pending suits for collection, 12 pending referrals to the Justice Department, and 8 ongoing investigations.

Pacific Region

Affirmative Fire Claims. The Pacific Region actively pursued cost-recovery actions against parties that were responsible for starting fires on NFS lands. It has represented USDA in affirmative fire cases that have resulted in the recovery of more than \$190 million, including \$30 million during FY 2010. Of the amount recovered, the Forest Service has received more than \$130 million to repair some of the damage caused by the fires. It is using this money to help restore the affected NFS lands, make the lands more resilient to climate change, and enhance water resources. In one case handled by Pacific Region attorneys during the year, the party responsible for starting a fire on the Plumas National Forest paid the United States \$17 million shortly after receiving a bill for \$17 million from the Forest Service. In 2008, this party paid the United States \$102 million for damages resulting from another fire on NFS lands in California. It paid this amount after many years of litigation.

Alaska Subsistence Program. The Pacific Region advised the Federal Subsistence Board on controversial issues regarding subsistence resources for rural residents of Alaska. This work included helping to draft an emergency closure of deer hunting that still allowed for a subsistence priority. The Pacific Region continued to provide assistance to the DOJ in litigation affecting the Federal Subsistence Program, resulting in a favorable district court decision in Katie Johns v. United States, a long-standing case in which the State of Alaska seeks to narrow the jurisdiction over navigable waters within federal reserves.

Civil Rights, Employment Law, and Contract Law. The Pacific Region successfully defended USDA agencies in employment-related litigation before the EEOC, MSPB, and the United States District Courts. Pacific Region attorneys provided USDA agencies with legal advice, case assessments, and settlement recommendations to minimize the risk of liability in employment-related matters and resolve appropriate cases without litigation. Pacific Region attorneys helped defend the Department before the EEOC in the class action litigation entitled Sedillo v. Vilsack. Pacific Region attorneys also successfully defended USDA agencies in contract-related litigation before the Civilian Board of Contract Appeals.

Climate Change. The Pacific Region worked closely with the Forest Service to address issues concerning climate change, including climate change considerations in NEPA analyses and the evolving role of carbon accounting with respect to Forest Service facilities, procurements, and land management projects. The Pacific Region expects to see a significant increase in its work related to climate change.

Farm Loan Programs. The Pacific Region provided legal advice to the FSA regarding projects and loans funded by the ARRA and other statutes. It helped FSA make millions of dollars in loans to family farmers and small farming operations in seven states, and it helped the agency with farm loan programs in the Western Pacific. Pacific Region attorneys helped the FSA recover debt in bankruptcy cases and other litigation matters, and provided advice to the

agency regarding its conservation programs and foreclosure actions.

Grazing. The Pacific Region continued to devote significant resources to grazing matters because environmental groups are filing more lawsuits challenging the Forest Service's grazing program. During Fiscal Year 2010, the Portland office alone worked on eight district court cases involving grazing.

Hydropower. The Pacific Region previously provided legal advice to the Forest Service in the complex negotiations that led to the Klamath Restoration Agreement and the Hydropower Settlement with PacifiCorp. If this settlement is approved by the Secretary of the Interior, it will lead to the removal of four major dams from the Klamath River, and would be the largest dam removal undertaking in United States history. Pacific Region attorneys are helping the Forest Service respond to an increased number of proposals for projects involving alternative sources of energy. In Alaska, for example, there were more than 20 new hydroelectric projects on NFS lands in FY 2010.

Mining. Pacific Region attorneys worked with the Forest Service to address unauthorized mining activities and unauthorized occupancies by helping the DOJ file civil and criminal enforcement actions. The successful prosecutions and civil actions resulted in favorable comments from elected officials, environmental groups, and the Northwest Mining Association, supporting USDA's efforts to address the environmental damages caused by unauthorized mining activities and occupancies.

Natural Resources Conservation Service. Pacific Region attorneys provided advice to the NRCS regarding numerous conservation easement acquisitions, which were funded by the ARRA and other statutory authorities.

Natural Resources Litigation. The Pacific Region provided significant assistance to the DOJ in natural resources litigation, including the lawsuits challenging the 2004 Sierra Nevada Framework, an amendment to the Land and Resource Management Plans for 11 National Forests in California; the lawsuits challenging the LRMPs for the four National Forests in Southern California; the lawsuits challenging a number of the travel management plans in the Pacific Region; the lawsuit challenging the Survey and Management Plan Amendment to the Northwest Forest Plan; the lawsuits challenging the Tongass National Forest LRMP's protection of roadless areas and old-growth reserves; the lawsuit challenging the exemption of the Tongass from the 2001 Roadless Rule; and the lawsuits challenging timber sales in roaded areas of the Tongass.

Pre-Decisional Environmental and Natural Resources Advice. The Pacific Region provided pre-decisional advice to the Forest Service on many significant environmental and natural resources matters to reduce the vulnerability of agency decisions in litigation. This included advice in support of Secretary Vilsack's direction to the Forest Service and Rural Development to develop a strategy to help communities relying on old-growth timber resources of the Tongass National Forest to transition to a more diversified economy. Pacific Region attorneys also provided advice on land and resource management plans, salvage and green timber sales, fuels and hazard reduction projects, and grazing allotments.

Renewable and Alternative Sources of Energy. The Pacific Region played an active role in advising USDA agencies on a variety of renewable energy projects, including projects involving wind, solar, and biomass power generation. For example, Pacific Region attorneys are working with the San Dimas Technology and Development Center on cutting-edge issues concerning the legal requirements applicable to ARRA projects for the construction and deployment of a photovoltaic system that would meet the electricity needs of the facility and produce excess power that could be placed back into the electrical grid. Pacific Region attorneys also provided advice on issues related to the use of woody biomass and related incentive programs available under federal law. The Pacific Region devoted more staff time to helping the Forest Service respond to proposals from power companies seeking to upgrade existing infrastructures on NFS lands and to build major new transmission lines, including providing advice with respect to the Sunrise Powerlink Project on the Cleveland National Forest.

Rural Development. The Pacific Region reviewed and prepared legal documents for grants and loans issued under the ARRA and other statutes, helping USDA agencies obligate several billion dollars in FY 2010. The Pacific Region helped the RUS obtain adequate security for its loans, and issued loan closing instructions for important water and sewer projects. Pacific Region attorneys helped the RHS with the transfer and assumption of multi-family housing properties, and the issuance of multi-family loan closing instructions. They worked with the DOJ to defend

lawsuits challenging the RHS's § 515 Rural Rental Housing Program.

Western Pacific Programs. The Pacific Region has experienced a significant increase in work concerning USDA programs in the Western Pacific Islands. Pacific Region attorneys worked closely with the RD State office in Hawaii regarding major improvement projects in Guam related to the planned U.S. military relocation, and to field office and program activities in Compact nations that were formerly part of the Trust Territory of the Pacific Islands. Pacific Region attorneys also provided legal advice to the Forest Service with respect to proposed conservation easements in American Samoa and the Federated States of Micronesia. The Pacific Region expects to see an increase in work from the Western Pacific Islands as Pacific Region attorneys use their expertise to help USDA agencies address the unique issues posed in these jurisdictions.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Statement of Department Goals and Objectives

The Office of the General Counsel (OGC) was established in 1910, (70 Stat. 742) as the law office of the Department of Agriculture. The mission of OGC is to provide legal services necessary to support activities of the USDA. OGC provides legal services primarily to the Secretary of Agriculture and officials at all levels of USDA as well as members of Congress concerning the programs and activities carried out by USDA.

OGC has one strategic goal and five strategic objectives that contribute to all the Department's strategic goals.

Agency Strategic Goal	Agency Strategic Goal	Agency Objectives	Programs that Contribute	Key Outcome
OGC supports all USDA strategic goals	<u>Agency Goal 1:</u> To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.	<u>Objective 1.1:</u> Review of all draft regulations submitted by USDA agencies, and provisions of advice to USDA officials as to their sufficiency. <u>Objective 1.2:</u> Preparation and review for legal sufficiency of all legal documents, memoranda, and correspondence. <u>Objective 1.3:</u> Conduct of litigation before courts and administrative forums, and provision of litigation support services to the Department of Justice, in connection with litigation arising out of all USDA programs and activities. <u>Objective 1.4:</u> Drafting of legislation, and review for legal sufficiency of legislation reports and testimony, in connection with proposals to establish or amend USDA programs and activities. <u>Objective 1.5:</u> Provision of advice and counsel to USDA officials concerning legal issues arising out of USDA programs and activities.	Legal Services Program	Provide effective legal services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

OFFICE OF THE GENERAL COUNSEL
Key Performance Outcomes and Measures

Selected Accomplishments Expected at the FY 2012 Proposed Resource Level: OGC will provide effective legal services in a responsive manner in order to ensure that agency officials can implement their programs.

Summary of Budget and Performance
Key Performance Outcomes and Measures

Goal 1: To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.

Key Outcome: Provide effective legal services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.

Key Performance Measure: All OGC's Performance Measures are key measures.

Office of the General Counsel
Summary of Budget and Performance
Key Performance Outcomes and Measures

Key Performance Targets:

Performance Measure	FY 2007 Actual	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Target	FY 2012 Target
Performance Measure #1 Percentage of USDA regulations reviewed and cleared within statutory and assigned OGC timeframes.	92% of USDA regulation reviewed and cleared timely	92% of USDA regulation reviewed and cleared timely	94% of USDA regulation reviewed and cleared timely	95% of USDA regulation reviewed and cleared timely	94% of USDA regulation reviewed and cleared timely	95% of USDA regulation reviewed and cleared timely
Performance Measure #2 Percentage of formal legal memoranda and other legal documents prepared within assigned timeframes.	82% of legal documents prepared within timeframes	82% of legal documents prepared within timeframes	84% of legal documents prepared within timeframes	87% of legal documents prepared within timeframes	85% of legal documents prepared within timeframes	87% of legal documents prepared within timeframes
Performance Measure #3 Items of controlled correspondence reviewed for legal sufficiency within assigned timeframes.	92% of correspondence reviewed within timeframes	92% of correspondence reviewed within timeframes	94% of correspondence reviewed within timeframes	95% of correspondence reviewed within timeframes	94% of correspondence reviewed within timeframes	95% of correspondence reviewed within timeframes
Performance Measure #4 Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA's Administrative Law Judge's and Judicial Officer, and other administrative bodies, conducted in effective and timely manner.	82% of pleadings and filings made timely	82% of pleadings and filings made timely	84% of pleadings and filings made timely	86 % of pleadings and filings made timely	84% of pleadings and filings made timely	86% of pleadings and filings made timely
Performance Measure #5 Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in effective and timely manner.	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely
Performance Measure #6 Drafts of legislation in support of USDA goals and priorities, and provision of drafting services when requested by Committees and Members of Congress, provided timely and effectively.	Draft legislation provided timely					
Performance Measure #7 Legislative reports and testimony reviewed within assigned timeframes.	92% of legislative reports and testimony reviewed timely	92% of legislative reports and testimony reviewed timely	94% of legislative reports and testimony reviewed timely	95% of legislative reports and testimony reviewed timely	94% of legislative reports and testimony reviewed timely	95% of legislative reports and testimony reviewed timely
Performance Measure #8 Legal advice and counsel to USDA officials and agencies provided timely and effectively.	Legal advice provided timely					
Total Costs	\$ 39,168,094	\$ 38,883,791	\$ 41,530,346	\$43,392,673	\$ 43,551,000	\$ 46,058,000

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Full Cost by Strategic Goal

Goal 1: To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.

<u>PROGRAM</u>	<u>PROGRAM ITEMS</u>	2010 AMOUNT <u>(\$000)</u>	2011 AMOUNT <u>(\$000)</u>	2012 AMOUNT <u>(\$000)</u>
Legal Services Performance measures apply	Direct Costs	\$40,288	\$40,741	\$43,169
	Administrative Cost	3,105	2,810	2,889
	Total Costs	\$43,393	\$43,551	\$46,058
	FTE's	284	289	298