

2020 USDA EXPLANATORY NOTES – OFFICE OF THE GENERAL COUNSEL

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AGENCY-WIDE

PURPOSE STATEMENT

By General Order of June 17, 1905, the Secretary of Agriculture established the position of Solicitor, thereby consolidating the legal activities of the Department. In 1956, Congress established the position of General Counsel of the Department of Agriculture as a Presidential appointee confirmed by the Senate (70 Stat. 742) (7 U.S.C. 2214). The Office of the General Counsel (OGC) provides legal services and legal oversight required by the Secretary of Agriculture and USDA to achieve the Department's mission and deliver programs and services to the American people. OGC serves as the law office of USDA and provides legal services to officials at all levels of USDA, as well as technical support to members of Congress concerning the programs and activities carried out by USDA.

OGC determines legal policy and directs the performance of all legal work conducted for USDA. All Department legal services are centralized within OGC, and the General Counsel reports directly to the Secretary. 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. Two Deputy General Counsels, five Associate General Counsels, and four Regional Attorneys assist the General Counsel in managing the work of the office.

The headquarters legal staff is divided into five divisions: (1) Marketing, Regulatory, and Food Safety Programs; (2) International Affairs, Food Assistance, and Farm and Rural Programs; (3) Natural Resources and Environment; (4) General Law and Research; and (5) Civil Rights, Labor and Employment Law. The field-based staff is organized into four regions (Eastern, Central, Mountain and Pacific) with 12 offices across the country.

Legal Advice

OGC provides both oral and written legal advice to all USDA officials. OGC also reviews administrative rules, regulations and final agency decisions for legal sufficiency; agency agreements and contracts; and provides counsel about other agency activities.

Legislation and Document Preparation

OGC prepares draft 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 represents USDA in administrative proceedings for the enforcement of rules having the force and effect of law; in quasi-judicial hearings held in connection with the administration of various USDA programs; and defends USDA in civil rights, employment, and labor cases.

Federal and State Court Litigation

OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation involves the defense of claims brought against the USDA. OGC serves as USDA's liaison with DOJ and assists in the preparation of all aspects of the government's case. OGC refers matters involving allegations of criminal conduct 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 General Law and Research represents USDA in certain classes of cases before the United States Courts of Appeals.

Law Library

OGC maintains the USDA Law Library, which, prior to 1982, was housed at the National Agricultural Library.

Geographic Location

The work of OGC is carried out in Washington, D.C. and four regions which include 12 offices as follows:

- Eastern Region: Atlanta, Georgia, Harrisburg, Pennsylvania, Milwaukee, Wisconsin
- Central Region: Kansas City, Missouri, Little Rock, Arkansas
- Mountain Region: Denver, Colorado, Albuquerque, New Mexico, Missoula, Montana
- Pacific Region: San Francisco, California, Juneau, Alaska, Portland, Oregon

As of September 30, 2018, there were 235 permanent full-time employees of which 126 were located in the 88 headquarters office and 109 in the field offices.

OIG and GAO Reports

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

AVAILABLE FUNDS AND STAFF YEARS*Table OGC-1. Available Funds and Staff Years (thousands of dollars, staff years (SY))*

Item	2017		2018		2019		2020	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Salaries and Expenses:								
Discretionary Appropriations.....	\$44,697	235	\$44,546	222	\$45,546	219	\$41,242	206
Transfers Out.....			-400					
Total Available	44,697	235	44,146	222	41,717	219	41,242	206
Lapsing Balances.....	-91		-174					
Obligations.....	44,606	235	43,972	222	41,717	219	41,242	206
Ob. Under Other USDA Appr.:								
Hazardous Materials Management								
Program	1,153	8	887	4	887	4	887	4
FS Non-Litigation Travel.....	6	0	4	0	10	0	10	0
CCC	283	3	245	2	420	4	420	4
Detail Support.....	599	4	502	3	0	0	0	0
Ombudsperson.....	230	1	161	1	161	1	0	0
Civil Rights Reimbursable.....	1,287	9	1,935	13	3,499	21	3,499	21
AMS User Fees	771	5	624	3	624	3	624	3
APHIS User Fees	76	0	60	0	76	0	76	0
GIPSA User Fees	15	0	0	0	15	0	15	0
Total, Other USDA.....	4,420	30	4,418	26	5,692	33	5,531	32
Total OGC.....	49,026	265	48,390	248	47,409	252	46,773	238

PERMANENT POSITIONS BY GRADE AND STAFF YEARS*Table OGC-2. Permanent Positions by Grade and Staff Years*

Item	2017			2018			2019			2020		
	Actual			Actual			Estimate			Budget		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
ES	1	0	1	1	0	1	1	0	1	1	0	1
SES.....	14	4	18	12	4	16	12	4	16	12	4	16
GS-15.....	37	29	66	32	25	57	29	23	52	26	21	47
GS-14.....	60	45	105	64	48	112	57	51	108	57	43	100
GS-13.....	10	6	16	10	3	13	9	2	11	9	5	14
GS-12.....	7	5	12	5	5	10	7	7	14	3	8	11
GS-11.....	9	15	24	7	14	21	9	10	19	12	7	19
GS-10.....	-	-	-	-	-	-	-	-	-	-	-	-
GS-9.....	6	3	9	7	2	9	7	3	10	5	2	7
GS-8.....	4	10	14	5	10	15	6	11	17	7	9	16
GS-7.....	2	3	5	1	3	4	1	2	3	2	4	6
GS-6.....	1	0	1	1	0	1	1	0	1	1	0	1
Total Permanent.....	151	120	271	145	114	259	139	113	252	135	103	238
Unfilled, EOY.....	16	10	26	20	5	25	0	0	0	0	0	0
Total Perm. FT EOY.....	135	110	245	125	109	234	139	113	252	135	103	238
Staff Year Est.....	142	123	265	136	112	248	139	113	252	135	103	238

SHARED FUNDING PROJECTS*Table OGC-3. Shared Funding Projects (dollars in thousands)*

Item	2017 Actual	2018 Actual	2019 Estimate	2020 Budget
Working Capital Fund:				
Administration:				
Material Management Service	\$43	\$33	\$30	\$36
Mail and Reproduction Services	232	291	324	309
Integrated Procurement Systems	10	30	24	25
Procurement Operations Services	42	55	59	53
Human Resources Enterprise Management Systems	2	3	3	3
Subtotal	329	412	440	426
Communications:				
Creative Media & Broadcast Center	14	22	28	35
Finance and Management:				
National Finance Center.....	74	83	80	84
Financial Management Support Services	186	177	180	177
Subtotal	260	260	260	261
Information Technology:				
Client Technology Services	546	728	769	774
National Information Technology Center	42	44	102	102
Enterprise Network Services.....	54	73	241	710
Subtotal	642	845	1,112	1,586
Correspondence Management.....	32	29	44	44
Total, Working Capital Fund.....	1,277	1,568	1,884	2,352
Department-Wide Shared Cost Programs:				
1890's USDA Initiatives.....	11	-	-	-
Agency Partnership Outreach	-	21	21	21
Classified National Security Information.....	3	-	-	-
Continuity of Operations Planning.....	6	-	-	-
Emergency Operations Center	7	-	-	-
Facility and Infrastructure Review and Assessment.....	1	-	-	-
Faith-Based Initiatives and Neighborhood Partnerships	1	-	-	-
Hispanic-Serving Institutions National Program.....	6	-	-	-
Human Resources Self-Service Dashboard.....	2	2	2	2
Human Resources Transformation.....	5	2	-	-
Identity Access Management	19	-	-	-
Medical Services.....	12	10	11	11
Office of Customer Experience.....	-	5	8	10
People's Garden.....	2	1	-	-
Personnel and Document Security	-	6	6	6
Personnel Security Branch	4	-	-	-
Security Detail	10	12	12	12
Security Operations.....	-	29	28	28
TARGET Center	4	4	3	3
USDA 1994 Program.....	2	-	-	-
USDA Enterprise Data Analytics Services	-	-	-	15
Virtual University	6	3	-	-
Total, Department-Wide Reimbursable Programs.....	101	95	91	108
E-Gov:				
Enterprise HR Integration	6	6	6	6
HR Management Line of Business.....	1	1	1	1
Total, E-Gov.....	7	7	7	7
Agency Total.....	1,385	1,670	1,982	2,467

ACCOUNT 1: SALARIES AND EXPENSES

LEAD-OFF TABULAR STATEMENT

Table OGC-4. Lead-Off Tabular Statement

Item	Amount
2019 Annualized Continuing Resolution.....	\$44,546,000
Change in Appropriation.....	-3,304,000
Budget Estimate, 2020.....	<u>41,242,000</u>

APPROPRIATIONS LANGUAGE

The appropriations language follows (new language underscored; deleted matter enclosed in brackets):

Salaries and Expenses:

For necessary expenses of the Office of the General Counsel, [~~\$3,304,000~~] \$41,242,000.

PROJECT STATEMENT

Table OGC-5. Project Statement (thousands of dollars, staff years (SY))

Item	2017		2018		2019		Inc. or Dec.	Chg Key	2020 Budget	SY	
	Actual	SY	Actual	SY	Estimate	SY					
Discretionary Appropriations:											
Legal Services	44,697	235	44,546	222	44,546	219	-3,304	1	-13	41,242	206
Total Appropriation.....	44,697	235	44,546	222	44,546	219	-3,304		-13	41,242	206
Transfers Out:											
Working Capital Fund	-		-400		-					-	
Total Available	44,697	235	44,146	222	44,546	219	-3,304		-13	41,242	206
Lapsing Balances	-91		-174		-					-	
Total Obligations.....	<u>44,606</u>	<u>235</u>	<u>43,972</u>	<u>222</u>	<u>44,546</u>	<u>219</u>	<u>-3,304</u>		<u>-13</u>	<u>41,242</u>	<u>206</u>

Legal Services

Base funds will allow the Office of the General Counsel to continue to provide legal oversight, responsively serve legal needs, and support all activities of the Department.

The funding change is requested for the following items:

- (1) A decrease of \$3,304,000 and 13 staff years (\$44,546,000 and 219 staff years available in 2019) for the Office of the General Counsel consisting of:

- A) A decrease of \$1,830,000 and 13 staff years for legal services.

A decrease of \$1,830,000 and 13 staff years will substantially affect OGC’s ability to provide timely and responsive legal services to support the Department in achieving its core mission. While we will ensure that the quality of OGC’s advice remains high, OGC will curtail lower priority legal services such as client training, drafting regulations and legislative language such as for the Farm Bill, technical assistance, and issuing formal legal opinions. OGC will reduce some legal services in areas such as civil rights, international trade and food assistance programs, natural resources and environment challenges, animal health, food safety programs, procurement and intellectual property. Litigation and litigation support of DOJ will remain high priority. OGC staff will be reduced by 6 staff years in Headquarters and 7 staff years in field office locations.

- B) A decrease of \$1,474,000 in non-salary costs.

OGC will reduce discretionary expenses in several areas. One area is a reduction in travel for non-critical legal services such as client training and in person legal counseling and advice. Telecommunication, IT services, supplies, contractual support, and computerized legal research (WESTLAW/LEXIS) will also be reduced. OGC will scale back on-line legal research services that support litigation, advice, counsel and will eliminate all awards and professional development programs.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND STAFF YEARS*Table OGC-6. Geographic Breakdown of Obligations and Staff Years (thousands of dollars, staff years (SY))*

State/Territory/Country	2017		2018		2019		2020	
	Actual	SY	Actual	SY	Estimate	SY	Budget	SY
Alaska	\$681	4	\$640	3	\$643	4	\$648	4
Arkansas.....	1,130	7	1,012	6	1,116	7	1,121	7
California	2,706	14	2,585	12	2,543	13	2,378	11
Colorado.....	2,189	13	2,067	12	1,764	13	1,604	11
District of Columbia.....	25,067	118	25,592	113	26,535	108	23,855	102
Georgia.....	2,938	17	2,831	17	2,839	17	2,842	17
Missouri	1,830	13	1,804	12	1,810	12	1,814	12
Montana	1,385	8	1,358	8	1,424	9	1,427	9
New Mexico.....	1,103	5	519	4	526	4	530	4
Oregon	1,851	11	1,872	10	1,756	9	1,633	8
Pennsylvania	1,254	8	1,115	8	1,122	8	1,003	7
Texas.....	1,087	7	1,102	7	1,105	7	1,109	7
Wisconsin.....	1,385	10	1,475	10	1,363	8	1,278	7
Obligations.....	44,606	235	43,972	222	44,546	219	41,242	206
Lapsing Balances	91	-	174	-	-	-	-	-
Total, Available.....	44,697	235	44,146	222	44,546	219	41,242	206

CLASSIFICATION BY OBJECTS*Table OGC-7. Classification by Objects (thousands of dollars)*

Item No.	Item	2017 Actual	2018 Actual	2019 Estimate	2020 Budget
	Personnel Compensation:				
	Washington D.C.....	16,175	14,526	14,884	14,309
	Personnel Compensation, Field.....	13,234	13,957	14,301	13,748
11	Total personnel compensation.....	29,409	28,483	29,185	28,057
12	Personal benefits	9,137	8,896	9,429	8,728
13.0	Benefits for former personnel.....	10	13	13	13
	Total, personnel comp. and benefits.....	38,556	37,392	38,627	36,798
	Other Objects:				
21.0	Travel and transportation of persons	169	139	143	120
22.0	Transportation of things	7	10	8	8
23.1	Rental payments to GSA	1,256	1,256	1,328	1,344
23.2	Rental payments to others	125	134	135	135
23.3	Communications, utilities, and misc. charges.....	846	903	916	900
24.0	Printing and reproduction.....	132	133	128	128
25	Other contractual services				
25.2	Other services from non-Federal sources	2,157	2,721	2,271	1,305
25.3	Other goods and services from Federal sources	463	258	265	274
26.0	Supplies and materials.....	761	697	675	205
31.0	Equipment	134	329	50	25
	Total, Other Objects	6,050	6,580	5,919	4,444
99.9	Total, new obligations	44,606	43,972	44,546	41,242
	DHS Building Security Payments (included in 25.3)....	238	247	255	263
	Position Data:				
	Average Salary (dollars), ES Position	\$177,640	\$169,814	\$175,677	\$181,416
	Average Salary (dollars), GS Position.....	\$124,150	\$127,417	\$123,896	\$120,199
	Average Grade, GS Position.....	14.5	14.6	14.4	14.3

STATUS OF PROGRAMS

The Office of the General Counsel (OGC) provides legal services and oversight required by the Secretary and USDA to achieve the Department's mission and deliver programs and services to the American people. OGC provides proactive, accurate, creative and prompt legal services. OGC is committed to developing its employees and to serving its clients in a way that is collaborative, transparent, innovative, fact-based, and technology-enabled.

Current Activities

USDA's lawyers are involved in almost every Departmental activity. They provide day-to-day advice on a broad range of legal issues. On the programmatic side, they do everything from assisting in the development of complex regulations, to serving as counsel for high-value business transactions. OGC attorneys also provide extensive drafting and technical assistance to the Department and Congress on legislative proposals, assist the Department in briefing Congress in response to inquiries, and assist the Department in the development of both internal and external policies. OGC's practice is also litigation intensive. OGC represents or assists in the representation of USDA in disputes in every conceivable tribunal, including administrative bodies, the Federal and State courts and the World Trade Organization. OGC's services also include responding to legal inquiries and preparing formal legal opinions on a broad range of issues relating to the Department's authorizing statutes, as well as laws of general applicability, and constitutional and fiscal law matters. OGC prepares or interprets contracts, mortgages, leases, deeds, and other legal documents, prepares briefs, and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

Selected Examples of Recent Progress

OGC provided extensive advice to FSA and the Secretary in connection with the development of the \$12 billion suite of programs addressing mitigation of damage to agricultural producers arising from tariffs imposed by China and other countries.

OGC provided extensive advice in the development of the Agricultural Trade Promotion Program, a \$200 million export promotion program designed in response to tariffs imposed by China and other countries.

OGC worked closely and effectively with DOJ to defend the agency in a lawsuit challenging an order to re-export twenty tons of corn seed valued at over \$9 million that originated in countries that are prohibited from exporting corn to the United States due to significant pest and disease risks.

OGC devoted significant resources to support a controversial 2018 wild horse gathering on the Modoc National Forest and advised the agency on wild horse and burro management issues in Arizona, Utah, and Montana.

In supporting Departmental and agency procurement actions, GLRD defended the Department in litigation before the CBCA and in over 20 bid protests before the GAO or the United States Court of Federal Claims (COFC). As an example of its efforts, GLRD successfully defended the FS in COFC and then appellate litigation over the contract award for the overhaul of Recreation.gov, the United States' online recreation reservation system.

In FY 2018, OGC reviewed and cleared over 150 PACA reparation decisions that represented over \$3.5M in disputed claims.

Administration and Resources Management

OGC Office of Administration and Resource Management provides administrative support to OGC to provide quality legal services effectively and efficiently. OGC purchased additional laptop computers to replace out of warranty equipment to facilitate the IT modernization and consolidation initiative at USDA. In addition, OGC is in the process of debuting its new case management solution (Matter Center) later this year. Matter Center will increase work productivity for OGC's employees by allowing the integrated use of the Government Community Cloud's O365 applications. OGC also purchased new Video Teleconference equipment for its Portland, OR office to replace an out of warranty unit experiencing technical issues.

Marketing, Regulatory and Food Safety Programs

The Division provides legal advice and litigation support to the Food Safety and Marketing and Regulatory Program mission areas, which agencies include the Food Safety and Inspection Service (FSIS), the Animal and Plant Health Inspection Service (APHIS), the Agricultural Marketing Service (AMS).

Marketing Agreements and Orders, Research and Promotion Programs, Federal Grain Inspection Service, and National Organic Program: OGC provides the AMS with legal support for marketing orders, research and promotion programs, the Federal Grain Inspection Service, and the National Organic Program (NOP), to include formal and

informal rulemaking, and enforcement and defense of these programs. AMS referred nine cases to OGC for administrative action in FY 2018. OGC reviewed for legal sufficiency approximately 113 AMS rulemaking actions in FY 2018. Significant actions included the National Bioengineered Food Disclosure Standard proposed rule, various amendments of the National List of Substances that are allowed and disallowed for use in organic production, and the California Federal Milk Marketing Order. In addition to reviewing and clearing these actions, OGC provided legal review of numerous policy and other documents, including approximately 45 Federal Register notices, as well as daily informal legal advice relating to these programs. OGC attorneys served as agency counsel in 11 Federal court cases involving marketing orders, research and promotion programs, and NOP. These cases involved class action suits for just compensation for raisins held in reserve under the raisin marketing orders, a legal challenge to the reserve requirement provisions of the tart cherry marketing order, a lawsuit alleging that USDA missed the statutory deadline for promulgating the National Bioengineered Food Disclosure Standard rule, a challenge to USDA's approval of the National Pork Board's use of check-off funds to purchase trademarks, a lawsuit challenging the use of assessments collected under the Beef Promotion and Research Act and the Beef Promotion and Research Order by certain qualified state beef councils, and various legal challenges to the NOP's decisions to delay and ultimately withdraw the Organic Livestock and Poultry Practices Final Rule. OGC also provided extensive drafting and technical assistance to the Department and Congress on legislative proposals and assisted the Department in briefing Congress in response to inquiries, including assisting AMS in developing Farm Bill language.

Packers and Stockyards Act (P&S Act)

In FY 2018, OGC filed 29 administrative complaints and referred four new actions to DOJ to enforce the requirements of the P&S Act, which amounted to civil penalties totaling \$377,675. These complaints and actions seek the imposition of cease and desist orders, suspension of registrations, civil penalties and injunctions. OGC assisted DOJ in a lawsuit challenging the withdrawal of a set of rules regarding harm to competition and conduct that would be considered an undue or unreasonable preference or advantage. Additionally, OGC provided technical assistance on amendments to the P&S Act as part of Farm Bill preparation.

Perishable Agricultural Commodities Act (PACA)

OGC supports AMS in its enforcement of the PACA. These efforts can result in the assessment of civil penalties, or suspension or revocation of a license, and the termination of employment with any PACA licensee or individual found to be responsibly connected to a violating entity. OGC received 21 new referrals and filed 22 new administrative enforcement complaints alleging violations of the fair-trade requirements of the PACA. OGC attorneys recently filed an appeal to the Judicial Officer where the Chief ALJ issued an Order, misstating service requirements and imposing new service requirements that are not contained in the Rules of Practice. In addition, OGC resolved and closed a total of 26 PACA enforcement actions, resulting in unpaid sellers receiving several hundred thousand dollars in restitution. In FY 2018, OGC reviewed and cleared over 150 PACA reparation decisions that represented over \$3.5M in disputed claims. Also, in FY 2018, the PACA Division of AMS learned that the Kroger Co. was imposing payment terms on suppliers that required PACA licensees to give up their statutory trust rights in violation of the PACA. OGC advised the PACA Division that Kroger's actions constitute dissipation of the statutory trust and worked with the Division to advise Kroger of that fact. As a result, Kroger issued a letter to its suppliers stating that the 90-day payment terms do not apply to produce transactions, allowing PACA licensees to maintain their trust rights.

Animal and Plant Health Laws and Wildlife Services

In FY 2018, OGC reviewed for legal sufficiency 40 proposed and final rules and 42 notices in support of the APHIS. Many of these regulations were designed to reduce regulatory burden or increase consumer choice, including significant regulations to revamp APHIS' plant pest regulations and the regulations governing the importation of fruits, vegetables and plants for planting in the United States. APHIS also promulgated rules to eliminate quarantines for emerald ash borer and pine shoot beetle. OGC worked closely with APHIS officials in developing a proposed rule to update APHIS' biotechnology regulations in a manner that would withstand legal challenge. OGC worked closely and effectively with DOJ to defend the agency in a lawsuit challenging an order to re-export twenty tons of corn seed valued at over \$9 million that originated in countries that are prohibited from exporting corn to the United States due to significant pest and disease risks. OGC also worked hand-in-hand with DOJ to defend APHIS in a lawsuit challenging an order to re-export a shipment of cargo that was infested with an invasive, destructive plant pest that had never before been found in the United States. We also worked with DOJ to defend a rule allowing the importation of lemons from Argentina, thereby preventing a threatened action against the United States in the World Trade Organization.

Animal Welfare Act (AWA) and Horse Protection Act (HPA)

OGC supports APHIS in its unique Federal role of enforcing the AWA and the HPA through administrative actions. In FY 2018, OGC attorneys obtained favorable orders in over 40 HPA cases, resulting in 31 orders disqualifying respondents from participating in horse shows, exhibitions, sales, and auctions regulated under the HPA for a specified period of time and assessing civil penalties of over \$45,000. OGC successfully resolved cases against three different exhibitors resulting in revocation orders and civil penalties exceeding \$140,000. OGC also provided considerable assistance to APHIS in the development and drafting of proposed rules establishing criteria for de minimus operations and a proposed rule to revamp the licensing process under the AWA.

Food Safety

OGC reviewed and cleared for legal sufficiency over 12 proposed rules, final rules and notices for publication in the Federal Register for FSIS, including significant rules to modernize the inspection process in swine slaughter establishments, to establish new food safety requirements for establishments producing egg products, and to allow the continued importation of *Siluliformes* products valued at over \$1 billion from various countries. OGC successfully represented the agency in an expedited administrative proceeding to withdraw inspection services from a meat processor that had a history of serious and flagrant food safety violations. OGC also referred over ten cases to the DOJ seeking criminal penalties or injunctive relief and worked with DOJ in obtaining favorable consent decisions. OGC provided considerable advice to the agency in connection with jurisdictional issues relating to the development of cell-cultured meat and poultry products and in establishing a waiver process to allow for increased line speeds in poultry plants.

International Affairs, Food Assistance, and Farm and Rural Programs

Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Domestic Commodity-Related Activities: OGC provided extensive advice to FSA and the Secretary in connection with the development of the \$12 billion suite of programs addressing mitigation of damage to agricultural producers arising from tariffs imposed by China and other countries. This included the Market Facilitation Program and the Food Purchase and Distribution Program, conducted under the authorities of the CCC. OGC was also extensively involved in the development of the \$2.36 billion Wildfire and Hurricane Indemnity Program to compensate producers for losses incurred from wildfires and hurricanes in 2017. OGC was instrumental in the development of the Dairy Assistance Program for Puerto Rico, following Hurricane Maria, also under CCC authority.

Foreign Agricultural Service (FAS)

OGC provided extensive advice in the development of the Agricultural Trade Promotion Program, a \$200 million export promotion program designed in response to tariffs imposed by China and other countries. OGC has advised the Department on various World Trade Organization (WTO) and other international matters. This included extensive support in the development of litigation in the WTO in two cases against China. In addition, OGC provided extensive advice on the text of various chapters under consideration in the renegotiation of the North American Free Trade Agreement. These texts include market access, sanitary and phytosanitary measures, and technical barriers to trade. OGC is similarly advising the Department in negotiations with the United Kingdom over transition mechanisms to continue the two countries' mutual organic, food safety and animal and plant disease equivalence determinations and recognitions after Brexit.

Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC)

OGC provided extensive legal advice to RMA and the FCIC Board of Directors regarding new and innovative programs brought before the Board for approval, including a new Dairy Revenue Protection policy and new tree and crop policies. OGC also provided extensive legal services to FCIC such as legal reviews of regulations and program policy and procedures and assisting FCIC in its function as regulators of the Federal crop insurance program.

Food, Nutrition and Consumer Services

OGC provided extensive legal advice to the Center for Nutrition Policy and Promotion on the 2020 Dietary Guidelines for Americans. Issues involved committee funding, candidate nomination, and topic selection in consultation with the U.S. Department of Health and Human Services. In addition, OGC advised the Food and Nutrition Service (FNS) on significant rulemakings involving work requirements for able-bodied adults without dependents and eligibility for nutrition programs based on immigration status. The Supplemental Nutrition Assistance Program (SNAP) and Special Supplemental Nutrition Program for Women, Infants, and Children represent the largest mandatory and discretionary programs of USDA.

Rural Development (RD): OGC provided extensive legal advice to RD on Farm Bill matters, particularly in the area of its Telecommunications Programs. OGC also was instrumental in the development of innovative initiatives to

combat rural opioid misuse, support rural e-connectivity, and implement recommendations of the Task Force on Agriculture and Rural Prosperity.

Natural Resources and Environment

Forest Service (FS)

OGC advised the FS on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). OGC counsels the FS on legal issues arising under laws including the Administrative Procedures Act, the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Healthy Forest Restoration Act, and the Endangered Species Act (ESA) to name just a few. In addition, OGC provided support to FS State and Private Forestry, Business Operations, and Research and Development regarding a myriad of conservation programs. OGC assisted the FS and other USDA offices in drafting legislation, and reviewed pending legislation pertaining to the conservation title of the Farm Bill. OGC also reviewed legislative reports and testimony for congressional hearings, and provided legal advice to the FS regarding law enforcement issues and the Secure Rural Schools Act payments. In the past year, OGC provided legal services to the FS on a wide range of agency activities:

Energy and Mineral Development

OGC provided legal assistance to the FS in several rulemaking efforts intended to expedite energy development and permitting for significant mineral projects. OGC also provided significant assistance to the FS regarding the development of mineral deposits in Arizona, Montana, and Minnesota valued in the billions of dollars.

Infrastructure

OGC provided legal advice to the FS to expedite infrastructure development involving the national forests, especially with regard to expansion of broadband capacity, electric transmission lines, water developments, and contested natural gas pipelines in Virginia and West Virginia.

Regulatory Reform and Forest Planning

OGC assisted the FS in identifying barriers and obstacles to national forest management resulting from obsolete and redundant regulations and directives. OGC played a key role in advising the FS regarding environmental analysis and decision-making reform, including proposed amendments to FS NEPA regulations and directives. OGC provided legal research and informal advice regarding significant land and management plan amendments and revisions, as well as objections concerning plans, projects, and permits.

Litigation

OGC coordinated litigation strategy and assisted in the defense of cases involving roadless area management, timber salvage, mineral development, hazardous fuels reduction, infrastructure projects, and livestock grazing. OGC assisted in the defense of regulations, policies, programmatic forest plans, and most commonly, resource management projects involving vegetation management, livestock grazing, mining and energy development.

Forest and Range Management

OGC provided informal advice concerning shared stewardship and contracting authority, and assisted the FS in the development of Good Neighbor agreements with several States. OGC also provided advice and represented the agency in various administrative forums, including appeals before the Civilian Board of Contract Appeals (CBCA), suspension and debarment proceedings, bid protests before the General Accounting Office (GAO), small business set-aside appeals, and export sourcing area proceedings. OGC devoted significant resources to support a controversial 2018 wild horse gather on the Modoc National Forest, and advised the agency on wild horse and burro management issues in Arizona, Utah, and Montana.

Roadless Area Management

OGC advised the FS and Under Secretary for Natural Resources and Environment concerning the 2001 roadless rule and rulemaking petitions involving Utah, Wyoming, and Alaska.

Wildlife Management

OGC advised the FS and supported DOJ in defending litigation of wildlife management direction in land management plans, *e.g.*, Sage Grouse plan amendments.

Recreation

OGC provided advice to the FS on maintaining access for hunting and fishing, recreation fees, recreation residences, special use administration, ski area permitting, travel management, and numerous other issues arising from

recreational use of NFS lands. OGC also assisted in the drafting of key notices, directives, and policies concerning FS recreation programs.

Lands, Water, Wilderness and Wild and Scenic Rivers

OGC assisted the FS in resolving land adjustment issues by providing legal advice concerning disposal of real property (administrative sites and easements), land exchanges, and acquisition of rights of way and other real property interests. OGC provided litigation support for water adjudications, and advice regarding management of wilderness and wild and scenic river corridors.

Natural Resources Conservation Service (NRCS)

OGC provided support for the agency's natural resource conservation activities on private or non-Federal lands, including legal advice regarding the administration of programs such as the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Agricultural Conservation Easement Program, and the Regional Conservation Partnership Program. In addition, OGC provided significant legal services related to proposed legislation, including the Farm Bill.

Environmental Law

OGC provided litigation support and legal advice for all USDA agency matters related to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act, including the Holden Mine in Washington, and Viburnum Trend in Missouri. OGC advised and represented the Department and individual agencies regarding compliance with pollution control standards and continued to provide advice on hazardous materials liability arising out of real property transactions.

Deepwater Horizon Oil Spill

OGC advised the Department on major projects intended to implement the Deepwater Horizon consent decree. OGC also provided informal advice to senior USDA leadership in connection with the Gulf Coast Ecosystem Restoration Council, which selects and implements Gulf of Mexico ecosystem restoration projects.

Real Property Matters

OGC worked closely with USDA agencies that manage real property assets on a variety of legal issues relating to land ownership transactions and stewardship responsibilities. OGC provided 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.

General Law and Research

Appellate Litigation

The General Law and Research Division (GLRD), in coordination with attorneys from DOJ and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2018, GLRD consulted on 122 such appellate matters and prepared 31 appeal recommendations for DOJ's consideration.

FY 2018 GLRD coordinated USDA's participation in a notably high number of cases where the United States Supreme Court sought the views of the Solicitor General, including: *Association des Eleveurs de Canards v. Becerra* (addressing a challenge brought by foie gras producers and sellers to the State of California's ban on the sale of products involving forced feeding); *Missouri v. California* (addressing a challenge brought by the State of Missouri against the State of California's Proposition 2, which prescribes cage-size requirements for egg-laying hens); *Herrera v. Wyoming* (addressing whether a federal treaty that gave the Crow Tribe a "right to hunt on the unoccupied lands of the United States" protected the Tribe's right to harvest elk in a National Forest even when the harvest violated state game laws); *Green Valley Special Utility District v. City of Cibolo, Texas* (examining the rights of a public utility district that is the holder of a USDA water utility loan to preclude a city from providing its residents with sewer service in that district); and *Atlantic Richfield Co. v. Gregory A. Christian, et al.* (examining whether federal environmental law bars or preempt state-law restoration claims). In addition, GLRD coordinated with DOJ regarding USDA's interests relating to *Raymond J. Lucia Industries, Inc., and Raymond Lucia v. SEC*, in which the Supreme Court considered the application of the Appointments Clause to enforcement proceedings presided over by administrative law judges.

GLRD is assisting DOJ in an affirmative appeal before the D.C. Circuit in *Humane Society v. Perdue* concerning payment for the trademark "Pork, The Other White Meat." GLRD is assisting DOJ's defense of the Secretary's position in *Organization for Competitive Markets v. USDA*, regarding the establishing of criteria to define "undue or unreasonable preference or advantage" under the P&S Act. GLRD is assisting DOJ in *State of Alaska, et al. v. Perdue*, where Alaska is challenging USDA's Roadless Rule. GLRD is continuing to assist DOJ defend the

Secretary's position in *Animal Legal Defense Fund et al. v. USDA, et al.*, with respect to contentions that USDA violated FOIA's affirmative disclosure requirements by removing from its public website various Animal Welfare Act records. GLRD is assisting DOJ in *Center for Biological Diversity v. U.S.F.S.*, defending the FS's decision not to regulate the use of lead ammunition on NFS lands in Arizona. GLRD is assisting DOJ in *Cowpasture River Preservation Assoc., et al., v. FS et al.*, which challenges permitting decisions relating to construction of segments of the Atlantic Coast Pipeline.

GLRD defends most USDA Judicial Officer decisions that enforce the P&S Act, PACA, AWA, and the HPA, and that are appealed to the Federal courts of appeals. GLRD attorneys brief and argue these cases before the courts of appeals. During FY 2018, five petitions for review of the Judicial Officer's HPA decisions were filed before the Court of Appeals for the D.C. Circuit, and one was filed before the Court of Appeals for the Sixth Circuit. Because each petition challenged the constitutionality of the appointment of the presiding ALJ pursuant to the Supreme Court's decision in *Raymond J. Lucia Industries, Inc., and Raymond Lucia v. SEC*, GLRD assisted DOJ's Civil Appellate Division in litigating federal cases.

GLRD is responsible for handling transactional, counseling and litigation issues that arise throughout the Department and its agencies; for example, GLRD advises agencies and offices regarding the Department's legal issues and litigation relating to realignment of the Department, the Farm Bill, procurements, and fiscal law. In addition, GLRD assisted with responses to information requests from Congress.

GLRD provides the primary legal support for Departmental Management (DM) and for the Research, Education and Economics (REE) mission area. For DM, GLRD provided legal guidance in support of the Secretary's general efforts to reorganize the Department, specific efforts to establish the Office of Partnerships and Public Engagement and create the Farm Production and Conservation (FPAC) Mission Area, and other matters. GLRD assisted DM and FPAC leadership with organizing funding and staffing for the FPAC business center. GLRD also is supporting the Secretary's goal of the proposed realignment of the Economic Research Service (ERS) within the Office of the Chief Economist and relocating ERS and National Institute of Food and Agriculture outside the National Capital Region. GLRD supports other matters involving agriculture-related legislation and litigation.

GLRD is supporting the transfer from the Department of Homeland Security to USDA of operational responsibility for the National Bio and Agro-Defense Facility, including operational planning and future operations of the facility.

In supporting Departmental and agency procurement actions, GLRD defended the Department in litigation before the CBCA and in over 20 bid protests before the GAO or the United States Court of Federal Claims (COFC). As an example of its efforts, GLRD successfully defended the FS in COFC and then appellate litigation over the contract award for the overhaul of Recreation.gov, the United States' online recreation reservation system.

For AMS, GLRD attorneys have responded to emergency inquiries regarding the use of funds for emergency food distribution under the Stafford Act after Hurricanes Florence, Harvey, Irma, and Maria.

GLRD also handles on behalf of the Department's agencies and offices the legal work and litigation that arises under the Federal Tort Claims Act (FTCA), the Freedom of Information Act (FOIA), the Privacy Act (PA), and the Federal Advisory Committee Act.

GLRD continued handling, and supporting DOJ, in many FOIA cases, involving complex disclosure and privacy issues concerning numerous agencies and private parties, and a multitude of records. Plaintiffs in these cases target records relating to important policies, programs, and leadership throughout the Department. Over the past year, FOIA suits pending increased by 45 percent, FTCA suits pending increased by 55 percent and FTCA administrative claims pending increased by 17 percent. To mitigate the amount of future FOIA litigation, GLRD reviewed and cleared determinations on 107 FOIA appeals in FY 2018, reducing the appeals backlog by 35 percent. The proliferation of FOIA requests government-wide indicates that GLRD's workload likely will continue to increase substantially in the coming year. Despite the burgeoning FOIA caseload, and finite resources, GLRD had numerous successes in FY 2018, including the satisfaction of a court order to complete production in a multi-agency, multi-year case, thus avoiding threatened sanctions.

GLRD is currently defending USDA, and assisting DOJ with judicial litigation, in numerous cases involving complex and sensitive issues. Examples of FTCA matters being handled by GLRD include fires in National Forests and elsewhere, such as the Pautre Fire and the Dog Head Fire cases where plaintiffs are seeking over \$150,000,000 in damages. Among successes in FY 2018, GLRD prevailed on a motion to dismiss in *Hurst v. U.S.*, a wrongful death suit against the FS in which Plaintiff was seeking a \$16 million judgment. In *Fountain v. United States*, GLRD prevailed on a motion to dismiss in a case seeking \$10 million. In addition, GLRD secured appellate affirmance of

its complete victory in defending against an FTCA suit arising out of 25 tort claims, seeking a total of over \$500 million in damages based on the 6/10/10 flood at the Albert Pike Recreational Area in Arkansas in which 20 lives were lost.

GLRD continued to provide legal oversight in the development of the Department's cybersecurity, defensive counterintelligence, insider threat detection initiatives and other sensitive national security issues. GLRD participated in Federal interagency initiatives in these areas, particularly with respect to biodefense, counterintelligence, and human trafficking. GLRD provided advice and guidance on sensitive matters before the Committee for Foreign Investment in the United States, helping to ensure the security of the nation's agricultural resources. GLRD continued to advise the department on numerous cybersecurity and information technology law issues, interpreting and advising on statutes, regulations, and executive orders concerning national security related programs and activities. GLRD also served as the department's legal advisor to the Office of Homeland Security's Continuity of Operation (COOP) program providing legal advice and guidance to the department during the planning and execution phases of the largest intergovernmental continuity exercise. For natural disasters such as the recent hurricanes in the Carolinas and Florida, GLRD coordinated and oversaw OGC's legal support to the department's and FEMA's response efforts.

GLRD provides legal services in patent, trademark, and copyright law for a variety of programs throughout the Department. This includes legal oversight and advice in the transfer of USDA technology to the private sector – oversight and advice on patent procurement, employees' invention rights, assignments, licenses, Federal Register notices, and infringement upon USDA patents. In FY 2018, GLRD's patent workload increased significantly following a reorganization of the FS's technology transfer program. This required GLRD's direct handling of 10 filings and 11 ongoing prosecutions of FS domestic and foreign patent applications.

GLRD also advises on intellectual property (IP) rights issues arising in connection with numerous other USDA activities, including alleged USDA infringement of others' trademarks and copyrights, the proper use of and protection for USDA trademarks, and the proper use of copyrighted material. GLRD also files and maintains USDA trademark registrations at the U.S. Patent and Trademark Office (PTO). In FY 2018, GLRD conducted due diligence studies and applied for PTO registration of a number of symbols being considered for USDA's important National Bioengineered Food Disclosure Standard. Other USDA insignia, symbols, and marks, on which GLRD advised in FY 2018, included the USDA Symbol, the 4-H Club name and emblem, Smokey Bear, the FS Insignia, and FS scenic and historic trail symbols.

GLRD also advises on patent rights, copyright, data rights, trade secrecy, confidentiality, and publicity rights in transactional matters. In FY 2018, GLRD provided IP advice in negotiations with Google amending Google's Developer Distribution Agreement. This enables FNS and other USDA agencies to place USDA software applications (Apps) in Google Play stores. GLRD also provided IP advice in reviewing the standard Apple Developer Agreement to enable FNS to launch its high profile Food Buying Guide Mobile App.

Civil Rights, Labor and Employment Law

OGC represents USDA in issues involving civil rights and employment, human resources, labor relations, and employee relations, including litigation and policy work. OGC 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. OGC defends the Secretary's interests before the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the U.S. Office of Special Counsel, and before numerous administrative tribunals referenced earlier. OGC also assists DOJ in defending the Secretary in similar claims brought in Federal district and appellate courts, and the Court of Federal Claims. The Civil Rights, Labor and Employment Law Division (CRLELD) performs the litigation work and policy work in these subject areas, subject to certain criteria.

CRLELD Litigation Section: CRLELD's Litigation Section defends the Secretary 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. CRLELD was responsible for handling over 400 complaints of employment and program discrimination, and complaints related to labor and employee relations decisions, in various forums across the country. CRLELD also represented the Secretary's interests in resolutions and investigations of Office of Special Counsel complaints filed by employees and former employees alleging whistleblower allegations. The Litigation Section was responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices, and held numerous in-person and video teleconference training sessions for both Agency representatives before EEOC and MSPB, and managers throughout USDA to ensure that the

Department's vision of civil rights continues to be accomplished. A summary of some of the major work of the Litigation Section is summarized below:

Defending All EEOC Complaints Involving FS

The Litigation Section absorbed 60 EEOC administrative cases and appeals involving USDA's FS over the course of the Fiscal Year that will result in the full complement of over 150 EEOC cases involving this Agency being handled by the Litigation Section.

Administrative Employment Discrimination Class Actions

The Litigation Section continues to represent the Secretary in six pending EEOC administrative class actions of employment discrimination, ensuring the proper representation of management at RD, APHIS, FSIS, FS, and DM. Specifically, the Litigation Section represents USDA in a formal class complaint filed by a group of USDA employees alleging that the agency discriminated against deaf and hard of hearing employees Department-wide based on physical disability when on May 19, 2014, the sign language interpreting services for deaf and hard of hearing in USDA's National Capital Region were decentralized. The Litigation Section is also representing USDA in a formal class complaint alleging discrimination and harassment (nonsexual) based on mental disability (dysnomia) and reprisal (current EEO activity) by the Office of Human Resources Management. The Litigation Section is defending the Secretary at the certification level in an administrative class action brought by current and former employees and applicants who applied for positions in the Office of the Assistant Secretary for Civil Rights (OASCR) and/or requested disability accommodations, who allege that they were discriminated against based on their disabilities. The Litigation Section is also defending the Secretary at the certification stage in a putative administrative class action brought by female firefighters in Region 5 of the FS, who allege that the Agency discriminates on the basis of gender in reassignment, hiring and promotions, among other alleged actions. The Litigation Section is defending the Secretary at the certification stage in claims of class discrimination on the basis of age via denial of overtime by APHIS since December 2012, due to collective bargaining agreement changes regarding work schedule assignments. The Litigation Section is also defending the Secretary at the certification stage on claims that FSIS' policy of prohibiting employees working in alternative duty assignments from working overtime or holidays violates the Rehabilitation Act.

Judicial Employment Class Actions

The Litigation Section assisted DOJ in defending claims by non-exempt Fair Labor Standards Act (FLSA) employees, government-wide, who worked during the furlough period in October 2013. The Litigation Section also worked with DOJ to resolve a putative class action by FS Foresters in the Pacific Northwest Research Station who were not paid overtime in accordance with the FLSA and Federal Employees Pay Act. The resolution was for back pay only and resolved a long-standing dispute in the most economical and fiscally sound manner possible for the Federal Government.

Program Discrimination Individual Federal District Court Cases

The Litigation Section assisted DOJ in the successful dismissal of several such long-standing cases. In Gail Chiang and Curneal Watson District Court case based on allegations of housing discrimination in the Virgin Islands, the Litigation Section worked with DOJ to secure a dismissal of this long-standing matter for failure to prosecute after plaintiff failed to respond to Motion to Dismiss. In Eddie Slaughter FSA program discrimination complaint, the appeals court affirmed the dismissal of a District Court case based on arguments identified and briefed by the Litigation Section, agreeing that a breach of contract cannot be based on 1099 forms, and that the complaint was untimely raised. In the Rodney Bradshaw District Court case alleging discrimination in FSA loan making, the Litigation Section guided DOJ and FSA to a low-cost resolution of a long-standing case and convinced DOJ to avoid settlement language that left open the possibility of filing claims should Congress pass certain legislation. In the Estate of Matthew Grant program discrimination judicial appeal related to alleged discrimination in FSA loan servicing, the Litigation Section assisted DOJ in briefing opposition to the appeal. In the George and Patricia Hildebrandt FSA program discrimination District Court case, the Litigation Section provided immediate guidance and responses regarding issues that came up related to a settlement in principle involving loan restructuring, including making certain that the FSA standard loan restructuring documents reflected the terms of the settlement agreement, and finalizing loan closing details. The Litigation Section helped DOJ secure dismissal of the Robert Bean, et al. FSA loan program discrimination case.

Program Discrimination Group and Class Action Cases

The Litigation Section worked on ongoing implementation issues involved in former class action complaints and group complaints of program discrimination:

Hispanic and Women Farmers Claims Process (HWFCP)

In *Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack* - Hispanic and Women farmers and ranchers alleged discrimination by FSA in loan making and loan servicing, respectively. After denial of class certifications, USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination as an alternative for individual plaintiffs to litigate their cases in Federal court. Over 50,000 claims were filed by individuals participating in the non-judicial process. Approximately 22,000 claims were adjudicated, and the claims process provided over 3,000 payments to prevailing claimants in 2016. All of the collateral cases challenging the HWFCP have now been dismissed by numerous Federal district courts. The Litigation Section continued to work with DOJ to defend the Secretary in the appeal of a dismissed class action by African American farmers alleging that they were excluded from the process without any briefing at all.

Keepseagle et al. v. Vilsack (Keepseagle)

In November 1999, Native American farmers and ranchers filed a class action suit alleging discriminatory treatment in USDA loan programs and a systematic failure to investigate civil rights complaints. In *Keepseagle*, the 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, which the court approved. All payments have been made and all debt relief provided to prevailing class members; and OGC assisted with programmatic relief implementation that was required by the *Keepseagle* settlement agreement. In 2017, OGC worked with DOJ, Class Counsel and the lead Class Agent's counsel on the ultimate resolution of the distribution of *cy pres* funds. In 2018, the Litigation Section worked with DOJ to ensure the proper distribution to appropriate beneficiaries of a portion of the *cy pres* funds.

Pigford II

In 1997, a group of African-American farmers brought suit against the USDA for alleged discrimination on the basis of race in the *Pigford v. Glickman (Pigford)* case. The parties entered into a Consent Decree, which established a claims process where approximately 22,721 farmers were eligible to participate and timely filed claims in the claims process. There were over 66,000 late claims in *Pigford*. Of the approximately 66,000 applicants that petitioned to participate late in *Pigford*, only 2,500 were approved to proceed through the *Pigford* claims process. In June 2008, Congress enacted legislation which afforded judicial recourse for late *Pigford* filers in the U.S. District Court for the District of Columbia. The legislation further provided that the Secretary of USDA was to make \$100,000,000 available for payments and debt relief in satisfaction of the claims filed pursuant to the legislation. The Claims Resolution Act of 2010 appropriated an additional \$1.15 billion in monetary relief for the agreement, consolidated under the name *In re Black Farmers Discrimination Litigation (BFDL)*. In 2018, the Litigation Section ensured that the \$12 million remaining in *cy pres* funds were properly distributed to appropriate beneficiaries with court approval, without incurring additional costs to USDA.

CRLELD Policy Section

The Civil Rights, Labor and Employment Law Policy Section (Policy Section) is responsible for providing advice and counsel prior to the request for a hearing in employment matters before the EEOC. The section is also responsible for advising agencies on a variety of labor relations matters, including grievances, Unfair Labor Practice allegations, midterm bargaining, and impact and implementation bargaining. The Policy Section provides legal sufficiency reviews of Final Agency Decisions issued by the Assistant Secretary for Civil Rights in employment and program civil rights complaints, including decisions rendered in the farm and housing loan programs under the Equal Credit Opportunity Act. The Policy Section also prepares formal legal opinions on a wide variety of civil rights, labor, and EEO matters and has the primary responsibility for working with the Office of Adjudication to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. In addition, the Policy Section functions as a proactive civil rights office providing training on a variety of civil rights and employment issues, suggesting changes to agency practices to reduce discrimination complaint activity, developing action plans in response to compliance reviews, and responding to changes in the law. The Policy Section serves as the primary office for addressing internal labor, personnel, and EEO matters within OGC.

OASCR and Departmental Re-organization of Civil Rights

The Policy and Litigation Sections worked closely with OASCR to develop a plan and roll out strategy to restructure OASCR and centralize civil rights offices from the agency level to the Mission Areas. The plans approved by USDA leadership involved employee engagement and Congressional notification that will result in streamlining processes, elimination of duplicative work, and defined structure. As part of this plan, the Policy Section supervised the development of the Mission Areas' review and determination of the number of civil rights staff necessary to perform

functions. These efforts were part of the Secretary's OneUSDA initiative, and will strengthen civil rights policy implementation and enforcement at the Department.

Departmental Directives Review

The Policy Section along with the General Law Division performed a comprehensive review of all regulations and departmental directives in civil rights, EEO, labor, and employment as part of the Secretary's OneUSDA reform initiative. The analysis identified several directives that were eliminated or modified to streamline processes, increase efficiency, and eliminate redundancies. In particular, the Policy Section helped to draft Secretarial Memoranda and Departmental Regulations addressing personnel settlements, contracts with outside counsel and labor engagement with unions.

Title IX and Religion and Applicability to USDA Assisted Programs

The Policy Section took the lead on revising USDA's Title IX enforcement regulations at 7 C.F.R. Part 15a to remove inconsistencies with the Department of Education and DOJ. The revisions brought USDA in compliance with DOJ Common Rule for Title IX issued in 2000. This also raised issues by stakeholders and members of Congress with Title IX applicability to rodeo events segregated by gender that are financially supported by land grant institutions funded by USDA. The Policy Section also provided advice to FNS to address religious issues that were raised by organizations and individuals regarding program and service delivery.

Review of USDA Labor Contracts

Under the Secretary's OneUSDA Labor Foundation Principles, the Policy Section continued to review agency labor contracts and other issues to ensure that all notice requirements were met and agencies were consistent in addressing issues with the unions for which there were departmental policies such as telework.

OGC Collective Bargaining Agreement

The Policy Section provided significant legal support to the OGC management team as it undertook a year-long effort to negotiate a new Collective Bargaining Agreement with the OGC employees' union (AFGE Local 1106), and drafted numerous submissions to Federal Labor Relations Authority, Federal Service Impasses Panel, and an Arbitrator for a national grievance.

The Policy Section also provided guidance and review for more than 100 disciplinary and performance actions, more than 40 settlement agreements, and more than 45 legal opinions and policy documents.

Regional Offices

Attorneys in OGC's field offices play a critical role in the Department, advising the USDA agencies and officials charged with implementing programs at the regional, State and local levels. Attorneys in all the Regional Offices handled a wide variety of matters critical to the Department's programs and goals. In addition, the varied resources and needs of the clients in each of OGC's field regions require OGC to provide a host of legal services to its client agencies and officers, specific to each region of the country.

Eastern Region

OGC's Eastern Region provides legal support and advice to USDA agencies in 29 eastern States along with the U.S. Territories of Puerto Rico and the U.S. Virgin Islands. The Eastern Region handles commercial work, such as contracts, real estate lending, bankruptcies and foreclosures; environmental and conservation work; as well as torts, subpoenas, civil rights cases and EEOC litigation. It represents all agencies of the Department. During FY2018, this Region opened 3,408 matters including thousands of requests for legal opinions and 1,318 judicial litigations. They also completed and closed 3,098 matters.

Oil, Gas and Mineral Development

OGC Eastern Region assisted the FS in upholding its forest plans and projects in numerous litigation matters, including continuing to defend the FS in several matters challenging its oversight of minerals and oil and gas development on NFS lands including developments in Minnesota, Virginia and West Virginia. In *Center for Biological Diversity v. U.S. F.S.*, OGC is currently defending Bureau of Land Management's authorization of the development of all federal oil and gas minerals in the Wayne National Forest's Marietta Unit, on approximately, 40,000 acres. OGC also defended the FS in *Duhring v. USDA* against a claim for damages for alleged tortious interference with the plaintiff's private mineral development activities, as well as damages for alleged property loss. The Court found in favor of the government and dismissed the case. The plaintiff appealed the decision.

Preparation and Review of Farm Bill Legislation

The Eastern Region worked extensively on the Farm Bill with both the House and Senate Agriculture Committees as well as NRCS. This work included drafting, redrafting and reviewing legislation; providing oral and written advice to the House and Senate Agriculture Committees, as well as reviewing Questions for Record, Official Correspondence, Federal Register Notices, and Legislation documents.

FNS

USDA aggressively implemented a number of measures to reduce the prevalence of trafficking in the SNAP, more than half of the resulting cases were brought in the Eastern Region. OGC Eastern Region attorneys assisted FNS in upholding the integrity of SNAP by assisting in litigations handled by the U.S. Attorney's Offices (USAO) to defend retailers' challenges to the Agency's disqualifications. The Eastern Region also assisted in coordinating FNS retailer disqualification cases brought throughout the U.S. by a Florida-based law firm that has developed a boutique practice bringing Federal Court challenges to the Agency's disqualifications.

RMA/FCIC

Over the last several years, numerous Government agencies, including the Office of Inspector General, DOJ, Internal Revenue Service, Federal Bureau of Investigation, and the Kentucky Insurance Department, in conjunction with RMA, were involved in tobacco fraud investigations in Kentucky. These investigations included 34 individual agents, adjusters and policyholders in 13 counties in Kentucky and Tennessee for 2009-2015 tobacco crops. OGC Eastern Region assisted in these cases including litigating *Roger Birge v. RMA*, and *Larry Walden v. RMA*.

The Eastern Region also assisted in upholding the integrity of the Crop Insurance program, assisting in various litigations challenging the Agencies' decisions to deny numerous claims. In *JPM-RDP Farms LLC v. USDA*, JPM filed three notices of loss with the Insurance Company, reporting that excess rain and/or freeze caused its tomato crops to fail, asserting losses over \$1 million. RMA issued a decision denying JPM's insurance claims. JPM appealed the RMA's decision to National Appeals Division (NAD). The Agency was upheld at NAD, and JPM appealed to District Court. OGC Eastern Region assisted the USAO in successfully defending this case. The District court upheld the Agency's decision to deny the claim.

The Eastern Region also assisted the Kentucky USAO in prosecuting a False Claims Act case against a Kentucky farmer that collected indemnity payments for crop years 2013, 2014, and 2015, because of fraudulent claims. A settlement resulted in the defendant paying restitution of the total amount collected.

The Eastern Region also worked with the RMA Compliance office to review and issue legal sufficiency review of Final Agency Determinations seeking to recover indemnity overpayments against insurance companies.

EEOC Litigation Project

OGC Eastern Region attorneys successfully defended USDA agencies in employment and program-related discrimination litigation before the EEOC, dedicating two full-time staff to handle these cases. Additionally, Eastern Region attorneys assisted the USAO's in defending such cases in U.S. District Courts.

Federal Tort Claims Act

Attorneys in the Eastern Region adjudicated over 75 Federal Tort Claims Act claims seeking damages against USDA agencies of more than \$1,800,000.

Rural Development

OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 1,300 direct loans and in handling a large volume of related litigation, such as bankruptcies and foreclosures that arose out of such a large loan portfolio.

FSA

OGC Eastern Region provided legal advice to FSA on loan issues and bankruptcies in almost 500 matters. It also assisted DOJ in defending FSA in cases challenging its implementation of program funds.

Central Region

OGC's Central Region provides legal advice and services to all USDA agencies in a 13 state region that is home to America's most productive farmland and is comprised of thousands of rural communities. The Central Region is also

home to many large urban centers¹ that obtain supplemental food assistance from USDA. All these USDA activities require legal advice and representation provided by the attorneys and staff in the Central Region.

FSA and related CCC Programs

In the Central Region, FSA has over \$5 billion in outstanding direct loans and guaranteed loans. Home to over 1 million farms, with farm product sales totaling almost \$180 billion, the Central Region is an integral part of the U.S. economy. FSA, as part of that equation, requires significant legal counseling and representation for these loan, commodity and farm programs. OGC's Central Region also provides legal advice to the staff that administers the United States Warehouse Act, protecting grain depositors at federally licensed facilities. OGC was instrumental in providing legal advice on environmental issues related to expanding poultry and swine operations in Arkansas. In protecting the agency's financial interests, OGC represented FSA in several complex bankruptcies and adversary proceedings, such as in *Taylor*, where OGC represented the agency in a complex adversary proceeding regarding lien priority with a competing creditor. In *Sandahl Farms* OGC successfully represented the agency in District Court regarding a payment limitation case where the producer engaged in a scheme or device to evade the payment limitation rules.

NRCS

OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Program. In the case of the Drummond Flats Wildlife Management Area, OGC assisted NRCS in a joint acquisition project (NRCS and the State of Oklahoma) that encompasses 7,000 acres. The topography and prevalence of wetlands in Arkansas and Louisiana required significant amounts of legal assistance in those acquisitions. In defensive work, OGC defended NRCS in *Choctaw Transportation Company, Inc.*, (Raccoon Island Project), where the contractor sought an additional \$4.1 million for work on a coastal restoration project. OGC successfully defended the NRCS declination at the CBCA and in the Federal Circuit. In *Berning*, OGC is defending the agency's Environmental Quality Incentives Program from a challenge by producers who seek payments for a practice they allegedly previously completed.

Risk Management Agency and Federal Crop Insurance Corporation

OGC provided legal assistance to RMA, FCIC and its various components that operate in the Central Region. Compliance cases involving the approved insurance providers and their administration of the crop insurance program required legal assistance to ensure re-insurance is proper for those policies. The Eighth Circuit affirmed the *Bottoms Farms* case, where OGC successfully defended the RMA decision that required levees to be built immediately following rice planting. In *Struss*, OGC is defending a novel attack by a producer who is seeking to have a nationwide interpretation overturned, claiming the interpretation is incorrect as to his situation.

RD, Rural Housing, Rural Utilities and Rural Business Programs

The Central Region continued its efforts to assist the RD mission area in making and servicing loans to rural areas of the United States. RD's housing programs continue to need legal services to defend the Agency's financial interest in bankruptcy, as well as claims made by other creditors and adjoining landowners. Water and sewer environmental programs require significant legal advice to facilitate loan making and servicing actions. In the Community Facilities Program, OGC provided legal advice to facilitate loans and grants on several faith-based projects, which provide additional obstacles to conform to constitutional restrictions. Rural medical facilities continue to apply for loans to build and upgrade their facilities and equipment. New hospital construction is up, but OGC is also working on documents related to financing computers and other necessary state-of-the-art equipment (e.g., MRI) required in the modern practice of medicine. In re: *Iron County*: OGC is advising RD in a Chapter 9 Bankruptcy where the security is a revenue bond for approximately \$7 million, but where decreased revenue threatens the sustainability of the hospital and the likelihood of repayment from revenues. Other OGC legal work includes issues related to debt restructuring, parity transactions, revitalization loans, as well as pre-payment issues related to multi-family borrowers phasing out of the program. This year the multi-family program required a high volume of legal work to facilitate numerous transfers and assumptions. Rural Utilities also required significant amounts of legal work this year. In *City of Cibolo, Texas v. Green Valley Special Utility District*, OGC provided legal advice on a case pending before the United States Supreme Court involving two competing utility districts that implicates USDA's programs and collateral.

¹ For example: Chicago, St. Louis, Houston, Dallas/Fort Worth/Arlington, San Antonio, Indianapolis, El Paso, Nashville, Memphis, Oklahoma City, Kansas City, Omaha/Council Bluffs, Minneapolis/St. Paul, Tulsa, New Orleans, Wichita, Austin.

FS

OGC's Central Region assisted the FS with a wide variety of matters including environmental consultations, land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, title claims and fire cost recovery actions. Challenges brought by adjacent landowners involving boundary disputes, title challenges, title questions and access rights continued to necessitate legal representation for the Central Region. For the Cherokee National Forest, the Central Region is providing legal advice on an acquisition that is complicated because the boundary spans two states, and the consideration is part donation, part federal grant and part appropriated funds. In *Barron vs. United States*, OGC defended a *Bivens* Action brought against FS employees, and other government employees, involving illegal bear hunting and illegal possession of firearms within the Ouachita National Forest. OGC also provided litigation support in several fire recovery tort claims, such as in *Reed (also known as the Gatlinburg Fire)* where a forest fire engulfed substantial parts of this Tennessee resort and vacation town.

Employment and Discrimination Cases

The Central Region defended USDA in litigation in various forums brought by employees alleging various types of workplace discrimination. In addition, the Central Region defended the Department in programmatic cases brought by program participants alleging various types of discrimination or mistreatment. EEOC defensive work has added to the caseload for attorneys, as OGC transitions to handling more of these cases directly. In District Court, the Central Region successfully defended actions brought against the agency involving cases of non-selection, or alleging various types of discrimination based on disability, reprisal, sex (gender), race and/or age. In *Kinzie* OGC successfully defended an assertion of age discrimination and reprisal, retaliatory hostile work environment and constructive discharge. In *Claborn-Welch*, the Central Region is defending the agency against an action brought by a former employee who claims that the agency failed to accommodate her disability when it discontinued her full-time telework. In *Jones*, OGC is defending an EEOC decision that found no discrimination, but where the Plaintiff also now alleges various violations, including retaliation based on his numerous prior EEOC complaints spanning over a decade.

FNS SNAP

Legal advice and representation in the Courts for the FNS and SNAP requires OGC litigation support. Store owners challenged actions brought by FNS to disqualify their stores or to assess a civil monetary penalty in transfer of ownership cases. In the *Fannin Food Mart* case, OGC defended a rare challenge to the amount of a civil penalty assessed by the Agency. In *Portland Food Mart*, OGC is defending a challenge to a three-year suspension imposed as a reciprocal suspension because of the retailer's suspension from the WIC program. In other cases, OGC worked to sustain cases that challenged the ALERT systems, which uses complex algorithms to detect abusive transactions. Examples include *Sairavi Inc.*, and *Tawakal Halal LLC* cases. In cases like *Cicero Gas and Food, Inc.*, coordinated nation-wide challenges brought by a Plaintiffs' attorney also increased the complexity and added to the discovery responsibility in defending SNAP cases.

Miscellany

In *Meza*, OGC is defending the agency's financial interests in a complicated auto accident involving numerous different insurance carriers, but where rental car companies have primary responsibility. The National Animal Disease Center and the National Bio-Agri Defense Facility are in the Central Region, and necessitated legal assistance involving procurement of electrical supply and territorial disputes with a municipal power company. OGC advised ARS about an environmental issue when a septic tank at an ARS research facility malfunctioned resulting in raw sewage spillage. These activities all require the legal assistance of the attorneys and staff in the Central Region.

Mountain Region

OGC's Mountain Region provided legal support and advice to USDA agencies in 12 States in the Rocky Mountain and western area of the country.

FS Programs

The majority of legal challenges to FS i.e., proposals to harvest timber, implement projects to reduce the threat of wildfire and restore forest health, authorize private parties to mine, extract oil and gas, construct energy infrastructure and water developments, and operate recreational facilities, are brought under the NEPA, the NFMA and the ESA. The Mountain Region of OGC provided extensive advice to the FS regarding compliance with these and other laws in furtherance of the priorities of the Secretary of Agriculture and the Chief of the FS, and assisted DOJ in defense of over 100 pending cases. The majority of FS litigation cases in the Mountain Region involved FS proposals to harvest timber or treat forest vegetation, authorize livestock grazing, authorize mining and mineral development activities, and manage the motor vehicle transportation system of roads and trails. As the FS undertook

revision of its Forest Plans for each National Forest under new rules, OGC was instrumental in advising the FS regarding compliance with these laws.

Water Rights

Many uses of NFS land are dependent upon water and water rights, and OGC assisted the FS to acquire and protect water rights necessary for National Forest purposes. The Mountain Region of OGC represented the FS in administrative water rights proceedings in Nevada, Arizona, New Mexico, Idaho Montana, and Utah. OGC also worked with DOJ in judicial water rights proceedings to acquire and protect water rights administered by the FS for National Forest purposes. OGC assisted the FS in assuring that authorized users of the national forests who use water are in compliance with state law water rights requirements. Finally, OGC assisted the FS in evaluating private claims of water rights that are located on or affect NFS land to assure that such private water rights are respected.

Mining and Energy Development

OGC advised the FS regarding several controversial proposed oil and gas development projects on NFS land in Colorado, Utah and Wyoming; coal development in Colorado, Wyoming, and Utah; and mines and proposed mining projects throughout the Region, including proposed copper and uranium mines in Arizona and New Mexico, phosphate and cobalt mines in Utah, a proposed molybdenum mine in Colorado, and proposed silver mines in Montana.

Wildlife Management

There has been a recent trend in lawsuits seeking to compel the FS to regulate wildlife management activities traditionally administered by the States. OGC advised the FS and assisted DOJ in litigation concerning: collection of wildlife data by the State of Idaho in wilderness areas that requires helicopter landings in wilderness; private sponsorship of hunting contests when some hunters might take game on national forests; transplantation of mountain goats by the State of Utah on State land, where transplanted goats may eventually wander onto a national forest; winter feeding of elk by the State of Wyoming on national forests; use of lead projectiles by hunters in Arizona; and potential impacts to bighorn sheep from diseases transmitted by domestic sheep permitted on national forests. For the most part, OGC and DOJ have been successful in preserving the traditional role of states in the management of wildlife populations.

Grazing and Range

OGC continued to provide extensive advice and litigation support to the FS regarding its ongoing efforts to reconcile its authorization of livestock grazing with its obligations to protect endangered and sensitive species including bullhead trout, bighorn sheep, and the New Mexico meadow jumping mouse

Fire

The four FS regions served by the Mountain Region of OGC have active wildland fire programs, which led to a large number of claims for collection of fire suppression costs and damages totaling in excess of \$50 million. Numerous cost collection suits are pending, and OGC routinely assists the FS with administrative cost collection efforts. The FS entered comprehensive agreements with state and local governments to allocate wildland firefighting responsibilities and share costs with OGC assistance in negotiating and drafting agreements.

Real Property

Federal agencies are required by law to obtain approval of title from their Departmental Counsel when acquiring land or interests in land. OGC assisted the FS and agencies such as the ARS in acquiring title to real property to support their programs by evaluating and approving title to land to be acquired. OGC also assisted agencies that hold title to real property, such as the FS and ARS, in protecting and defending title and boundaries. Many trespass claims by and against the United States were resolved with the assistance of OGC before legal action was filed, and many of the lawsuits filed were settled quickly with OGC assistance. Where title disputes could not be resolved by settlement, OGC assisted the DOJ in defending and prosecuting quiet title and trespass actions.

Hazardous Materials Cleanup and Cost Recovery

OGC provided extensive advice relating to hazardous materials cleanup on NFS lands and recovery of costs from potentially responsible parties.

Commercial and Assistance Programs

OGC provided legal advice to, RMA, FSA, RD, and NRCS for hundreds of loan, grant, crop insurance, and conservation easement transactions during the past year. OGC handled a range of litigation including defending NRCS eligibility determination for the conservation easement program (*James Day v. NRCS*), and NRCS wetland determinations (*Foster v. Vilsack*). OGC assisted DOJ in defending food stamp fraud determinations by FNS.

Tort Claims

Attorneys in the Mountain Region adjudicate administrative claims under the Federal Tort Claims Act under \$500,000. Most claims are in the range of \$2,500 to \$25,000. The Mountain Region adjudicated over 50 cases.

Pacific Region

OGC's Pacific Region provides legal representation and advice to USDA agencies and officials in the states of Alaska, Washington, Oregon, California, Hawaii, Nevada, and Idaho, as well as in American Samoa, Guam, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.

Alaska Subsistence Program

The Pacific Region plays a unique role in advising the Alaska Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. In FY 2018, the Pacific Region provided advice to the FS on a wide range of topics, including the delegation of the Board's authority to FS officials to issue closure orders regarding the hunting of deer and other wildlife species; proposals to raise the harvest limit on Tongass wolves, which recently have been considered for listing under the ESA; and how to comply with a court order to identify areas of marine submerged lands that were improved and therefore reserved from conveyance to the State of Alaska at statehood.

Contracts and Contract Disputes

The Pacific Region advises USDA agencies concerning contracts and contract disputes, including procurement contracts, stewardship contracts, cooperative agreements, and leases and licenses. When USDA contracts are the subject of disputes, Pacific Region attorneys provide first-chair representation of USDA before the CBCA and support to DOJ in litigation before the Court of Federal Claims and the Federal Circuit Court of Appeals.

Crop Insurance

The Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. During FY 2018 and 2019, the Pacific Region continued to represent RMA in a multi-million dollar crop insurance case.

Employment Law

The Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment-related cases before the EEOC and the Federal courts. For example, Pacific Region attorneys continue to provide legal representation in the *Bush* class action and provide legal advice to the FS regarding claims brought by female firefighters.

Energy

The Pacific Region continues to help the FS respond to a large number of proposals for hydropower and other alternative energy projects. In Alaska, for example, there are more than 20 proposed hydroelectric projects on NFS lands. The Pacific Region also advises USDA agencies on wind, solar, and biomass renewable energy projects.

Farm Loan Programs

The Pacific Region drafts and reviews legal documents and provides advice to FSA regarding loans to family farmers and small farming operations. Pacific Region attorneys help ensure that FSA's use of taxpayer funds complies with applicable legal requirements and that security interests FSA obtains to secure repayments are valid and enforceable. Pacific Region attorneys also provide advice and representation to FSA in borrower default and bankruptcy situations. In these cases, the Pacific Region helps FSA enforce its security interests and recover debts owed to the United States.

Fire Cost Recovery

The Pacific Region plays an active and highly effective role in helping the FS recover damages it incurs fighting human-caused wildfires. Pacific Region attorneys work with the FS to account for fire-cost expenditures and in calculating damages to FS facilities and natural resources. In many cases, Pacific Region attorneys then work closely with DOJ to recover the damages. The Pacific Region has helped the United States recover more than \$500 million in fire cost recovery cases.

FNS

The Pacific Region handles a significant number of FNS SNAP cases in which storeowners are seeking judicial review of their disqualification from the Program. Pacific Region attorneys defend these cases and have worked with FNS and DOJ to create model responses to written discovery and develop consistent litigation strategies. In FY

2018, the Pacific Region presented deposition training for FNS employees in response to the growing demand for depositions of FNS employees.

Lands Transfers

The Pacific Region provides advice and reviews legal documents relating to many transfers of interests in land either from or to the United States. Pacific Region attorneys ensure that these transactions comply with legal standards and that the interests of the United States are protected. During FY 2018, the Pacific Region handled a number of significant lands transactions, including the conveyance of 5,527 acres of land, valued at more than \$8 million, from a timber company to the FS as part of the fire cost recovery compensation stemming from the Moonlight Fire settlement; the third phase of acquisition of lands (an additional 6,080 acres for \$4.2 million) that will result in the largest transfer in FS history of lands from a private inholding into a National Monument in Alaska; and the initial implementation of a massive land exchange with the State of Alaska that Congress legislated in FY 2017.

Land Management Decisions and Litigation

The Pacific Region advises three FS Regions, including 39 National Forests, with respect to a wide range of public land management decisions. For example, in the policy arena, Pacific Region attorneys are engaged in the FS's national effort to streamline compliance with environmental laws to increase the pace and scale of important forest management across the country. In the litigation arena, the Pacific Region has taken the lead in successfully defending projects using the new statutory authority to improve forest health using a categorical exclusion for the prevention and treatment of insect and disease tree mortality. In FY 2018, the Pacific Region successfully defended several FS timber harvest and forest thinning projects designed to reduce the threat of catastrophic wildfires in the West; these successes are resulting in more treatment on the ground, reduced threats to the National Forests and nearby communities, and decreased litigation.

Law Enforcement Assistance

The Pacific Region plays an important role in advising the FS on law enforcement issues. During FY 2018, the Pacific Region reviewed and advised the FS on hundreds of Forest Orders, which prohibited specified conduct on NFS lands. In addition, the Pacific Region advised the FS on law enforcement issues relating to unauthorized occupancy of these lands. Pacific Region involvement helped ensure that law enforcement activities and prosecutions were handled appropriately.

Legislative and Congressional Affairs

The Pacific Region provides advice to USDA client agencies concerning proposed legislation and inquiries from Members of Congress. For example, during FY 2018, the Pacific Region advised the FS in response to a Congressional request regarding adoption of a broader interpretation of the Alaska National Interest Lands Conservation Act (ANILCA) to allow families to transfer ownership of private cabins in the Tongass National Forest to subsequent generations. The Pacific Region also advised the FS about its response to Questions for the Record posed by the U.S. Senate Energy and Natural Resources Committee related to subsistence hunting and fishing under ANILCA and land acquisition issues involving Alaska Native corporations, communities, and veterans.

Mining and Minerals

The Pacific Region helps the FS address controversial issues regarding mining on NFS lands, including defense of environmental challenges to FS decisions to allow proposed mining activities and enforcement of mining laws and regulations. The Pacific Region has played an instrumental role in defending states' rights to regulate use of suction dredges in mining operations.

RD

In FY 2018, the Pacific Region provided legal advice to the RD mission area with respect to hundreds of loans and grants totaling more than \$1 billion. During FY 2018, the Pacific Region began providing advice for RD national loan committee consideration regarding major proposed financing projects, including a proposed \$450 million California water project. Pacific Region attorneys support RD programs and protect the government's interests by analyzing loan instruments, assessing the adequacy of loan security, and preparing detailed loan closing instructions. The Region also provides advice and representation to USDA agencies with respect to delinquent loans, bankruptcy, and debt collection.

Special Use Permits

The Pacific Region provides advice to the FS on a wide range of special use permits authorizing individuals and entities to engage in specified activities on NFS lands. Special use permit issues are often controversial and the Pacific Region provides representation to the FS when litigation is filed. Special Use Permit issues of particular note

in FY 2018 included issues regarding renewal of the permit authorizing Nestle Waters to extract water from the San Bernardino National Forest and a challenge to the FS's issuance of a special use permit to the Navy to conduct electronic warfare activities on NFS lands.