

2018 President's Budget
Office of the General Counsel

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OFFICE OF THE GENERAL COUNSEL

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.

Description of Programs:

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
Temple, Texas

Mountain Region:

Denver, Colorado
Albuquerque, New Mexico
Missoula, Montana

Pacific Region:

San Francisco, California
Juneau, Alaska
Portland, Oregon

As of September 30, 2016, there were 253 permanent full-time employees of which 130 were located in the headquarters office and 123 in the field offices.

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

OFFICE OF THE GENERAL COUNSEL

Available Funds and Staff Years (SYs)

(Dollars in thousands)

Item	2015 Actuals		2016 Actuals		2017 Estimate		2018 President's Budget	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
	Salaries and Expenses:							
Discretionary Appropriations.....	\$44,383	221	\$44,383	227	\$44,299	236	\$42,970	222
Lapsing Balances.....	-1,064	-	-186	-	-	-	-	-
Obligations.....	43,319	221	44,197	227	44,299	236	42,970	222
 Obligations under other USDA appropriations:								
Hazardous Materials Management								
Program.....	1,150	8	1,153	8	1,153	7	1,153	7
FS Non-Litigation Travel.....	50	-	13	-	13	-	13	-
CCC.....	332	3	326	3	419	3	326	3
OCFO WCF	7	-	5	-	-	-	-	-
Detail Support.....	276	2	248	2	253	2	-	-
Ombudsperson.....	189	1	178	1	244	1	-	-
Civil Rights Reimbursable.....	740	6	1,068	8	1,611	10	1,873	13
AMS User Fees.....	652	5	647	5	773	6	773	6
APHIS User Fees.....	76	-	76	-	63	-	63	-
GIPSA User Fees.....	15	-	14	-	15	-	15	-
Total, Agriculture Appropriations..	3,487	25	3,728	27	4,544	29	4,216	29
Total, OGC.....	46,806	246	47,925	254	48,843	265	47,186	251

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff Year Summary

Item	2015 Actual			2016 Actual			2017 Estimate			2018 President's Budget		
	Wash.			Wash.			Wash.			Wash.		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	13	4	17	14	4	18	14	4	18	14	4	18
GS-15.....	36	29	65	33	25	58	36	29	65	35	25	60
GS-14.....	57	49	106	58	45	103	62	49	111	64	51	115
GS-13.....	8	-	8	9	2	11	6	5	11	9	5	14
GS-12.....	6	5	11	4	5	9	7	5	12	4	5	9
GS-11.....	4	21	25	6	13	19	9	18	27	7	14	21
GS-10.....	2	-	2	2	-	2	-	-	-	-	-	-
GS-9.....	6	8	14	6	5	11	6	3	9	6	3	9
GS-8.....	4	7	11	4	8	12	4	10	14	4	9	13
GS-7.....	1	10	11	1	6	7	2	3	5	1	3	4
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	1	-	1	1	-	1	-	-	-	-	-	-
Total Perm. Positions.....	140	133	273	140	113	253	148	126	274	146	119	265
Unfilled, EOY.....	-18	-14	-32	-	-	-	-5	-4	-9	-10	-4	-14
Total, Perm. Full-Time Employment, EOY.....	122	119	241	130	123	253	143	122	265	136	115	251
Staff Year Est.....	130	116	246	134	120	254	143	122	265	136	115	251

OFFICE OF THE GENERAL COUNSEL

The estimates include appropriation language for this item as follows (new Language underscored; deleted matter enclosed in brackets):

Salaries and Expenses:

For necessary expenses of the Office of the General Counsel, [\$44,383,000] \$42,970,000

Lead-Off Tabular Statement

Current Law

Budget Estimate, 2018.....	\$42,970
2017 Annualized Continuing Resolution.....	<u>44,299</u>
Change in Appropriation.....	<u><u>-1,329</u></u>

Summary of Increases and Decreases - Current Law

(Dollars in thousands)

	2015	2016	2017	2018	2018
	<u>Actual</u>	<u>Change</u>	<u>Change</u>	<u>Change</u>	President's
					<u>Budget</u>
Discretionary Appropriations:					
Office of the General Counsel.....	\$44,383	-	-\$84	-\$1,329	\$42,970

Project Statement

Adjusted Appropriations Detail and Staff Years (SYs)

(Dollars in thousands)

Program	<u>2015 Actual</u>		<u>2016 Actual</u>		<u>2017 Estimate</u>		<u>Inc. or Dec.</u>		<u>2018 President's</u>	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Discretionary Appropriations:										
Legal Services.....	\$44,383	221	\$44,383	227	\$44,299	236	-\$1,329 (1)	-14	\$42,970	222
Lapsing Balances.....	-1,064		-186		-		-		-	
Total Obligations.....	<u>44,383</u>	<u>221</u>	<u>44,383</u>	<u>227</u>	<u>44,299</u>	<u>236</u>	<u>-1,329</u>	<u>-14</u>	<u>42,970</u>	<u>222</u>

OFFICE OF THE GENERAL COUNSEL

Project Statement

Obligations Detail and Staff Years (SYs)

(Dollars in thousands)

Program	2015 Actual		2016 Actual		2017 Estimate		Inc. or Dec.		2017 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Obligations:											
Legal Services.....	\$43,319	221	\$44,197	227	\$44,299	236	-\$1,329	(1)	-14	\$42,970	222
Lapsing Balances.....	1,064	-	186	-	-	-	-	-	-	-	-
Total Appropriation.....	44,383	221	44,383	227	44,299	236	-1,329		-14	42,970	222

Justification of Increases and Decreases

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.

- (1) A decrease of \$1,329,000 and 14 staff years (\$44,299,000 and 236 staff years available in 2017) for the Office of the General Counsel consisting of:

The funding change is requested for the following items:

- (a) An increase of \$738,000 for pay costs, (\$192,000 for annualization of the fiscal year 2017 pay raise and \$546,000 for the anticipated fiscal year 2018 pay raise.) This increase is needed to support estimated staffing levels to meet the demands for OGC services. Approximately 86 percent of OGC's budget is expended in support of personnel salaries and benefits, which leaves no flexibility for absorbing increased costs for pay or any other salary adjustments. OGC can absorb such increases by reducing staff, or reassessing its operating requirements for travel, training, equipment, maintenance of equipment, departmental assessments, law library purchases, and supplies that comprise only 14 percent of the overall budget.
- (b) A decrease of \$1,433,000 and 14 staff years in legal services. A decrease of \$1,433,000 and 14 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 10 staff years in Headquarters and 4 staff years in field office locations.
- (c) A decrease of \$634,000 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.

OFFICE OF THE GENERAL COUNSEL

Geographic Breakdown of Obligations and Staff Years
(Dollars in thousands and Staff Years (SYs))

State/Territory	2015 Actual		2016 Actual		2017 Estimate		2018 President's Budget	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Alaska.....	\$634	4	\$642	4	\$668	4	\$675	4
Arkansas.....	954	7	1,012	7	1,020	7	1,027	7
California.....	4,067	15	2,805	14	2,893	14	2,763	13
Colorado.....	2,348	12	2,646	13	2,486	13	2,492	13
Georgia.....	2,569	16	2,552	17	2,760	17	2,778	17
Missouri.....	1,403	11	1,617	11	1,729	13	1,734	13
Montana.....	1,467	7	1,304	8	1,318	8	1,325	8
New Mexico.....	1,003	6	870	6	1,008	8	717	6
Oregon.....	1,586	9	1,743	10	1,843	11	1,854	11
Pennsylvania.....	1,224	8	1,182	8	1,252	8	1,153	7
Texas.....	976	6	955	6	1,048	7	1,056	7
Wisconsin.....	972	8	1,436	9	1,497	10	1,504	10
District of Columbia.....	24,116	112	25,433	114	24,844	116	23,892	106
Obligations.....	43,319	221	44,197	227	44,366	236	42,970	222
Lapsing Balances.....	1,064	-	186	-	-	-	-	-
Total, Available.....	44,383	221	44,383	227	44,366	236	42,970	222

OFFICE OF THE GENERAL COUNSEL

Classification by Objects

(Dollars in thousands)

	2015	2016	2017	2018
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's Budget</u>
Personnel Compensation:				
Washington D.C.....	\$13,757	\$14,677	\$15,329	\$15,143
Field.....	13,218	14,104	14,728	14,548
11 Total personnel compensation.....	26,975	28,781	30,057	29,691
12 Personnel benefits.....	8,271	8,831	8,998	9,532
13.0 Benefits for former personnel.....	32	10	10	10
Total, personnel comp. and benefits.....	35,278	37,622	39,065	39,233
Other Objects:				
21.0 Travel and transportation of persons.....	269	267	149	90
22.0 Transportation of things.....	6	7	5	5
23.1 Rental payments to GSA.....	1,530	1,479	1,349	1,298
23.2 Rental payments to others.....	123	129	130	132
23.3 Communications, utilities, and misc. charges...	902	800	701	790
24.0 Printing and reproduction.....	95	116	121	121
25.2 Other services	3,664	2,458	1,697	778
25.3 Other goods and services from Federal sources	167	447	317	303
26.0 Supplies and materials.....	715	709	715	195
31.0 Equipment.....	570	163	50	25
Total, Other Objects.....	8,041	6,575	5,234	3,737
99.9 Total, new obligations.....	43,319	44,197	44,299	42,970
DHS Building Security Payments (included in 25.3)...	\$167	\$273	\$273	\$273
Position Data:				
Average Salary (dollars), ES Position.....	\$172,571	\$174,086	\$170,387	\$176,925
Average Salary (dollars), GS Position.....	\$113,579	\$116,572	\$124,758	\$128,425
Average Grade, GS Position.....	14.3	14.3	14.5	14.6

OFFICE OF THE GENERAL COUNSEL

Shared Funding Projects

(Dollars in thousands)

	2015	2016	2017	2018
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's Budget</u>
Working Capital Fund:				
Administration:				
HR Enterprise System Management.....	-	\$2	\$2	\$3
Procurement Operations.....	30	31	42	55
Material Management Service Center.....	38	50	43	33
Mail and Reproduction Management.....	235	262	232	291
Integrated Procurement System.....	7	10	10	16
Subtotal.....	310	355	329	398
Communications:				
Creative Media & Broadcast Center.....	30	42	14	25
Finance and Management:				
Financial Management Services.....	155	167	186	174
National Finance Center.....	82	77	74	67
Subtotal.....	237	244	260	241
Information Technology:				
Client Technology Service.....	436	300	546	505
National Information Technology Center.....	30	44	42	44
Enterprise Network Services.....	14	71	54	57
Subtotal.....	480	415	642	606
Correspondence Management.....	20	25	32	29
Total, Working Capital Fund.....	1,077	1,081	1,277	1,299
Department Shared Cost Programs:				
1890's USDA Initiatives.....	8	9	11	10
Classified National Security Information.....	3	2	3	2
Continuity of Operations Planning.....	6	6	6	6
Emergency Operations Center.....	6	7	7	6
Facility and Infrastructure Review and Assessment.....	1	1	1	1
Faith-Based Initiatives and Neighborhood Partnerships.....	1	1	1	1
Hispanic-Serving Institutions National Program.....	5	5	6	5
Human Resources Transformation	5	4	5	5
Identity & Access Management (HSPD-12).....	19	19	20	18
Medical Services.....	12	13	15	14
People's Garden.....	2	2	2	2
Personnel Security Branch.....	3	4	4	3
Pre-authorizing Funding.....	11	10	11	10
Retirement Processor/Web Application.....	2	2	2	2
TARGET Center.....	4	4	4	4
USDA 1994 Program.....	2	2	2	2
Virtual University.....	6	6	6	5
Total, Departmental shared Cost Programs.....	96	97	106	96

OFFICE OF THE GENERAL COUNSEL

Shared Funding Projects

(Dollars in thousands)

	2015	2016	2017	2018
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>President's Budget</u>
E-Gov:				
Enterprise Human Resources Intigration.....	6	6	6	6
E-Rulemaking.....	2	-	-	-
E-Training.....	8	7	-	-
Human Resources Line of Business.....	1	1	1	1
Integrated Acquisition Environment - Loans and Grants.....	5	-	-	-
Integrated Acquisition Environment.....	2	3	-	-
Total, E-Gov.....	<u>24</u>	<u>17</u>	<u>7</u>	<u>7</u>
Agency Total.....	<u>1,197</u>	<u>1,195</u>	<u>1,390</u>	<u>1,402</u>

OFFICE OF THE GENERAL COUNSEL

Status of Programs

Current Activities: 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 supports USDA's efforts to help rural America thrive, reduce hunger in the U.S. and abroad, promote agricultural production, and preserve our Nation's natural resources by providing proactive, accurate, creative and prompt legal services. OGC is committed to developing its employees and to serving its clients in a way that is inclusive, collaborative, transparent, innovative, knowledge-driven and technology-enabled.

USDA's lawyers are involved in almost every Departmental activity. They provide day-to-day advice on a broad range of legal issues, including personnel, procurement, fiscal, cyber and physical security, and privacy matters. On the programmatic side, they do everything from assisting in the development of complex regulations, to serving as counsel for high-value business transactions such as those funded by the Rural Utilities Service. OGC attorneys also provide extensive drafting and technical assistance to the Department and Congress on legislative proposals, assists the Department in briefing Congress in response to inquiries, and assists 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 and prepare briefs and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

Selected Examples of Recent Progress:

- Obtained civil penalties in the amount of \$3.5 million as part of a negotiated settlement in the *Santa Cruz Biotechnology* case, the largest Animal Welfare Act settlement in USDA history, at more than ten times the previous largest settlement of \$270K.
- Provided legal support on the successful defense of WIC litigation involving infant formula contracts, *Gerber v. Vilsack*, (D. D.C.).
- Negotiated Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) agreements with responsible parties that required them to undertake site work and/or reimburse oversight costs at other contaminated waste sites impacting National Forest System (NFS) lands, including the Georgetown Railroad-Site, Holden Mine Site, Georgetown Canyon Site, Ruth/Morning Star Mine Site, Meyers Landfill Site, and the Hazel Creek Abandoned Lead Smelter site. Obtained more than \$9.5 million in fire and CERCLA cost-recovery actions.
- Assisted DOJ with a D.C. Circuit appeal that challenged USDA's New Poultry Inspection System, *Food & Water Watch, Inc. v. Vilsack*. The D.C. Circuit found that the plaintiffs lacked standing and affirmed the district court's dismissal of their complaint.
- Provided more than 50 civil rights training sessions for over 6,000 USDA employees during FY 2016 and across all agencies and staff offices. The training sessions provided valuable information on a wide variety of EEO and civil rights topics that help the Department foster the highest standards in meeting its mission.
- Worked with Rural Development (RD) to issue bonds for a water system in a disadvantaged town that had been unable to finalize the transaction, after struggling for years to complete the financing for the project.

ADMINISTRATION AND RESOURCES MANAGEMENT

OGC Office of Administration and Resource Management (OARM) provides administrative support to OGC in order to provide quality legal services effectively and efficiently.

In FY 2016, OGC has made additional enhancements to its network infrastructure to increase bandwidth in all field offices. This will result in increased work productivity for OGC employees by allowing all networked Information Technology (IT) equipment in those offices to efficiently and securely connect to USDA's internal network and the internet. To align with the Office of Management and Budget (OMB), OGC continued use of its General Support System, Enterprise Active Directory and USDA's Tier One Help Desk Support to consolidate IT services and provide cost savings to the agency. OGC has made additional enhancements to OGC's internal SharePoint site to include better navigation, file server functionality, governance plan and site branding.

LAW LIBRARY AND PROFESSIONAL DEVELOPMENT

The Law Library coordinates access to legal information and training resources for OGC to help attorneys and staff provide quality legal services and develop their professional skills.

In FY 2016, the Law Library negotiated access to a larger collection of web-based research sources to reduce use of space for print sources, minimize duplicate purchases across multiple locations, and provide greater flexibility for employees who telework. Library collections in three locations were also reviewed and organized to ensure efficient use of physical space. A new product for accessing court dockets and documents online was tested and purchased. This will help OGC attorneys and staff track updates to matters more accurately and efficiently while controlling costs. Throughout FY 2016, OGC offered 47 different trainings and conferences for staff. These were conducted in-person and via video teleconference by in-house and third-party instructors, coordinated through the Law Library. The Law Librarian/Training Coordinator researched options and secured licenses through an OCIO contract for a web-based meeting platform to improve access to training for a geographically-diverse workforce. The Law Librarian/Training Coordinator administered 360 Assessments to 26 Supervisors and Managers, ensuring that 100 percent of OGC leadership has been through this important self-assessment process in the last 3 years.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders, Research and Promotion Programs, and National Organic Programs: OGC provides the Agricultural Marketing Service (AMS) with legal support for marketing orders, research and promotion programs, and the National Organic Program, to include formal and informal rulemaking, and enforcement and defense of these programs. AMS provided approximately 95 rulemaking actions to OGC for legal sufficiency review in FY 2016, including the rulemaking to establish organic standards for aquaculture, apiculture, and organic livestock and poultry practices. In addition to review and clearance of these actions, OGC provided legal review of numerous policy and other documents, as well as daily informal legal advice relating to these programs. OGC also provided representation and support to AMS in the formal rulemaking hearings pertaining to amendments to the raisin marketing order and the establishment of a new Federal Milk Marketing Order for California. The California hearing concluded in the first quarter of 2016. OGC successfully represented AMS in administrative litigations including challenges to the Tart Cherry Marketing Order. OGC assisted DOJ in five cases involving marketing orders, three cases involving research and promotion programs, and two cases involving the National Organic Program. OGC also provided substantial technical assistance to congressional staff in drafting legislation to create a national bioengineered food disclosure standard that was signed into law under a compressed timeframe.

Perishable Agricultural Commodities Act (PACA): OGC supports AMS in its enforcement of PACA. These efforts can result in the assessment of civil penalties or suspension or revocation of licenses, and the termination of employment with any PACA licensee of individuals found to be responsibly connected to a violating entity. OGC received 23 new referrals and filed 25 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. In FY 2016, OGC filed an administrative complaint alleging that a licensee issued false and misleading statements and failed to account truly and correctly regarding transactions involving tomatoes from Mexico. This was the first complaint filed for violations of PACA that is also in violation of the Tomato Suspension Agreement. In addition, OGC resolved and closed a total of 17 PACA enforcement actions, resulting in unpaid sellers receiving several hundred thousand dollars in restitution. Additionally, OGC provides legal sufficiency review and clearance of PACA informal rulemaking dockets. In FY 2016, OGC reviewed and commented on PACA's rulemaking to update and clarify growers' rights under the PACA trust and when PACA has authority to initiate a disciplinary investigation. PACA also provides an administrative forum for USDA's Judicial

Officer to resolve disputes among private parties relating to produce transactions in reparation cases. In the role of presiding officers, OGC attorneys presided over oral hearings, drafted numerous orders and reviewed draft decisions and orders prepared by AMS staff. In total, OGC drafted or reviewed over 119 orders in PACA reparation cases that resulted in awards of over \$3.7 million.

Animal and Plant Health Laws and Wildlife Services: In FY 2016, OGC reviewed and approved for legal sufficiency 96 notices, 18 final rules, 14 proposed rules, and 4 interim rules, in support of the Animal and Plant Health Inspection Service (APHIS). OGC assisted APHIS in the development, drafting and issuance of several significant regulations, including revisions to the biotechnology regulations (7 C.F.R. Part 340) that will constitute the first comprehensive change since 1987, and the proposed rule to update APHIS's National Environmental Policy Act regulations. OGC spent many hours assisting APHIS with working to resolve barriers to the expansion of the Mexican market for U.S. table-stock potatoes, and in assisting DOJ with four lawsuits challenging Wildlife Services' wildlife control activities.

Animal Welfare Act and Horse Protection Act: OGC supports APHIS in its unique Federal role of ensuring the humane care and treatment of millions of animals covered by the Animal Welfare Act (AWA) and the Horse Protection Act through administrative enforcement actions. In FY 2016, OGC attorneys filed 61 complaints and helped APHIS secure over \$5 million in civil penalties and \$619,117 under those statutes. OGC provided significant review and assistance to the proposed rule for amending the horse protection regulations, which would, among other things, amend the regulations to provide that APHIS (rather than industry) will train and license inspectors inspecting horses for compliance with the Horse Protection Act.

Federal Grain Inspection Service: OGC provided legal advice and support for the implementation of the reauthorization of certain provisions of the U.S. Grain Standards Act (USGSA) including the fee authority. OGC reviewed and cleared for legal sufficiency approximately 25 Federal Register documents, and increased from 16 the previous year. The documents involved grading standards, designations of official agencies, and delegations to State agencies.

Packers and Stockyards Act (P&S Act): In FY 2016, OGC filed administrative complaints and referred new actions to DOJ to enforce the requirements of the P&S Act. These complaints and actions seek the imposition of cease and desist orders and civil penalties. OGC referred 5 cases to the Department of Justice and obtained civil penalties of \$181,110. OGC reviewed rulemaking dockets and Federal register Notices and provided important legal advice and guidance regarding enforcement actions to the Packers and Stockyards Administration. OGC also provided significant review, advice, and assistance to the Grain Inspection, Packers and Stockyards Administration (GIPSA) to meet aggressive timelines for publication of the Farmer Fair Practices Rules; previously (2012-2016) an appropriations rider precluded publication of the rules.

Food Safety: OGC reviewed and cleared for legal sufficiency proposed rules, final rules and notices for publication in the Federal Register for the Food Safety and Inspection Service (FSIS). OGC assisted FSIS with the development and clearance of several significant rules, including the Mandatory Inspection of Fish of the Order Siluriformes and Products Derived from Such Fish final rule, and the Descriptive Designation for Needle- or Blade-Tenderized (Mechanically Tenderized) Beef Products final rule, which established labeling requirements for mechanically tenderized raw beef products. OGC worked closely and effectively with DOJ to defend the agency in several lawsuits including challenges to the new poultry products inspection system, and referred 8 cases to DOJ for criminal penalties and injunctions. OGC filed administrative actions to withdraw FSIS Federal inspection services from meat and poultry establishments and referred criminal cases and civil cases to DOJ. Finally, OGC worked effectively with FSIS to issue programmatic guidance that allows non-organic products to carry non-GMO claims on packages in addition to organic foods that always qualified for such a claim.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

CCC, Farm Service Agency (FSA), and Domestic Commodity-Related Activities: OGC provided extensive legal advice about the implementation issues regarding the Agricultural Act of 2014 (2014 Farm Bill) to Congressional staff and Administration officials. OGC's attention in this area focused on the implementation of the Agricultural Risk Coverage and Price Loss Coverage programs, and the amendments to the Actively Engaged in Farming regulations. OGC provided critical legal advice regarding the resolution of the bankruptcy of the Texoma peanut warehouses. As a result of OGC's and FSA's work, the producers that had receipted peanuts stored recovered nearly 100 percent of the value of their peanuts.

Foreign Agricultural Service (FAS): OGC provided extensive legal advice in the negotiations leading up to the conclusion of the agreement for the Trans-Pacific Partnership (TPP) and with respect to the Transatlantic Trade and Investment Partnership (T-TIP). OGC also provided substantial advice on a myriad of legal and commercial issues arising from the liberalization of diplomatic relations with Cuba. OGC has played a significant role in issues arising under the current suspension agreement with respect to countervailing and anti-dumping duties in connection with sugar imports from Mexico. OGC also was instrumental in the promulgation of a final rule for the Local and Regional Procurement Program.

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 the implementation of the Crop Insurance section of the 2014 Farm Bill. OGC successfully represented FCIC in a dispute before the U.S. District Court for the District of Columbia where the Approved Insurance Providers challenged FCIC's right to adjust premium rates in order to comply with the statutory requirement that premium rates be actuarially sound (*ACE v. FCIC, U.S.DC, D. DC, Case No. 1:14-cv-01992-RCL*).

Food, Nutrition and Consumer Services (FNCS): OGC provided technical assistance on the nutrition title to Congressional staff and Administration officials during Congress' consideration of the reauthorization of the Child Nutrition programs. OGC provided legal support regarding the SNAP litigation involving drug testing of SNAP recipients (*Wisconsin v. Vilsack, U.S. DC, ED WI, Case No. 15-C-0855*) and the impact of potential government shutdowns on the program (*Smith v. USDA, U.S. DC, ND CA, Case No. 15-cv-04497-THE*).

Rural Development (RD): OGC provided extensive legal assistance in the development of regulations, notices, and other legal documents required for the implementation of Rural Development and bioenergy titles in the 2014 Farm Bill, especially the regionalization regulations. OGC worked closely with the Rural Utilities Service regarding the finalization of the RD Environmental Regulation. This was the culmination of a ten year project. OGC has provided extensive legal advice regarding the development of ways to more effectively leverage RD funds with private sector funds to finance critical investments in rural American businesses and infrastructure.

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 such as the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Healthy Forest Restoration Act (HFRA) and the Endangered Species Act (ESA). In addition, OGC provided support to FS State and Private Forestry, Business Operations, and Research and Development regarding a myriad of conservation programs. 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 its review of energy development projects involving geothermal development, electric transmission lines, coal leasing, and oil and gas leasing. OGC also provided significant assistance to the FS regarding the development of hard rock mineral deposits in Arizona, Oregon, and Minnesota valued in billions of dollars.

- *Litigation*: OGC coordinated litigation strategy and assisted in the defense of cases involving emerging legal issues concerning wildlife management, timber salvage, mineral development, fuels reduction, livestock grazing, and wilderness use. 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 Management Program*: OGC provided informal advice concerning stewardship contracting authority, and assisted the FS in the development of Good Neighbor agreements with Wisconsin, Oregon and Michigan. OGC also provided advice and represented the agency in various administrative forums, including appeals before the Civilian Board of Contract Appeals, suspension and debarment proceedings, bid protests before the Government Accountability Office, small business set-aside appeals, and export sourcing area proceedings.
- *Recreation*: OGC provided advice to the FS on recreation fees, recreation residences, special use administration, 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, including policies governing management of ski areas and over-snow vehicles.
- *Lands, Energy, Wilderness and Treaty Rights*: 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 also provided advice regarding designation and management of national monuments and activities within designated wilderness areas. In the past year OGC continued to increase its legal assistance concerning American Indian treaty rights and religious freedom, and provided significant legal advice on environmental justice and cultural resource protection.
- OGC also provided legal advice to the FS regarding law enforcement issues and the Secure Rural Schools Act payments.

Natural Resources Conservation Service (NRCS): OGC provided support for the agency's natural resource conservation activities on private or non-Federal lands, including programs authorized by the Food Security Act of 1985. OGC assisted in the administration of numerous programs, including 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 implementation of the 2014 Farm Bill. OGC also provided support to NRCS programs under the Soil Conservation and Domestic Allotment Act of 1936, the Watershed Protection and Flood Prevention Act and the Flood Control Act of 1944.

Examples of work in support of NRCS programs include: 1) preparing title opinions for conservation easement acquisitions related to NRCS conservation programs; 2) defending the agency in litigation asserting breach of contract and uncompensated takings under the former Conservation Security Program; 3) responding to discovery requests related to a takings claim filed by farmers in the Missouri River Basin regarding the U.S. Army Corps of Engineers' management decisions; 4) providing assistance to NRCS in addressing violations of deed terms on easements held in the name of the United States; 5) expediting review and clearance of several final rules implementing the 2014 Farm Bill; 6) providing support to NRCS as it restructures its easement acquisition procedures; 7) advising NRCS on easement acquisitions related to water rights, outstanding mineral rights, and limitations on access; 8) advising NRCS on easement enforcement and evaluation of easement administrative actions as authorized under the 2014 Farm Bill; 9) preparing preliminary title opinions on Emergency Watershed Program-Floodplain Easement and restoration projects using Hurricane Sandy relief funds; and 10) advising NRCS on matters related to open government and information security, including compliance with the Freedom of Information Act and the Privacy Act.

Environmental Law: OGC provided litigation support and legal advice for all USDA agency matters related to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). 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.

Examples of accomplishments include: 1) defense of a RCRA lawsuit filed against the FS seeking to ban the use of lead ammunition by hunters; 2) assisting the Commodity Credit Corporation's (CCC) efforts to address contaminated waste sites resulting from its prior use of the fumigant carbon tetrachloride at Midwestern grain storage facilities; 3) assisting Rural Development's efforts to identify and evaluate potential environmental liabilities that could adversely impact various direct loan and loan guarantee transactions; and 4) defending the Agricultural Research Service and other agencies in connection with existing and potential hazardous waste site cleanup liabilities. OGC coordinated with State and Federal Natural Resource Trustees on the withdrawal of the reopener claim in the Exxon Valdez Oil Spill case, and assisted with the review of the 22,890 acre Cube Cove, Alaska land purchase.

Deepwater Horizon Oil Spill: OGC actively assisted the Department on a wide variety of Deepwater Horizon issues, including the review, approval and implementation of the \$21 billion consent decree, the largest environmental settlement in U.S. history. OGC advised and represented USDA senior leadership in connection with the Gulf Coast Ecosystem Restoration Council, which selects and implements Gulf of Mexico ecosystem restoration projects. OGC also advised USDA with respect to its role as one of four Federal natural resource trustees responsible for restoring natural resources injured by the oil spill.

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 the Department of Justice (DOJ) and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2016, GLRD consulted on 134 such appellate matters and prepared 38 appeal recommendations for DOJ's consideration.

GLRD's responsibilities include reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court, Federal circuit courts, and State appellate courts. In FY 2016, GLRD assisted DOJ prepare the petition for certiorari filed in the Supreme Court on behalf of the Forest Service in *Cottonwood Environmental Law Center v. USFS*, in which the United States sought review of the Ninth Circuit's holding that the Endangered Species Act requires the Forest Service to reinitiate consultation on forest plans when the Fish and Wildlife Service designates new critical habitat or lists new species. GLRD also assisted DOJ in drafting a brief in opposition to certiorari in *Arlen Foster and Cindy Foster v. Vilsack*, in which landowners challenge the Natural Resources Conservation Service's methodology for determining wetlands. GLRD assisted DOJ with a Second Circuit appeal, *Friends of Animals v. William Clay*, in which the court decided that the lethal taking of three snowy owls at JFK airport in December 2013 did not violate the Migratory Bird Treaty Act. GLRD also assisted DOJ with briefing and preparing for oral argument in a Tenth Circuit appeal, *Big Cats of Serenity Springs v. Vilsack*, which raises Fourth Amendment issues in the context of a warrantless search of an animal rescue facility. GLRD continues to assist DOJ with another Tenth Circuit appeal, *United States v. Board of County Commissioners*, which questions whether State and local ordinances that allow tree cutting and thinning on National Forests are unconstitutional and invalid because they conflict with federal law and violate the Supremacy Clause. GLRD participated in settlement discussions between the FS and recreational hikers in California regarding the scope of the FS's authority to collect recreation fees on four Southern California National Forests (*Fragosa v. Moore; Wiechers v. Moore*). The extended negotiations resulted in the lifting of a district court injunction that prevented the FS from charging recreation fees to users of specified amenities on the forests. Finally, GLRD coordinated USDA's participation as *amicus* in a case affecting suction dredge mining pending before the California Supreme Court (*People v. Reinhart*), and a related case before the Ninth Circuit also addressing whether federal mining law preempts State regulation of suction dredge mining (*Bohmker v. Oregon*).

GLRD defends most USDA Judicial Officer decisions that enforce the P&S Act, PACA, AWA, and the Horse Protection Act (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 2016, GLRD handled two such cases. GLRD completed work on *Knapp v. U.S. Department of Agriculture*, an AWA appeal in which the Fifth Circuit remanded two minor issues to the Judicial Officer for further development. *McCoy v. USDA*, an HPA case in which the Secretary issued a default judgment, is fully briefed and pending before the Court of Appeals for the Sixth Circuit.

GLRD also is responsible for preparing USDA's official recommendations to DOJ on whether to appeal adverse decisions of various lower courts or to participate as amicus in Supreme Court or other appellate cases. In FY 2016, GLRD prepared 38 such recommendations.

Fiscal/Contract and Research: GLRD is responsible for handling issues that cut across the Department and its agencies; for example, GLRD advises the agencies and offices of the Department's legal issues and litigation relating to the Farm Bill, procurements, and fiscal law. GLRD continues to assist the Research, Education, and Economics (REE) mission area and Departmental Management on Farm Bill programs, such as analyzing eligibility and contribution requirements under the commodity board provision of the Agriculture and Food Research Initiative grant program, reviewing and drafting Federal Register notices and new language for request for applications prioritizing grant applications from Centers of Excellence, as well as the Food Insecurity Nutrition Incentive grant program. Within REE, GLRD assisted the National Institute of Food and Agriculture (NIFA) with various program issues: advising NIFA on the Foundation for Food and Agriculture Research, including improvement of coordination to leverage private funding; and reviewing notices and revising the terms of the service agreement under the existing Veterinary Medicine Student Loan Repayment Program to address overlapping service obligations and other compliance issues. Other assistance provided to NIFA includes guidance on issues surrounding land-grant status and formula fund allocation.

In supporting Departmental and agency procurement actions, GLRD defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals, the Court of Appeals for the Federal Circuit, the Court of Federal Claims, District Courts, and the Government Accountability Office (GAO). For example, GLRD successfully repelled the first salvo of protests aimed at obtaining support services for Recreation.gov, a national trip planning and online reservation system for U.S. parks, national forests, museums, and other recreational destinations. GLRD obtained the GAO dismissal of a number of the protest arguments two days before the Agency Report was due, filed over a hundred pages of memoranda of law, 2,000 pages of documents, and responded to tight GAO deadlines. Ultimately, the protester withdrew its protest, but the next wave of litigation continues as the protester re-filed the withdrawn GAO protest at the Court of Federal Claims.

GLRD assisted agencies in program efforts as well. For example, GLRD completed a multi-year effort to help define policy regarding industrial hemp research, as legitimized in the 2014 Farm Bill. Section 7606 of the 2014 Farm Bill legalized the growing and cultivating of industrial hemp for research purposes in States where such growth and cultivation is legal under State law, notwithstanding existing Federal statutes that would otherwise criminalize such conduct. This sanctioned conduct is limited to growth and cultivation by an institution of higher education or State department of agriculture for research or pilot programs. Section 7606 authorized State departments of agriculture to promulgate regulations for pilot programs but did not provide a specific delegation to USDA to implement the program, leaving open many questions regarding the continuing application of Federal drug control statutes as section 7606 did not remove industrial hemp from the Federal controlled substances list. GLRD coordinated at high-levels with representatives at DEA and FDA, which culminated in a Statement of Principles on Industrial Hemp, published August 12, 2016 in the Federal Register. GLRD also furthered a component of the Administration's effort to reduce waste, fraud, and abuse through its work with an agency and OIG. GLRD reviewed and analyzed 130 transactions identified by OIG and provided guidance on improper payments and correct obligation practices. Finally, GLRD provided proactive work for the upcoming Administration transition. GLRD researched issues related to the Federal Vacancies Reform Act of 1998 and delegations of authority. GLRD also drafted a final rule establishing the designation of First Assistants to positions in the Department to which appointment is required to be made by the President with the advice and consent of the Senate.

FTCA/FOIA and eDiscovery: OGC 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 (FACA). In addition to reviewing 110 administrative FOIA appeal packages for legal sufficiency and making determinations in 28 administrative tort claims; significant legal resources continue to be expended on the defense of the tort claims and suits that have been filed against the FS as a result of the June 2010 flash flood at the Albert Pike Recreation Area in Arkansas, in addition to other major claims and suits against the Department under the FTCA, valued at over a half-billion dollars.

OGC continued handling a large number of FOIA cases, involving over 100,000 pages of records; several were complicated because they involved third party notice and rights to confidential business information under Exemption 4, and chief among them were 8 separate FOIA litigations that the Cornucopis Institute filed against USDA's AMS, in pursuit of records relative to the National Organics Program (NOP). GLRD also interceded on behalf of AMS in regard to a FOIA suit that the Organization of Competitive Markets filed against USDA/OIG and, further, offered a staff attorney to serve as a Special Assistant U.S. Attorney during a FOIA trial before the District of South Dakota in the matter of *Argus Leader v. USDA (FNS)* dealing with records of numerous retailers containing confidential business information relative to SNAP. Moreover, GLRD continued working with APHIS and DOJ to defend another high-volume FOIA suit filed by the Center for Food Safety relative to numerous outstanding information requests concerning genetically-engineered crops; Center for Food Safety involves over 150,000 in records and, over the next few years, will require legal sufficiency review of these documents on a production schedule set by the court.

Additionally, GLRD provided valuable litigation support in 3 separate FACA lawsuits, including one involving USDA's dietary guidelines, which was dismissed; as well as in an APA action that PEER filed relative to USDA's scientific integrity program, which also was dismissed. Finally, GLRD continued to provide legal oversight in the development of the Department's cybersecurity, defensive counterintelligence, and insider threat detection initiatives, in order to ensure consistency with the intelligence community's standards; and participated in interagency initiatives in this area. In addition to continuing to provide input and guidance on FOIA improvement legislation, GLRD also supported USDA efforts to bring itself into compliance with OMB statistical initiatives and other Administration initiatives on Open Government.

Intellectual Property: OGC provided legal services in patent, trademark, and copyright law for a variety of programs throughout the Department. This included advice in the transfer of Department technology to the private sector, that is, advice in the patenting and licensing of Department inventions. This included providing oversight and advice on patent procurement, reviewing updates of invention licensing forms and invention assignments, clearing Federal Register license notices for legal sufficiency, and advising on potential infringement of licensed patents. OGC also advised on invention rights, copyright, trade secrecy, confidentiality, and publicity rights in various types of agreements, including joint research, material transfer, confidentiality, publishing agreements, model releases, appearance releases, procurement contracts, grants, and memoranda of understanding. Additionally, OGC advised Department agencies on intellectual property rights in the conduct of their activities, including infringement, the proper use of trademarks and copyrighted material, and endorsements. USDA insignia, symbols, and marks, on which OGC advised, included the USDA Symbol, the 4-H Club name and emblem, Smokey Bear, the Forest Service Insignia, and various program logos. OGC activities included the filing of trademark applications at the Patent and Trademark Office and the maintenance of trademark registrations. OGC also reviewed intellectual property subject matter in proposed legislation, Congressional reports and testimony, and in proposed Department regulations.

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 authorizes. 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 the

U.S. Department of Justice (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 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. CRLELD was responsible for handling over 305 complaints of employment and program discrimination, and complaints related to labor and employee relations, in various forums across the country. CRLELD also represented the Secretary's interests in resolutions of Office of Special Counsel complaints filed by employees and former employees alleging whistleblower allegations. The Litigation Section was also 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:

Employment Discrimination Class Actions: The Litigation Section continues to assist DOJ in defending claims by non-exempt Fair Labor Standards Act (FLSA) employees, Government-wide, who worked during the furlough period in October 2013. CRLELD continued to collect information from all USDA offices and subcomponent Agencies, resulting in over 10,000 additional notices being sent to potential class members. Based upon the organization and demonstration of effective collection of data, the Judge denied a motion to have a second notice period. The Litigation Section is also working with OGC Pacific Region to assist DOJ in defending a putative class action by Forest Service foresters in the Pacific Northwest Research Station who allegedly were not paid overtime in accordance with the FLSA and Federal Employees Pay Act (FEPA).

The Litigation Section is also representing 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. CRLELD appropriately analyzed the complaint and anticipates responding to the EEOC's schedule for briefing the issue of certification when it is received. 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 and/or requested disability accommodations, who allege that they were discriminated against based on their disabilities. The Litigation Section is defending the Secretary at the certification stage in a putative administrative class action brought by female fighters in Region 5 of the Forest Service, 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's policy of prohibiting employees working in alternative duty assignments from working overtime or holidays violates the Rehabilitation Act.

Program Discrimination Individual Federal District Court Cases: The Litigation Section continued to coordinate the defense of USDA with DOJ in numerous program individual cases brought by plaintiffs who allege discrimination in the delivery of USDA direct loan and other programs. The Litigation Section assisted DOJ in the successful dismissal of several such long-standing cases, for example -- *Eddie Slaughter v. Vilsack*, and *Ronald White v. Vilsack*.

Program Discrimination Group and Class Action Cases: The Litigation Section worked daily on implementation issues involved in two former class action complaints and two group complaints of program discrimination:

1. *Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack* - Cases alleged discrimination by FSA against Hispanic and Women farmers and ranchers in loan making and loan servicing, respectively. The U.S. Supreme Court denied the petitions for writ of certiorari challenging the D.C. Circuit Court of Appeals and the District Court decisions regarding the denial of class certification. USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination against women and Hispanics 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. The Litigation Section ensured that the claims process completed adjudication of over 22,000 claims in 2016, and the claims process provided over 3,000 payments to prevailing claimants in 2016. The Litigation Section assumed a direct liaison role between Agency offices, the Office of Congressional Relations, and the Office of Communications, as the Hispanic and Women Farmers Claims Process (HWFCP) has drawn high levels of attention from Congressional staffs. The Litigation Section continues to monitor all aspects of this voluntary claims process, including responding timely to hundreds of responses to Congressional and other stakeholder inquiries.

2. *Keepseagle et al. v. Vilsack* - 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 on April 28, 2011. All payments have been made and all debt relief provided to prevailing class members. OGC assisted with the implementation of programmatic relief that was required by the *Keepseagle* settlement agreement. With regard to an approximately \$380 million *cy pres* fund remaining, the Judge denied the Class's initial request to create a 501(c) (3) trust that would select beneficiaries and disburse remaining settlement funds over a period of no more than 20 years because the lead class agent did not support the request. The Judge also denied the lead Class Agents' request for a full redistribution of the *cy pres* funds to successful claimants. In 2016, OGC worked daily with DOJ, Class Counsel and the lead Class Agent's counsel on the ultimate resolution of the distribution of *cy pres* funds – an extraordinary achievement for the Government. The Litigation Section continues to monitor the implementation of the settlement agreement, including difficult decisions concerning the funds remaining after distribution to successful claimants, delivery of programmatic relief, and responses to Congressional and other stakeholder inquiries.

3. *Pigford II* - The settlement agreement in *In Re Black Farmers Litigation (Pigford II)*, a consolidation of lawsuits with approximately 35,000 plaintiffs, was approved by the court on October 27, 2011. The lawsuits were in response to the 2008 Farm Bill which authorizes individuals who were not allowed to file claims under the *Pigford* Consent Decree because of untimeliness and have not had decisions on the merits to seek relief in Federal court. All prevailing claimants were paid, and OGC ensured that funds dedicated to payments, the Ombudsperson, and administration are transferred timely. The Litigation Section worked directly with DOJ to convince the Court to uphold the *cy pres* provisions from the *Pigford II* Settlement Agreement as it was written, despite a potential desire to redistribute the money to prevailing complainants. The Litigation Section also continues to address issues involving the disposition of remaining settlement funds, probate and tax issues involving prevailing claimants, and inquiries from Congressional stakeholders and claimants concerning the completed claims process.

LGBT Anti-Discrimination Work: The Litigation Section and the Policy Section worked directly with the Office of the Assistant Secretary for Civil Rights (OASCR) and stakeholder agencies to ensure compliance with recent changes in the law as it applies to transgender and gay employees and applicants for employment. Representatives sat on a DOJ Government-wide task force to address issues related to transgender rights, and participated in a Rural Summit in North Carolina sponsored by OASCR, the National Center for Lesbian Rights, and the True Colors Fund, to ensure the public recognized that USDA's programs were available to widely diverse communities.

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 (ULP) allegations, midterm bargaining, and impact and implementation bargaining. The Policy Section, upon request, also provides legal sufficiency reviews of Final Agency Decisions (FAD) issued by the Assistant Secretary for Civil Rights in program civil rights complaints, including decisions rendered in the farm and housing loan programs under the Equal Credit Opportunity Act (ECOA). 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 (OA) to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. The Policy Section also functions as a proactive civil rights office providing training on a variety of civil rights and employment issues, suggesting changes to agency practices in order to reduce discrimination complaint activity, developing action plans in response to compliance reviews, and responding to changes in the law. The Policy Section also serves as the primary office for addressing internal labor, personnel, and EEO matters within OGC.

Training: The Policy Section provided several training sessions to the new NRCS employee relations staff to help them develop their skills in evaluating and drafting charges for performance and conduct actions. The Policy Section also trained approximately 2,500 FSA supervisors and managers on *How to Prevent and Respond to Sexual Harassment*, during 13 one hour training sessions. The initial training session was presented in person, during a quarterly managers' meeting in Washington, DC with VTC Kansas City, and the other sessions were presented via Live Meeting Webinars.

EEO Report of Investigations (ROI) Summit: The Policy Section convened two Department-wide ROI Summits for Agency CR Directors, the Office of the Chief Financial Officer, the OASCR, and the Procurement Operations Division to ensure that the parties worked together so that the Department meets the 180-day deadline to complete EEO ROIs. These meetings ensured that new contracts were executed and that funds were transferred timely under interagency agreements.

Section 508 Compliance: The Policy Section brought together leaders from OASCR, OGC, and the Chief Information Officer (CIO) to address USDA's Section 508 responsibilities to ensure that all Departmental information technology is accessible to customers with disabilities and to ensure proper reporting of 508 matters in the future.

Review of OGC Collective Bargaining Agreement: The Policy Section provided significant legal support to the OGC management team as it undertook a nearly year-long effort to negotiate informally with the OGC employees' union (AFGE Local 1106) to revise the OGC Collective Bargaining Agreement (CBA).

The Policy Section provided guidance and review for more than 40 disciplinary and performance actions, more than 50 settlement agreements, and more than 30 new and revised regulations 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 of 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 handled over 3,100 litigation matters and 4,400 transactional matters in FY 2016.

FS: OGC Eastern Region assisted the FS in upholding its forest plans and projects in numerous litigation matters, including several matters challenging the FS's oversight of oil and gas development on National Forest land. For example, in *Sierra Club v. United States Forest Service*, OGC assisted the FS in defending a challenge in U.S.

District Court to the reissuance of Special Use Authorization to Enbridge Energy for Pipeline Operations on the Huron-Manistee National Forest. The Sierra Club challenged a Categorical Exclusion issued under NEPA for the renewal of a special use permit for an oil pipeline operated by Enbridge Energy. The pipeline was originally authorized in 1952 and has been in operation since 1953. There is a 60 foot wide right of way across the Huron-Manistee National Forest in the lower peninsula of Michigan, which is approximately 8.4 miles long and covers a total of 61.09 acres.

OGC also assisted the FS in defending a challenge to oil and gas management on the Ozark –St. Francis National Forest. In *Ouachita Watch League, et al. v. Judith Henry, et al.*, the Ouachita Watch League, (OWL) and others filed a complaint in the U.S. District Court against U.S. Forest Service, Bureau of Land Management (BLM); U.S. Department of the Interior (DOI); Little Rock District; Department of Defense-Army (DOD-Army); and the U.S. Corps of Engineers (COE) to prevent gas drilling in north central Arkansas, and in the Ozark National Forest in northwest Arkansas until studies have been conducted to comply with applicable environmental laws and to demonstrate that hydraulic fracturing of gas wells is not potentially harmful to the environment. The Court ruled that the FS development approach did not violate NEPA.

Risk Management Agency (RMA): Numerous government agencies, including the Office of Inspector General (OIG), DOJ, Internal Revenue Service (IRS), Federal Bureau of Investigation (FBI) and the State of KY Insurance Department, in conjunction with RMA, were involved in tobacco fraud investigations. The investigations included 34 individual agents, adjusters and policy holders in 13 counties in Kentucky and Tennessee for 2009-2015 tobacco crops. The potential impact of Multiple Peril Crop Insurance (MPCI) fraud is estimated at \$7.4 Million. OGC assisted RMA in handling several large crop insurance claim cases that arose from this multi-agency investigation.

RD: OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of its direct loans and in handling a large volume of related litigation, such as bankruptcies/foreclosures that arose out of such a large loan portfolio. In addition, OGC assisted RD's Rural Business Service in closing \$11.7 million in loan transactions.

NRCS: OGC Eastern Region assisted NRCS in acquiring 167 conservation easements within the OGC Eastern Region, including 10 major acquisitions valued at over \$25.4 million. This assistance helped NRCS in its mission to help reduce soil erosion, enhance water supplies, improve water quality, increase wildlife habitat, and reduce damages caused by floods and other natural disasters.

FSA: OGC Eastern Region provided legal advice to FSA with loan issues and bankruptcies in hundreds of matters during the past year. Opening over 575 new matters, OGC helped FSA provide millions of dollars in loans to family farmers and small farming operations, and also assisted DOJ in defending FSA in cases brought challenging its implementation of program funds.

Federal Tort Claims Act – Attorneys in the Eastern Region adjudicated over 85 Federal Tort Claims Act claims seeking damages of almost \$1million against agencies of the Department.

Employment/Program Discrimination Defense: OGC Eastern Region attorneys successfully defended USDA agencies in employment and program-related discrimination litigation before the EEOC, and assisted the U.S. Attorney's Offices in defending such cases in the United States District Courts.

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 comprised of thousands of rural communities needing access to essential services and credit facilitated by USDA. These USDA activities require legal advice and representation provided by the attorneys in the Central Region.

Rural Development (RD): The Central Region continued its efforts to gain programmatic compliance from RD borrowers. OGC facilitated a loan to another disadvantaged city so that its bond issuance would legally comply with

both State law and RD requirements. Working with RD and DOJ, OGC was able to finalize the liquidation of a sewer project and facilitate the sale of the sewer treatment system to a private entity that could make the necessary improvements to the system. OGC continues to work with RD and its multi-family housing program on issues related to debt restructuring, parity transactions, revitalization, as well as pre-payment issues including a case where specific performance was demanded, resulting in the borrower bringing the account current. Single Family Housing continues to provide an ever-increasing amount of work related to foreclosure and collection through tax refund offsets and bankruptcy actions. OGC's Central Region provided legal advice and guidance related to hundreds of millions of dollars on faith-based community projects for loans and grants, ranging from Head Start programs housed in churches to multi-million dollar loans to colleges and universities in rural America.

Food and Nutrition Service (FNS): OGC worked with FNS to recognize discrepancies involving store visit reports conducted by contractor's detection of Halal Meat in the Minneapolis area Somali community for the Supplemental Nutritional Assistance Program. OGC again assisted in defending several suits brought by store owners challenging the sanctions established by FNS to permanently disqualify the store, deny authorization, suspend the store for a period or levy a fine against the store owners (transfer of ownership). In *Edgehill Grocery*, OGC is defending FNS in a challenge to its decision to withdraw SNAP authorization following a conviction for State sales tax evasion, which FNS considers "fraud," making the store ineligible. OGC defended FNS in several cases based on their ALERT system that detected highly suspicious purchasing patterns, and in so doing established some precedential case law helpful to FNS and future cases. OGC's assistance to defend challenges to the SNAP program and the sanctions levied is essential to the integrity of the program and the public's trust that the program is being carried out with sufficient integrity, oversight and accountability.

Security Issues: Central Region dealt with an emerging issue involving threats to its physical structures as well as its employees. At the Meat Animal Research Center, animal rights activists have protested the site, disrupted the research being conducted there, and threatened employees. OGC addressed other threats to employees by coordinating efforts to get a civil order for protection involving death threats made by a program participant. Threats to USDA facilities and employees is an emerging issue that has taken on increased importance for OGC's Central Region.

Farm Service Agency and related Commodity Credit Corporation Programs: There are over 1 million farms and \$5 billion in outstanding FSA loans in the Central Region, requiring significant legal representation for the various loan and commodity programs. OGC's Central Region also works closely with the United States Warehouse Licensing and Examination Division to ensure the integrity of that program throughout the United States. In Porter, OGC is working to protect grain depositors against claims brought by another creditor that is over-reaching. In GFS, Inc., OGC worked with FSA to issue a final contractor's decision on a claim for \$1 million in storage fees already paid by FSA. In *Caldwell Bank*, OGC is defending the Agency's security interest (\$5.3 million) for Farm Storage Loans that are in default. Additional FSA work in the environmental arena has also increased, due to challenges brought by environmental groups seeking to stymie loans made or guaranteed by FSA. Last year's Buffalo Watershed challenge involved a Concentrated Animal Feeding Operation, and this year the Tracy Poultry Project is under challenge regarding the environmental and biological assessments done by FSA under NEPA. Lastly, the Central Region represented the Agency in many bankruptcy proceedings and adversary proceedings which threatened the Agency's liens or financial interests or diminished its potential recovery.

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. The Central Region worked with the Compliance Office to review and issue legal sufficiency reviews of Final Agency Determinations seeking to recover indemnity overpayments against insurance companies, and thus to minimize the litigative risk and potential exposure for the agency. In a complex *Qui Tam* case, OGC provided extensive assistance in complying with court-ordered discovery required in that litigation. In another case, OGC successfully defended RMA's practice of requiring that an insurance company strictly comply with the requirements of a crop insurance policy and reinsurance agreements. Lastly, the Central Region also provided training to RMA clients to assist them in carrying out their mission and to better meet their program goals and objectives.

Forest Service: OGC's Central Region assisted the Forest Service with a wide variety of matters including 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 provide legal work for the Central Region.

Natural Resources Conservation Service: NRCS has a role as a land management agency, after having acquired many easements under its various acquisition authorities in the last decades. In *Rodgers*: OGC assisted NRCS in bringing an affirmative case to remediate violations to a WRP easement. NRCS also requires additional legal assistance for restoration projects that it is funding along the Gulf Coast, following the devastating hurricanes of the last decade. In the *St. Bernard Parish* case, OGC is defending a Contracts Disputes Act Claim regarding claims for financial assistance provided to the Parish for measures to relieve hazards and damages created by Hurricane Katrina and second level claims made by its contractor. In *PM Farms* and *Smith* cases, OGC is defending NRCS determinations regarding highly erodible lands and wetland determinations. OGC successfully defended NRCS in litigation where it was claimed that structures on an easement area were causing flooding on a neighbor's land. In *Wely*: OGC is defending a Fifth Amendment "takings" claim brought against Agency regarding its CRP practices. The OGC Central Region also provided training and counseling to NRCS clients to assist NRCS in carrying out their mission and to better meet their program goals and objectives.

Contract Litigation: The OGC Central Region assisted Contracting Officers actively litigating several contractor claims before the Civilian Board of Contract Appeals. Several different cases involve NRCS and its coastal restoration and reconstruction initiatives following the hurricanes that hit the Gulf Coast over the last decade. In the *Regency Construction* case, OGC successfully defended a Civilian Board of Contract Appeals case resulting in the contractor being awarded \$26,500 on a claim that was in excess of \$500,000.

Employment and Discrimination Cases: The Central Region defended USDA in litigation brought by employees alleging various types of workplace discrimination, brought in various forums. 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. The Central Region also defended the Department in programmatic cases brought by program participants alleging various types of discrimination or mistreatment. In one case, OGC is defending the Department in a suit brought by a former employee who sued under the Rehabilitation Act regarding his dismissal related to illicit drug use. After resolution of the case, he brought a second case seeking additional damages alleging that the dismissal caused him to relapse. In another case, OGC successfully defended the agency's hiring decision, wherein the complainant alleged a discriminatory animus hiring decision. OGC is currently defending the Department in other actions made by employees involving a variety of allegations, such as failure to accommodate, retaliation, and age and/or race discrimination.

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.

NEPA, NFMA, and ESA: OGC handled a wide range of legal issues arising under NEPA, NFMA and ESA. OGC provided extensive advice to the FS on compliance issues relating to forest plan revision efforts across the region, as well as specific projects and uses such as timber harvesting, mines, water facilities, ski resorts, and fuel reduction/fire risk mitigation projects under the Healthy Forests Restoration Act. In addition, OGC provided litigation support in a wide range of federal court cases challenging these kinds of programmatic and project decisions. Current active litigation includes eight federal court cases filed in five States, all challenging the multi-State greater sage-grouse land use plan amendments.

Water Rights and Water Facilities: OGC represented the FS in water rights issues at the regional and national levels, and is actively involved in helping the FS establish and protect water rights in State administrative proceedings in Colorado, Nevada, Arizona, New Mexico, Montana, and Utah. For example, the Mountain Region is currently working with the Department of Justice to protect FS water rights in the Coeur d'Alene Spokane River Basin Adjudication, the Little Colorado and Gila adjudications in Arizona, and the Aamodt and Cow Creek adjudications in New Mexico. In Montana, OGC is negotiating with the Blackfeet Tribe on behalf of the FS

regarding tribal instream rights within the Badger Two Medicine area of the Lewis and Clark National Forest.

Mining and Energy Development: OGC advised the FS regarding controversial oil and gas development projects 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. OGC is defending the FS in active litigation including *Wildearth Guardians v. Jewell* (D. Colo.) (coal mining in central Utah), *Wildearth Guardians v. USFS* (D. Wyo.) (coal mining in Wyoming's Thunder Basin), *Save Our Cabinets v. USFWS* (D. Mont.) (copper and silver mining in NW Montana), and two actions challenging baseline data gathering activities related to the Resolution Copper Mine in Arizona (*Concerned Citizens and Retired Miners Coalition v. Forest Service* (D. Ariz.); *San Carlos Apache Tribe v. Forest Service* (D. Ariz.)).

Grazing and Range: OGC continued to provide extensive advice and litigation support to the FS regarding its ongoing efforts to reconcile grazing with its obligations to protect endangered and sensitive species including bullhead trout, bighorn sheep, and the New Mexico meadow jumping mouse. Current litigation includes *Western Watersheds Project v. USFS* (D. Idaho), *Martinez v. U.S.* (Ct. Fed. Cl.), and *Gallatin Wildlife Assn. v. USFS* (D. Mont.).

Fire: The four FS regions served by the Mountain Region of OGC have active wild-land fire programs, which led to a large number of claims for collection of fire suppression costs and damages. Numerous costs collection suits are pending, and OGC routinely assists the FS with administrative cost collection efforts.

Land Issues: OGC assisted the Forest Service with land acquisition projects, including six major acquisitions in Arizona and New Mexico, and protected the FS' rights in numerous quiet title lawsuits, including a major case filed by the State of North Dakota and several counties in that State that seek to block FS travel management initiatives in the Little Missouri National Grassland by asserting public rights of way over all section lines in the Grassland. This case could significantly affect Federal land management in all States with section line laws.

Hazardous Materials Cleanup and Cost Recovery: OGC provided extensive advice relating to hazardous materials cleanup on national forest system lands, as well as litigation support in CERCLA cases such as *Chevron Mining, Inc. v. U.S.* (D. N.M.), a contribution action now pending in the 10th Circuit Court of Appeals. OGC also assisted the Forest Service in executing a first-of-its-kind agreement with EPA to ensure fire preparedness in the area surrounding a former vermiculite mine in Libby, Montana, where a wildfire could present unusual public health risks due to significant concentrations of asbestos fibers embedded in tree bark and duff in the surrounding forest.

FSA, RD, and NRCS: OGC provided legal advice to FSA, RD, and NRCS with respect to hundreds of loan, grant, 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* (D. NM).

Pacific Region

OGC's Pacific Region provides legal representation and advice to USDA agencies and officials in seven western States as well as American Samoa, Guam, Palau, the Federated States of Micronesia, the Northern Mariana Islands, and the Marshall Islands.

Alaska Subsistence Program: OGC advised the Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. This work included advising USDA in shifting from using contracts with the State of Alaska and Tribes for fish monitoring to using cooperative agreements, as authorized in an Alaska-specific statute. OGC continued to provide assistance to DOJ in litigation affecting the Program, including litigation over a tribe's controversial use of gillnets for salmon fishing in one of Alaska's world-renowned rivers for sport fishing.

Employment Law: OGC helped resolve individual claims that were part of a major civil rights class action and obtained favorable decisions from the EEOC. In addition, OGC prevailed at summary judgment in a federal court

case on plaintiff's claims for age and disability discrimination and harassment and retaliation based on events that occurred during plaintiff's employment as a firefighter for the Forest Service.

Farm Loan Programs: OGC provided advice to FSA regarding various projects and loans and helped FSA provide millions of dollars in loans to family farmers and small farming operations. OGC helped FSA recover debt in bankruptcy cases and other litigation matters, and provided advice to FSA regarding its conservation programs and foreclosure actions.

Grazing: OGC advised the Forest Service and successfully defended litigation regarding livestock grazing permits on NFS lands. In *Oregon Wild v. Forest Service*, which challenged grazing in bull trout critical habitat on the Fremont-Winema National Forest, OGC helped FS obtain a favorable summary judgment decision that was not appealed.

Land Rights: OGC provided legal services to FS with respect to various real property issues. These issues included completing environmental review of plans to develop a surface estate, which was acquired as important habitat with Exxon Valdez Oil Spill settlement dollars, to access the mineral estate owned by an Alaska Native corporation wishing to assert mining rights. OGC was instrumental in completing an agreement to purchase a 23,000-acre inholding in Admiralty National Monument in Alaska, the largest of its kind in FS history. OGC advised on a large proposed land exchange between the Tongass National Forest and the Alaska Mental Health Trust, as well as implementation of lands transactions involving transfers of lands to FS pursuant to the Moonlight Fire settlement with Sierra Pacific Industries.

Legislation and Congressional Relations: OGC helped the Chief of the Forest Service respond to Congressional inquiries about the effect of the Administration's policies on the Tongass National Forest's timber program, land exchanges, mineral access, and renewable energy development. OGC helped the Forest Service implement legislation that was designed to resolve an Alaska Native corporation's entitlement to nearly 70,000 acres of land in the Tongass National Forest.

Mining and Minerals: OGC helped the FS address challenging and controversial issues regarding mining on NFS lands, including defense of environmental challenges to FS decisions to allow proposed mining activities. In FY 2016, OGC provided important contributions to the United States' briefing before the California Supreme Court on the question of whether California's regulation of suction dredge mining is preempted by federal law. Further, OGC provided advice to the FS regarding Oregon's moratorium on suction dredge mining. OGC also advised the FS with respect to a variety of unauthorized mining and unauthorized occupancy issues and worked with DOJ in the prosecution of civil and criminal enforcement actions relating to these situations.

Natural Resources Litigation: OGC successfully defended numerous lawsuits involving challenges to proposed sales of salvage timber burned in a variety of wildfires on NFS lands. In addition, OGC's involvement in one consolidated set of lawsuits in Alaska, collectively known as the Big Thorne and Tongass Plan cases, has resulted in continuation of a victory in the district court through an effective oral argument before the Ninth Circuit in FY 2016 (a final decision is pending). OGC continued to handle a large number of lawsuits challenging the Forest Service's tree-thinning projects, fuels-reduction projects, and other vegetation-management projects; grazing program; and travel management plans.

Public Lands Management Decisions: OGC's provided advice regarding amendment of the Tongass Forest Plan, which this year published the first decision implementing the Forest Service's new planning regulations, to help communities in Alaska shift from relying on old-growth timber resources of the Tongass National Forest to a more diversified economy. OGC advised several national forests within the Pacific Region about how to implement the 2012 Planning Rule through significant land and resource management plan revisions and amendments. OGC also provided advice on a variety of proposed salvage timber sales, fuels and hazard-reduction projects, wild horse management, and grazing allotments. Particularly in light of the 41-day armed occupation of the Malheur National Wildlife Refuge, several of these Forest Service decisions were the subject of heightened sensitivity.

Renewable and Alternative Sources of Energy: OGC helped the FS respond to a large number of proposals for hydropower and other alternative energy projects. In Alaska, for example, there are more than 30 proposed hydroelectric projects on NFS lands. OGC advised USDA agencies on wind, solar, and biomass renewable energy projects. With respect to federal facilities, OGC helped several USDA agencies with proposed solar and energy conservation projects that are designed to achieve federal renewable energy and carbon reduction goals. OGC also advised the Forest Service regarding transport of liquid natural gas via the Pacific Connector Pipeline.

RD: OGC provided legal advice to RD agencies with respect to hundreds of loan and grant transactions in the Pacific Region with dollar values in the hundreds of millions. OGC also helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of prematurely maturing loans. OGC helped RD defeat a preliminary injunction motion in federal district court that involved a developer who was out of compliance with agency regulations.

Water Rights: OGC advised the FS and NRCS with respect to water law and water rights issues. OGC provided advice and representation to the Forest Service on controversial issues relating to renewal of a special use permit allowing a major bottled water company to extract water on NFS lands in California. OGC helped obtain a federal district court ruling upholding the Forest Service's position.

Wildfire and Pollution Abatement Cost Recovery: OGC actively pursued claims to recover costs incurred and natural resource damages from parties responsible for negligently starting fires on NFS lands in the Pacific Region. OGC also worked to recover costs of hazardous waste abatement on NFS lands.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance

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 members of Congress, concerning the programs and activities carried out by USDA.

The Department will revise the USDA Strategic Plan later in the spring and expects to release it with the FY 2019 President’s Budget.

Key Performance Measures:

Performance Measure	2012 Actual	2013 Actual	2014 Actual	2015 Actual	2016 Actual	2017 Target	2018 Target
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA’s Administrative Law Judge’s and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner
Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in an effective and timely manner.	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner
Legal advice and counsel to USDA officials and agencies provided timely and in an effective manner.	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Some legal services may be delayed and/or curtailed
Dollars (in thousands)	\$39,259	\$40,826	\$39,489	\$43,319	\$44,197	\$44,299	\$42,970

Analysis Results

Selected Past Accomplishments toward Achievements of the Key Outcome:

- Obtained civil penalties in the amount of \$3.5 million as part of a negotiated settlement in the *Santa Cruz Biotechnology* case, the largest Animal Welfare Act settlement in USDA history, at more than ten times the previous largest settlement of \$270,000.
- Provided legal support on the successful defense of WIC litigation involving infant formula contracts, *Gerber v. Vilsack*, (D. D.C.).
- Negotiated Comprehensive Environmental Response, Compensation and Liability agreements with responsible parties that required them to undertake site work and/or reimburse oversight costs at other contaminated waste sites impacting National Forest System lands, including the Georgetown Railroad-Site, Holden Mine Site, Georgetown Canyon Site, Ruth/Morning Star Mine Site, Meyers Landfill Site, and the Hazel Creek Abandoned Lead Smelter site. Obtained more than \$9.5 million in fire and CERCLA cost-recovery actions.
- Assisted DOJ with a D.C. Circuit appeal that challenged USDA's New Poultry Inspection System, *Food & Water Watch, Inc. v. Vilsack*. The D.C. Circuit found that the plaintiffs lacked standing and affirmed the district court's dismissal of their complaint.
- Provided more than 50 civil rights training sessions for over 6,000 USDA employees during FY 2016 and across all agencies and staff offices. The training sessions provided valuable information on a wide variety of EEO and civil rights topics that help the Department foster the highest standards in meeting its mission.
- Worked with Rural Development (RD) to issue bonds for a water system in a disadvantaged town that had been unable to finalize the transaction, after struggling for years to complete the financing for the project.

Selected Accomplishments Expected at the 2018 Proposed Resources Level:

- OGC will file timely and quality pleadings; and provide effective and timely litigation assistance.