

2023 USDA EXPLANATORY NOTES – OFFICE OF GENERAL COUNSEL

Table of Contents

Agency-Wide 2

 Purpose Statement 2

 Available Funds and FTEs 3

 Permanent Positions by Grade and FTEs 3

 Shared Funding Projects 4

Account 1: Salaries and Expenses 5

 Appropriations Language 5

 Lead-Off Tabular Statement 5

 Project Statement 5

 Geographic Breakdown of Obligations and FTE 9

 Classification by Objects 10

 Status of Programs 11

AGENCY-WIDE**PURPOSE STATEMENT**

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

OGC determines legal policy and directs the performance of all legal work conducted for USDA. All Department legal services are centralized within OGC, and the General Counsel reports directly to the Secretary. The General Counsel is the chief law officer of USDA and is responsible for providing legal services for all programs, operations, and activities of USDA. Three Deputy General Counsels, five Associate General Counsels, four Regional Attorneys, and the Director, Office of Administration and Resource Management 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. OGC also provides technical assistance to Congress on legislative drafting.

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 and includes print and electronic legal research resources and tools.

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, 2021, there were 230 permanent full-time employees, of which 116 were located in the headquarters office and 114 in the field offices.

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

AVAILABLE FUNDS AND FTEs

Table OGC-1. Available Funds and FTEs (thousands of dollars, FTEs)

| Item | 2020 | | 2021 | | 2022 | | 2023 | |
|--|----------|-----|----------|-----|-----------|-----|-----------|-----|
| | Actual | FTE | Actual | FTE | Estimated | FTE | Estimated | FTE |
| Salaries and Expenses: | | | | | | | | |
| Office of the General Counsel..... | \$45,146 | 212 | \$45,390 | 216 | \$45,390 | 212 | \$57,645 | 263 |
| Transfer Out: | | | | | | | | |
| Working Capital Fund..... | -375 | | -200 | | - | | - | |
| Total Available..... | 44,771 | 212 | 45,190 | 216 | 45,390 | 212 | 57,645 | 263 |
| Lapsing Balances | -103 | | -109 | | - | | - | |
| Total Obligations, OGC | 44,668 | 212 | 45,081 | 216 | 45,390 | 212 | 57,645 | 263 |
| Other USDA: | | | | | | | | |
| CCC | 173 | 1 | 337 | 2 | 446 | 2 | 446 | 2 |
| Civil Rights EEO Reimbursables | 2,417 | 14 | 2,877 | 17 | 2,598 | 17 | 2,625 | 17 |
| Detail Support | 107 | - | 109 | - | 50 | - | - | - |
| OCIO/FOIA Support..... | 482 | 2 | 469 | 1 | 426 | 2 | - | - |
| FOIAXpress and DOJ Portal..... | 262 | - | 260 | - | 275 | - | - | - |
| FS Non-Litigation Travel..... | - | - | - | - | 5 | - | 5 | - |
| Hazardous Materials Management Program | 978 | 4 | 800 | 4 | 909 | 4 | 909 | 4 |
| Records Management..... | 33 | - | 267 | 1 | 395 | 2 | - | - |
| AMS User Fees | 666 | 3 | 589 | 2 | 596 | 2 | 607 | 2 |
| APHIS User Fees | 26 | - | 30 | - | 30 | - | 30 | - |
| Total, Other USDA | 5,144 | 24 | 5,738 | 27 | 5,730 | 29 | 3,713 | 25 |
| Total, Agriculture Available | 49,812 | 236 | 50,819 | 243 | 51,120 | 241 | 61,358 | 288 |
| Other Federal Funds: | | | | | | | | |
| Department of Army | 26 | - | 28 | - | - | - | - | - |
| Total, Other Federal | 26 | - | 28 | - | - | - | - | - |
| Total Available, OGC | 49,838 | 236 | 50,847 | 243 | 51,120 | 241 | 61,358 | 288 |

PERMANENT POSITIONS BY GRADE AND FTEs

Table OGC-2. Permanent Positions by Grade and FTEs

| Item | 2020 | | | 2021 | | | 2022 | | | 2023 | | |
|----------------------|------|-------|--------------|------|-------|---------------|------|-------|-----------------|------|-------|-----------------|
| | D.C. | Field | Actual Total | D.C. | Field | Enacted Total | D.C. | Field | Estimated Total | D.C. | Field | Estimated Total |
| EX | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 |
| SES..... | 14 | 4 | 18 | 15 | 4 | 19 | 15 | 4 | 19 | 14 | 4 | 18 |
| GS-15 | 25 | 20 | 45 | 23 | 19 | 42 | 26 | 18 | 44 | 31 | 20 | 51 |
| GS-14 | 50 | 47 | 97 | 50 | 41 | 91 | 61 | 42 | 103 | 66 | 52 | 118 |
| GS-13 | 9 | - | 9 | 14 | 5 | 19 | 12 | 12 | 24 | 14 | 7 | 21 |
| GS-12 | 11 | 1 | 12 | 5 | 14 | 19 | 7 | 5 | 12 | 3 | 4 | 7 |
| GS-11 | 4 | 24 | 28 | 8 | 18 | 26 | 6 | 10 | 16 | 22 | 21 | 43 |
| GS-9 | 4 | 9 | 13 | 4 | 7 | 11 | 4 | 3 | 7 | 6 | 4 | 10 |
| GS-8 | 3 | 7 | 10 | 3 | 6 | 9 | 3 | 6 | 9 | 3 | 6 | 9 |
| GS-7 | 1 | 4 | 5 | 1 | 4 | 5 | 1 | 4 | 5 | 1 | 8 | 9 |
| GS-6 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 |
| Total Permanent | 123 | 116 | 239 | 125 | 118 | 243 | 137 | 104 | 241 | 162 | 126 | 288 |
| Unfilled, EOY | - | - | - | - | - | - | - | - | - | - | - | - |
| Total Perm. FT | | | | | | | | | | | | |
| EOY..... | 123 | 116 | 239 | 116 | 114 | 230 | 134 | 104 | 241 | 162 | 126 | 288 |
| FTE..... | 137 | 99 | 236 | 125 | 118 | 243 | 137 | 104 | 241 | 162 | 126 | 288 |

SHARED FUNDING PROJECTS

Table OGC-3. Shared Funding Projects (dollars in thousands)

| Item | 2020 Actual | 2021 Actual | 2022 Estimated | 2023 Estimated |
|--|----------------|----------------|-------------------|-------------------|
| Working Capital Fund: | | | | |
| Administrative Services: | | | | |
| Material Management Service..... | \$54 | \$52 | \$43 | \$42 |
| Mail and Reproduction Services..... | 329 | 320 | 174 | 174 |
| Integrated Procurement Systems..... | 17 | 20 | 22 | 22 |
| Procurement Operations Services..... | 59 | 54 | 70 | 86 |
| Human Resources Enterprise Management Systems..... | 3 | 5 | 5 | 5 |
| Subtotal..... | 462 | 451 | 314 | 329 |
| Communications: | | | | |
| Creative Media & Broadcast Center..... | 31 | 1 | 28 | 15 |
| Financial Management: | | | | |
| National Finance Center..... | 74 | 75 | 72 | 72 |
| Financial Shared Services..... | 174 | 186 | 193 | 201 |
| Subtotal..... | 248 | 261 | 265 | 273 |
| Information Technology: | | | | |
| Client Experience Center..... | 716 | 1,718 | 1,608 | 1,669 |
| Department Administration Information Technology Office..... | 201 | 344 | 382 | 395 |
| Digital Infrastructure Services Center..... | 231 | 123 | 331 | 341 |
| Enterprise Network Services..... | 212 | 108 | 107 | 107 |
| Subtotal..... | 1,360 | 2,293 | 2,428 | 2,512 |
| Correspondence Management Services..... | 44 | 47 | 60 | 60 |
| Total, Working Capital Fund..... | 2,145 | 3,053 | 3,095 | 3,189 |
| Department-Wide Shared Cost Programs: | | | | |
| Agency Partnership Outreach..... | 21 | 20 | 20 | 20 |
| Human Resources Self-Service Dashboard..... | 2 | - | - | - |
| Medical Services..... | 10 | 40 | 36 | 36 |
| National Capital Region Interpreting Services..... | - | - | 15 | 19 |
| Office of Customer Experience..... | 15 | 27 | 24 | 24 |
| Personnel and Document Security Program..... | 4 | 7 | 6 | 6 |
| Physical Security..... | 16 | 12 | 12 | 12 |
| Security Detail..... | 12 | 13 | 12 | 12 |
| Security Operations Program..... | 16 | 18 | 17 | 17 |
| TARGET Center..... | 3 | 4 | 4 | 4 |
| USDA Enterprise Data Analytics Services..... | 22 | 15 | 12 | 12 |
| Total, Department-Wide Reimbursable Programs..... | 121 | 156 | 158 | 162 |
| E-Gov: | | | | |
| Human Resources Line of Business..... | - | 1 | - | - |
| Integrated Acquisition Environment..... | 4 | - | - | - |
| Total, E-Gov..... | 4 | 1 | - | - |
| Agency Total..... | 2,270 | 3,210 | 3,253 | 3,351 |

ACCOUNT 1: SALARIES AND EXPENSES

APPROPRIATIONS LANGUAGE

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

For expenses necessary to the Office of the General Counsel, [~~\$60,723,000~~]\$57,645,000.

LEAD-OFF TABULAR STATEMENT

Table OGC-4. Lead-Off Tabular Statement (In dollars)

| Item | Amount |
|-------------------------|-------------------|
| Estimate, 2022 | \$45,390,000 |
| Change in Appropriation | + 12,255,000 |
| Budget Estimate, 2023 | <u>57,645,000</u> |

PROJECT STATEMENT

Table OGC-5. Project Statement (thousands of dollars, FTEs)

| Item | 2020 Actual | FTE | 2021 Actual | FTE | 2022 Estimated | FTE | 2023 Estimated | FTE | Inc. or Dec. | FTE Inc. or Dec. | Chg Key |
|-------------------------------|----------------|------------|----------------|------------|-------------------|------------|-------------------|------------|-----------------|---------------------------|------------|
| Discretionary Appropriations: | | | | | | | | | | | |
| Legal Services..... | \$45,146 | 212 | \$45,390 | 216 | \$45,390 | 212 | \$57,645 | 263 | +\$12,255 | +51 | (1) |
| Transfers Out: | | | | | | | | | | | |
| Working Capital Fund..... | -375 | - | -200 | - | - | - | - | - | - | - | - |
| Total Available..... | 44,771 | 212 | 45,190 | 216 | 45,390 | 212 | 57,645 | 263 | 12,255 | 51 | |
| Lapsing Balances..... | -103 | - | -109 | - | - | - | - | - | - | - | - |
| Total Obligations..... | <u>44,668</u> | <u>212</u> | <u>45,081</u> | <u>216</u> | <u>45,390</u> | <u>212</u> | <u>57,645</u> | <u>263</u> | <u>12,255</u> | <u>51</u> | |

Table OGC-6. Project Statement (thousands of dollars, FTEs)

| Item | 2020 Actual | FTE | 2021 Actual | FTE | 2022 Estimated | FTE | 2023 Estimated | FTE | Inc. or Dec. | FTE Inc. or Dec. |
|----------------------------|----------------|------------|----------------|------------|-------------------|------------|-------------------|------------|-----------------|---------------------------|
| Discretionary Obligations: | | | | | | | | | | |
| Legal Services..... | \$44,668 | 212 | \$45,081 | 216 | \$45,390 | 212 | \$57,645 | 263 | +\$12,255 | +51 |
| Lapsing Balances..... | 103 | - | 109 | - | - | - | - | - | - | - |
| Total Available..... | 44,771 | 212 | 45,190 | 216 | 45,390 | 212 | 57,645 | 263 | 12,255 | 51 |
| Less: | | | | | | | | | | |
| Total Transfers Out..... | 375 | | 200 | | - | | - | | | |
| Total Appropriation..... | <u>45,146</u> | <u>212</u> | <u>45,390</u> | <u>216</u> | <u>45,390</u> | <u>212</u> | <u>57,645</u> | <u>263</u> | <u>12,255</u> | <u>51</u> |

Office of the General Counsel

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) An increase of \$12,255,000 and 51 FTEs in FY 2023 (\$45,390,000 and 212 FTEs available in 2022).

The funding change is requested for the following items:

A. An increase of \$934,000, for pay inflation and FERS in 2022.

This increase supports the pay increase which went into effect January 1, 2022, of a 2.7 percent Cost of Living pay increases for civilian employees, and a 1.1 percent increase to cover the expenses for the mandated increase of USDA's contribution to FERS.

B. An increase of \$1,769,000 for 2023 Pay Cost.

This increase will support the annualization of the 2022 2.7 percent Cost of Living pay increase and the 2023 4.6 percent Cost of Living pay increase. Approximately 85 percent of OGC's budget is expended in support of personnel salaries and benefits, which leave no flexibility for absorbing increased costs for pay or any other salary adjustments.

C. An increase of \$2,413,000 to maintain current staff and legal services.

This critical increase is needed to support and maintain current staffing levels to meet the program demands and statutory requirements imposed on OGC. Approximately 85 percent of OGC's budget is expended in support of personnel salaries and benefits, which leave no flexibility for absorbing increased costs for pay or any other salary adjustments. OGC can absorb any such increases only by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, training, IT end user support, and supplies. As these items comprise only 15 percent of the overall budget, OGC's flexibility to reduce expenses is extremely limited and, when increased pay costs and salary adjustments are not fully funded, the only available option is to consider staff reductions. This increase is also needed for OGC to continue to carry out its mission of providing legal services and maintaining its legal research database licenses and training resources. OGC is providing legal services essential to the implementation of American Rescue Plan Act (ARP) programs. OGC is also assisting the Department with its multi-dimensional Pandemic Assistance Program under the 2021 Consolidated Appropriations Act and other authorities. In addition, OGC is providing legal support to economic recovery-related enhancements to food and nutrition programs and to rural housing, broadband, healthcare facilities and other rural development programs. Additional legal resources are needed for (1) ongoing COVID-19 responses, including assistance with supply chain resiliency enhancement, (2) providing advice on the return of USDA employees to the physical office spaces and facility usage planning, (3) carrying out programs funded under the CARES Act and ARP Act in accordance with statute and governmentwide regulatory policies, and (4) enhanced cybersecurity measures in the wake of the Solar Wind and the Coastal Pipeline attacks and intellectual property protection measures, both for the Department and the food and agriculture sector of the economy.

D. An increase of \$300,000 for Matter Center.

This increase will allow OGC to continue to develop the legal case management system and pilots within OGC to identify gaps in the current ECM case management system and help create a new legal tool that meets the need of a national law office. Promote research on legal case management systems that will enhance work performance of legal staff within USDA\OGC. Disseminate research and pilot results broadly to OGC management to inform leadership of next steps.

E. An increase of \$755,000 for non-salary cost.

OGC will increase funding for law library purchases, computerized legal research, and expenses in several areas due to inflation such as, GSA Rent, DHS Building Security, and shared funding services.

F. An increase of \$2,770,000 and 25 FTEs to backfill key vacant positions.

Due to high attrition rate in FY 2021 and FY 2022 to date and currently a flatlined FY 2022 budget, OGC currently lacks sufficient personnel to provide proactive services and needs more attorneys and support staff to handle routine matters and the increased workload associated with providing significant technical assistance to the House and Senate Agriculture Committees during their upcoming consideration of the 2023 Farm Bill. This work and more require more support from OGC than OGC can currently provide with its current staff. This budget increase will help direct resources to this need and include sufficient resources

to permit OGC to backfill vacancies left by some of the attorneys and support employees who retired or resigned over the last two years, and to respond to critical needs that OGC has been unable to address. The amount would cover salary and benefit costs to add five senior management positions eight staff attorneys, four paralegals, and eight administrative support staff positions.

G. An increase of \$3,314,000 and 26 FTEs for increased legal services to support programs, litigation, and integrity.

For FY 2023, we will continue to rebuild OGC based on three pillars: Support for Programs, Litigation, and Integrity. From these pillars we believe we will better serve our clients and stakeholders and support the Administration's four goals: Racial Equity, COVID-19 Response, Climate Change, and Rebuild the Economy.

- Support for Programs refers to OGC's actions to provide legal services to support Department programs and activities and provide technical assistance to Congress.
- Litigation refers to OGC's ability to conduct administrative enforcement litigation and support the Department of Justice in defending the Department against increased litigation and affirmatively recoup funds.
- Integrity refers to the ways in which OGC helps the Department ensure that its actions are appropriate, ethical, and properly documented and that such documentation is available as appropriate under the law.

Positions are needed to address the following areas of legal work:

- Implement the American Rescue Plan Act.
- Provide technical assistance on the development and implementation of Child Nutrition reauthorization.
- Provide technical assistance on the development and implementation of the 2023 Farm Bill.
- Policy and litigation work to support the implementation of the Administration's policies on safeguarding the food supply chain and other areas to rebuild the economy.
- Policy and litigation work to support the implementation of the Administration's policies on climate change in the areas of agricultural production, bioenergy, conservation and land management.
- Build modern records management, FOIA, and eDiscovery systems.
- Build capabilities in Indian Law to meet the Administration's goal of equity.
- Policy and litigation work in implementing the Administration's policies in racial equity.

Rebuild and expand capabilities in:

- Appropriations law
- Minerals law
- Supporting agencies fighting fraud
- Support agencies in complex commercial transactions
- Support agencies and the Department of Justice in USDA litigation

Without these additional resources, OGC will not be able to:

- Consistently and timely respond to requests for legislative technical assistance.
- Consistently and timely support the legal work needed to implement the Administration's policy goals of climate change, equity, and rebuilding the economy.
- Provide full litigation support in all cases which could lead to costly settlements or adverse case law.
- Rebuild the Department's records and FOIA systems. There currently are litigative risks because the Department is unable to properly and timely produce and maintain records as well as preserve evidence
- Properly advise agencies and defend actions associated with complex commercial transactions. This could lead to fewer losses associate with loan and loan guarantee programs. Such losses result in fewer loans and loan guarantee dollars available to stakeholders.

Listed below reflects how the new positions will support the three pillars:

1. Support for Programs (12 FTEs)

- a. Marketing and Regulatory Programs: Concentration and Hemp - This supports the Administration's goal of rebuilding the economy by creating new and better markets for agricultural producers, especially involving packers and stockyards work and other work related to market concentration.
 - b. Land Management/Conservation - The work of Forest Service, the Natural Resources Conservation Service, and Farm Service Agency is critical to the Department's efforts in supporting the Administration's climate change initiatives. We also need to address the impact on Indian Country by identifying and addressing systemic racism.
 - c. Complex commercial transactions – A key tool for the Department in rebuilding the rural economy is the loan and loan guarantee programs of the Rural Development Mission Area. These programs have substantially grown in size, and the complexity of the transactions has also significantly increased. The Mission Area needs more help from OGC to originate and service these loans and loan guarantees
 - d. General Law functions (contracting and appropriations)- The Department's purchasing power and internal resources are very effective and complicated tools to support the four Administration goals. OGC provides legal services to support the following tools: Using USDA staff to provide COVID-19 shots, purchasing food for donations from small and disadvantaged producers, inserting climate friendly requirements in procurement contracts, and leveraging USDA purchases to help rebuild and create markets in rural communities.
 - e. OGC Administration – In order to properly manage and support OGC's legal services, we need to increase our administrative staff.
2. Litigation – (5 FTEs) A core function of OGC is to litigate administrative enforcement actions and provide litigation support to the Department of Justice in federal court cases involving the Department. Given the very large scope of the Department, the cases involved are significant. These activities are critical to support the Administration's racial equity goal (as seen in the current section 1005 litigation), the climate change goal (as seen in the current Twin Metals litigation and affirmative fire claims cases), and the rebuilding the economy (as seen in the Brazos bankruptcy litigation where we are trying to ensure the stability of electricity supply in TX.)
 3. Integrity in the Department- (9 FTEs)
 - a. GLRD-eDiscovery – Only recently did the Department purchase a comprehensive e-Discovery platform. GLRD handles the legal issues for records management and FOIA and should have staff dedicated to management eDiscovery and related requests.
 - b. Civil Rights Policy – This is the team that provides advice to agencies in the Department to ensure that they understand their obligations under civil rights laws and policies and supports racial equity efforts.
 - c. Combating Fraud – Fraud not only represents a waste of taxpayer funds, but it also reduces the confidence that the public has in the activities of the Department, especially when it happens in the Department's larger programs such as SNAP.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs

Table OGC-7. Geographic Breakdown of Obligations and FTEs (thousands of dollars, FTEs)

| State/Territory/Country | 2020 | | 2021 | | 2022 | | 2023 | |
|----------------------------|--------|-----|--------|-----|-----------|-----|-----------|-----|
| | Actual | FTE | Actual | FTE | Estimated | FTE | Estimated | FTE |
| Alaska | \$571 | 3 | \$749 | 5 | \$764 | 5 | \$1,040 | 6 |
| Arkansas | 1,118 | 7 | 1,167 | 8 | 1,189 | 8 | 1,349 | 8 |
| California | 2,113 | 9 | 2,184 | 10 | 2,205 | 9 | 2,863 | 13 |
| Colorado | 2,224 | 12 | 1,984 | 10 | 2,003 | 10 | 2,114 | 12 |
| District of Columbia | 26,290 | 113 | 26,513 | 111 | 26,668 | 112 | 36,069 | 142 |
| Georgia | 2,743 | 15 | 2,919 | 16 | 2,948 | 16 | 3,341 | 17 |
| Missouri | 1,656 | 10 | 1,986 | 12 | 2,008 | 12 | 2,171 | 12 |
| Montana | 1,244 | 8 | 1,300 | 8 | 1,353 | 7 | 1,237 | 8 |
| New Mexico..... | 683 | 5 | 745 | 4 | 762 | 4 | 1,019 | 7 |
| Oregon | 2,097 | 8 | 1,693 | 9 | 1,710 | 9 | 1,975 | 12 |
| Pennsylvania | 1,454 | 8 | 1,474 | 9 | 1,526 | 8 | 1,806 | 10 |
| Texas..... | 1,158 | 7 | 954 | 6 | 862 | 5 | 938 | 6 |
| Wisconsin | 1,317 | 7 | 1,413 | 8 | 1,392 | 7 | 1,723 | 10 |
| Obligations..... | 44,668 | 212 | 18,910 | 216 | 45,390 | 212 | 57,645 | 263 |
| Lapsing Balances | 103 | - | 109 | - | - | - | - | - |
| Total, Available..... | 44,771 | 212 | 45,190 | 216 | 45,390 | 212 | 57,645 | 263 |

CLASSIFICATION BY OBJECTS

Table OGC-8. Classification by Objects (thousands of dollars)

| Item No. | Item | 2020 Actual | 2021 Actual | 2022 Estimated | 2023 Estimated |
|-------------------------------------|---|--------------|--------------|----------------|----------------|
| Personnel Compensation: | | | | | |
| | Washington D.C. | \$14,377 | \$14,882 | \$14,752 | \$18,387 |
| | Personnel Compensation, Field | 13,814 | 13,737 | 13,618 | 16,972 |
| 11 | Total personnel compensation | 28,191 | 28,619 | 28,370 | 35,359 |
| 12 | Personal benefits..... | 9,298 | 9,801 | 10,209 | 13,413 |
| 13.0 | Benefits for former personnel..... | 30 | 18 | 29 | 29 |
| | Total, personnel comp. and benefits | 37,519 | 38,438 | 38,608 | 48,801 |
| Other Objects: | | | | | |
| 21.0 | Travel and transportation of persons | 75 | 16 | 25 | 201 |
| 22.0 | Transportation of things..... | 1 | - | 4 | 4 |
| 23.1 | Rental payments to GSA | 1,427 | 1,599 | 1,660 | 1,760 |
| 23.2 | Rental payments to others..... | 165 | 162 | 165 | 165 |
| 23.3 | Communications, utilities, and misc. charges..... | 676 | 610 | 602 | 627 |
| 24.0 | Printing and reproduction | 196 | 155 | 219 | 219 |
| 25 | Other contractual services | - | - | - | - |
| 25.2 | Other services from non-Federal sources | 1,334 | 451 | 242 | 356 |
| 25.3 | Other goods and services from Federal sources..... | 2,490 | 2,906 | 3,236 | 3,856 |
| 26.0 | Supplies and materials | 754 | 683 | 324 | 912 |
| 31.0 | Equipment | 31 | 23 | 305 | 744 |
| 42.0 | Insurance Claims and Indemnities..... | - | 38 | - | - |
| | Total, Other Objects | 7,149 | 6,643 | 6,782 | 8,844 |
| 99.9 | Total, new obligations | 44,668 | 45,081 | 45,390 | 57,645 |
| | DHS Building Security Payments (included in 25.3) | \$247 | \$250 | \$253 | \$253 |
| Information Technology Investments: | | | | | |
| Major Investment 1 | | | | | |
| 11 | Internal Labor | 187 | 190 | 209 | 212 |
| 25.2 | Outside Services (Consulting)..... | 1,628 | 577 | 332 | 572 |
| | Total Major Investment 1 | 1,815 | 767 | 541 | 784 |
| 25.3 | Mission Area WCF Transfers..... | 1,500 | 2,676 | 2,844 | 2,844 |
| | Total Non-Major Investment | 1,500 | 2,676 | 2,844 | 2,844 |
| | Total IT Investments | 3,315 | 3,443 | 3,385 | 3,628 |
| Position Data: | | | | | |
| | Average Salary (dollars), ES Position | \$186,341 | \$192,401 | \$196,360 | \$199,655 |
| | Average Salary (dollars), GS Position..... | \$125,633 | \$124,587 | \$128,907 | \$125,115 |
| | Average Grade, GS Position..... | 14.3 | 14.3 | 14.2 | 14.0 |

Advertising Expenditures

There are no contracts for advertising expenses to report.

STATUS OF PROGRAMS

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

Current Activities

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

Selected Examples of Recent Progress by OGC

- The Marketing, Regulatory and Food Safety Programs Division oversaw 37 Packers and Stockyards Act (P&S Act) administrative enforcement cases, resulting in almost \$2 million in assessed civil penalties.
- The International Affairs, Food Assistance and Farm and Rural Programs Division advised on the development and implementation of the Pandemic Assistance for Timber Harvesters and Haulers program, which will provide up to \$200 million in financial relief to timber harvesting and timber hauling businesses, as well as the Pandemic Livestock Indemnity Program, which provides financial relief for producers that suffered losses due to insufficient access to processing facilities during the pandemic.
- The General Law and Research Division provided assistance to the Department in implementing the American Rescue Plan Act, Pub. L. 117-2, including the food supply chain and agriculture pandemic response and assistance and support for socially disadvantaged farmers and ranchers.
- The Mountain Region assisted the U.S. Attorney’s Office in negotiating the settlement of approximately \$25 million for the 2017 “416” fire (*United States v. The Durango & Silverton Narrow Gauge R.R. Co.*, (D. Colo.) for affirmative fire recovery costs.
- The Civil Rights Policy Section created an Employee Complaint Process Manual for senior leadership that provides an overview of various avenues available to employees who wish to pursue personnel complaints against USDA officials, supervisors, and employees.

Marketing, Regulatory and Food Safety Programs Division

The Division provides legal advice and litigation support to two Mission Areas: Food Safety and Marketing and Regulatory Programs. The workload increased significantly as the Agricultural Marketing Service (AMS) implements two new national programs, The National Bioengineered Food Disclosure Standard and the Domestic Hemp Production Program. Examples of the critical work performed by the Division during FY 2021 appear below:

Agricultural Marketing Service (AMS)***Domestic Hemp Production Program***

The Division was instrumental in AMS’s efforts to promulgate the final rule for the Domestic Hemp Production Program that included significant revisions to allow more flexibilities for States, Tribes, and research facilities. The Division also represented the Department in the Office of National Drug Control Policy’s working group on hemp and in the interagency working group that addressed the United States’ responsibilities under the United Nations Single Convention on Cannabis.

Agricultural Commodities Act

The Division drafted over 100 reparations decisions involving more than \$3.5 million in disputed claims and completed action on over 30 administrative complaints under the Perishable Agricultural Commodities Act. Those efforts also resulted in \$36,500 in civil penalties and in payments of approximately \$5.6 million to producers.

Antitrust/Anticompetition Issues

The Division has been working closely with AMS on its rulemaking efforts to address “unfair, unjustly discriminatory, or deceptive practice or device” and “undue or unreasonable preference or advantage” in violation of the P&S Act. The Division provided critical representation of USDA’s interests in discussions with DOJ’s Antitrust Division. The Division coordinated sensitive information sharing requests as antitrust investigations ensued.

Food Safety and Inspection Service (FSIS)

Swine Slaughter Modernization

The Division provided legal counsel to FSIS as it defended implementation of a significant rule to modernize the inspection process in swine slaughter facilities in three lawsuits filed in Minnesota, New York, and California. In the Minnesota case, the Court ordered that starting June 30, 2021, any establishment operating under the swine slaughter inspection system decrease its line speed from unlimited to no more than 1106 head per hour.

FSIS Mask Mandate

The Division also provided significant legal support regarding FSIS’s decision to protect their employees by requiring official meat and poultry establishments, egg products plants and other facilities where FSIS provides inspection services, located in areas of “substantial” or “high” communicating COVID-19 transmission, to have employees or contractors wear masks when FSIS inspection personnel are present in the facility.

Animal and Plant Health Inspection Service

Biotechnology Regulatory Services

Last year, the Division assisted APHIS in finalizing a rule to revise its biotechnology regulations in order to make them more effective and efficient. The Division has devoted significant resources to prepare for litigation challenging the regulation.

Animal Care

The Division provided substantial assistance to Animal Care in several rulemakings, including a proposed rule that covered the new area of bird standards and a final rule involving contingency plans. One rulemaking required complying with court mandated timelines, and another required complying with Congressional timelines. The Division also worked with DOJ to successfully bring the first two Animal Welfare Act affirmative litigation cases in federal court.

International Affairs, Food Assistance, and Farm and Rural Programs (FAIR) Division

The Division provided extensive legal advice and assistance to the Farm Service Agency (FSA), Foreign Agricultural Service (FAS), Risk Management Agency (RMA), Food and Nutrition Service (FNS), and Rural Development (RD) in connection with implementation of the CARES Act, the American Rescue Plan Act of 2021, and the Consolidated Appropriations Act, 2021. Examples of FAIR Division’s service supporting USDA Mission Areas include:

Commodity Credit Corporation (CCC) and Farm Service Agency (FSA)

OGC provided significant legal advice and assistance to FSA in the development of several pandemic assistance programs to aid recovery from the impacts of the COVID-19 pandemic on agricultural producers. OGC continued to support the implementation of the Coronavirus Food Assistance Program (CFAP), for example clearing rule amendments to provide additional assistance for certain producers, including up to \$1 billion for contract growers.

OGC advised on and negotiated a grant agreement that provided \$15 million to assist agricultural producers affected by worsening drought conditions in the Klamath River Basin in Oregon and California. In addition, OGC contributed to the rule establishing the Quality Loss Assistance (QLA) program to provide disaster assistance for crop quality losses that were a consequence of hurricanes, excessive moisture, floods, qualifying drought, tornadoes, typhoons, volcanic activity, snowstorms, or wildfires occurring in calendar years 2018 and 2019.

OGC advised on the implementation of Section 1005 of the American Rescue Plan Act (ARPA), which intended to provide debt relief to socially disadvantaged farm loan borrowers to combat the lingering effects of discrimination in Farm Loan Programs. OGC continues to support litigation defending the Section 1005 program, originally estimated to provide approximately \$5 billion of relief to socially disadvantaged farmers and ranchers. OGC advised on the newly established Heirs’ Property Relending Program (HPRP), which provides resources to assist agricultural producers and landowners to resolve heirs’ property land ownership and succession issues.

Foreign Agricultural Service (FAS)

OGC was instrumental in assisting the FAS in identifying and drafting the documents to make necessary changes to the dairy import licensing regime arising from the withdrawal of the U.K. from the European Union. Also, OGC played a significant role in an interagency effort to establish an agreement with the Government of El Salvador to accomplish debt relief and promote conservation in El Salvador under the Tropical Forest and Coral Reef Conservation Act of 1998. Under this bilateral agreement, El Salvador will pay debt owed to the Commodity Credit Corporation (CCC) under Title I of the Agricultural Trade Development and Assistance Act of 1954, Public Law No. 83-480 (“PL 480”), in part to CCC and in part into a Tropical Forest Fund in El Salvador. OGC assisted in drafting the bilateral agreement between the United States and El Salvador.

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

OGC provided legal advice to RMA and the FCIC Board of Directors on crop insurance policies, regulations, litigation, compliance issues, administrative proceedings, interpretations of procedure, final agency determinations, and various other matters. OGC’s legal guidance assisted RMA with the COVID-19 emergency, publishing regulations, issuing manager’s bulletins, responding to program participants, and managing the \$15.8 billion Federal Crop Insurance Program. OGC provided assistance in developing a demographic data collection to enable RMA to determine whether agents that deliver the Federal Crop Insurance Program reflect the diversity of the communities served. This information, collected for the first time, will enable USDA to target outreach where it is needed most.

Food, Nutrition and Consumer Services

OGC provided legal advice to the Center for Nutrition Policy and Promotion on the update to the Thrifty Food Plan (TFP), the basis for benefits in the Supplemental Nutrition Assistance Program (SNAP). This was the first update since 2006. OGC provided assistance to the government’s defense in litigation challenging emergency allotments authorized under the Families First Coronavirus Response Act and assisted in updating the Department’s policy on the amount and eligibility for emergency allotments. OGC also provided substantial support for programmatic waivers in the nutrition programs in response to COVID-19. OGC’s advice was integral to the establishment of the Pandemic Electronic Benefit Transfer Program, a newly established nutrition program that provides benefits to children for missed school lunches.

Rural Development (RD)

OGC provided significant assistance in closing two rounds of funding for the broadband ReConnect Pilot. That assistance included resolving a roadblock of almost \$1 billion in funding that could not be closed during the pandemic. OGC was also instrumental in developing and clearing the third round of funding for the ReConnect Program, which will provide over \$1.2 billion in funding for an application window that opened in November 2021. Additionally, OGC provided technical assistance in connection with Congress’s revision of broadband infrastructure programs. That effort eventually became the broadband component of the Bipartisan Infrastructure Bill, providing the Rural Utilities Service over \$2 billion in additional funds for ReConnect.

OGC assisted the government’s efforts to overcome COVID’s impact on housing, advising the Rural Housing Service (RHS) on the CARES Act provisions for forbearance and foreclosure moratoriums for single family housing loans, and on RHS’ policy to continue the foreclosure moratorium beyond the expiration of the CARES Act provision. OGC was instrumental in assisting the Rural Business-Cooperative Service on the establishment of a new program, the Food Supply Chain Guaranteed Loan Program authorized by the American Rescue Plan Act. OGC provided extensive assistance with program implementation, including developing a Notice of Funding Availability that makes approximately \$1 billion in funds available in FY 2022 to qualified borrowers and projects for the start-up or expansion of activities in the middle of the food supply chain, particularly the aggregation, processing, manufacturing, storage, transportation, and distribution of food, to increase capacity and help create a more resilient, diverse, and secure U.S. food supply chain. OGC assisted with transactional work including the development of four RD guaranteed loan programs (Business and Industry Guaranteed Loan Program, Rural Energy for America Program, Water, and Community Facilities) referred to as “OneRD.”

Natural Resources and Environment Division

OGC advised the Forest Service (FS) on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS) and provided legal services to the Natural Resource and Conservation Service (NRCS). OGC counseled the FS on legal issues arising under laws including the Administrative Procedures Act, the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Healthy Forest Restoration Act, and the Endangered Species Act (ESA). OGC assisted the FS and other USDA offices in drafting legislation, and reviewed pending legislation, pertaining to the conservation title of the Infrastructure Bill and the Build Back Better legislation. In the past year, OGC provided legal services to the FS and National Resource and Conservation Service on a wide range of agency activities:

Energy and Mineral Development

OGC provided legal assistance to the FS in litigation and program activities related to mineral projects for development of critical minerals and administration of the FS oil and gas resources on NFS lands. OGC has advised the FS in connection with legal challenges to land exchanges and mining projects intended to develop mineral resources on NFS lands, and on issues involving remediation of legacy mining sites and implementation of administration policies related to oil and gas development on NFS lands.

Infrastructure

OGC provided legal advice to the FS, Rural Development, and NRCS regarding infrastructure development in national forests, rural areas, and NRCS conservation easements, especially with regard to expansion of renewable energy transmission projects, broadband access in rural areas, and pipeline infrastructure. In addition, OGC assisted the FS in identifying infrastructure projects that could be expedited as part of the economic recovery efforts in response to the COVID-19 pandemic.

Regulatory Reform and Forest Planning

OGC assisted the FS in litigation and program activities relating to management of NFS lands for grazing, recreation, timber, watersheds, and wildlife habitat. OGC provided legal research and informal advice regarding significant land and management plan amendments and revisions, as well as objections concerning plans, projects, and permits, including critical habitat regulations under the Endangered Species Act.

Litigation

OGC coordinated litigation strategy and assisted in the defense of cases involving national monument designation, post-wildfire recovery and hazard abatement, roadless area management, infrastructure projects, and livestock grazing. OGC assisted in the defense of regulations, directives, programmatic forest plans, and most commonly, resource management projects involving vegetation management, livestock grazing, and mining and energy development.

Forest and Range Management

OGC provided legal advice on the Forest Service's development of its Forest Products Modernization initiative, including its efforts to modernize the FS timber handbook. OGC also provided advice and represented the agency in various administrative fora, 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. OGC provided advice to the FS on a number of issues relating to wildfire response and firefighter safety in light of the COVID-19 pandemic during an extremely busy fire season.

Roadless Area Management

OGC continued to advise the FS and Under Secretary for Natural Resources and Environment on rulemaking efforts concerning the 2001 roadless rule and its application to NFS lands in Alaska.

Recreation

OGC provided advice to the FS on hazard tree management issues in campgrounds, ski areas, and roadside areas. OGC has been active in advising the FS on insurance and indemnity issues with states that arise when state entities are involved in special use authorizations on NFS lands. OGC also assisted in the drafting of key notices, directives, and policies concerning FS implementation of public safety authority in response to the COVID-19 pandemic, including orders related to mask wearing on NFS lands and implementation of administration COVID-19 policies on NFS lands.

Lands, Water, Wilderness and Wild and Scenic Rivers

OGC advised the FS on a number of issues relating to FERC administration of hydropower facilities on NFS lands and wild and scenic river segments. OGC provided litigation support for water adjudications, including water rights associated with grazing on NFS lands as well as advice regarding management of wilderness and wild and scenic river corridors.

Natural Resources Conservation Service (NRCS)

OGC has continued to support NRCS activities on private or non-Federal lands, including legal advice regarding the administration of programs such as the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Agricultural Conservation Easement Program, and the Regional Conservation Partnership Program. OGC provided advice to NRCS on multiple litigation matters involving conflicts over NRCS easements and litigation over NRCS wetland compliance regulations.

Environmental Law

OGC provided litigation support and legal advice for all USDA agency matters related to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act, including the Holden mine site in Idaho and the Gold King mine site in Colorado, in addition to nationwide cleanup efforts at Formerly Used Defense Sites on FS lands. OGC advised and represented the Department and individual agencies regarding compliance with pollution control standards and continued to provide advice on hazardous materials liability arising out of real property transactions.

Deepwater Horizon Oil Spill

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

Real Property Matters

OGC worked closely with USDA agencies that manage real property assets on a variety of legal issues relating to land ownership transactions and stewardship responsibilities, especially involving issues of tribal co-management and land exchanges involving tribal interests in NFS lands. 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 Division (GLRD)

Appellate Litigation

GLRD assisted the Department of Justice (DOJ) in a number of affirmative appeals, including an appeal before the Ninth Circuit, *Apache Stronghold v. US*, which defends the FS's conveyance of title of 2,422 acres of the Tonto National Forest, including Oak Flat (an Apache sacred site), to Resolution Copper in exchange for 5,459 acres of conservation lands. GLRD also assisted in another appeal before the Ninth Circuit, *Pon v. US*, in which the Ninth Circuit affirmed the permanent disqualification of Pon from participating in the Supplemental Nutrition Assistance Program (SNAP, formerly called the Food Stamp Program). GLRD has also continued to assist DOJ's Office of Solicitor General in another case involving the SNAP, *United States v. Vaello Madero*, which is pending before the U.S. Supreme Court and involves the applicability of Social Security Administration and SNAP benefits in Puerto Rico. Additionally, GLRD assisted DOJ in securing the affirmance of a criminal conviction before the Third Circuit regarding a defendant who was found guilty in a complicated biofuels scam that defrauded the government of millions of dollars. GLRD also drafted appeal recommendations for the American Rescue Plan Act (ARPA) Section 1005 cases, which sought to enjoin USDA from administering the loan-forgiveness program set forth in the ARPA for socially disadvantaged farmers and ranchers.

GLRD continued to assist DOJ in *State of Alaska v. Vilsack*, in which the D.C. Circuit dismissed Alaska's challenge to USDA's Roadless Rule for mootness and lack of standing. Further, GLRD continued to assist DOJ with *2 Bar Ranch Limited Partnership v. Forest Service*, in which the Ninth Circuit upheld the Forest Service's management of the Dry Cottonwood Allotment on the Beaverhead-Deerlodge National Forest in Montana. In addition, GLRD coordinated with DOJ regarding USDA's interests relating to a petition for certiorari filed in *Public Watchdogs v. Southern California Edison Co.*, which raises an issue about the scope of the Hobbs Act. GLRD also coordinated with DOJ regarding USDA's interests relating to an amicus brief filed by DOJ in the Eighth Circuit in *Hus Buljic v. Tyson Foods Inc.*, which raises issues about the scope of federal-officer removal and the Defense Production Act.

GLRD also defends most USDA Judicial Officer decisions that enforce the P&S Act, Perishable Agriculture Commodities Act (PACA), Animal Welfare Act (AWA), and the Horse Protection Act, and that are appealed to the Federal courts of appeals. GLRD attorneys brief and argue these cases before the courts of appeals. During FY 2021, GLRD handled three petitions for review in the D.C. Circuit and the Fifth Circuit, challenging decisions issued by the Judicial Officer under the PACA.

Contracts and Fiscal Law

GLRD is responsible for handling transactional, counseling, and litigation matters that arise throughout the Department and its agencies; for example, GLRD advises agencies and offices regarding the Department's legal issues and litigation related to reorganizing and realigning the Department, complying with the Federal Vacancies Reform Act, and implementing COVID-19 related authorities, procurements, grants, and fiscal law issues. In addition, GLRD assisted with responses to requests for information and technical assistance from Congress and assisted the Department in implementing Farm Bill programs.

GLRD provides the primary legal support for Departmental Administration (DA) and for the Research, Education, and Economics (REE) Mission Area. For the REE mission area, GLRD provided legal services to the National Institute of Food and Agriculture (NIFA) and the Agricultural Research Service regarding the implementation of OMB administrative flexibilities related to the COVID-19 national emergency declaration, including issues surrounding no-cost extensions, payment of salaries, donation of personal protective equipment, and permitted use of grant funds in response to the emergency. GLRD advised Office of the Chief Financial Officer on implementation of revisions to 2 CFR Part 200 related to purchases of telecom equipment from certain Chinese-owned companies. GLRD also assisted with audits related to the move of NIFA and Economic Research Service (ERS) to Kansas City.

GLRD continued to assist the Department's response to the COVID-19 pandemic, including engagements under the Families First Coronavirus Response Act to purchase commodities for emergency distribution during a public health emergency designation, and under the Coronavirus Aid, Relief, and Economic Security (CARES) Act to prevent, prepare for, and respond to COVID-19 by providing support for agricultural activities and producers affected by pandemic related issues. COVID impact issues range from visitor access to buildings, USDA workplace safety plan, and the COVID impacts on FS wildland firefighting operations. Finally, GLRD provided assistance to the Department in various aspects of executive orders related to worker and contractor safety.

GLRD defended the government in litigation before Federal courts and administrative forums including over 40 protest-related matters initiated before the Government Accountability Office (GAO), as well as those continued from the previous fiscal year. For example, OGC successfully defended the FS' award of contracts for Next Generation 3.0 Large Airtanker aerial firefighting at GAO and again later at the Court of Federal Claims. GLRD also continues to advise the Department on litigation related to procuring and implementing an enterprise infrastructure solution.

GLRD attorneys respond to emergency inquiries regarding the use of funds for emergency food distribution under the Stafford Act. In the past year, GLRD provided legal assistance dealing with the aftermath of devastating wildfires in the American West and the hurricanes affecting the Gulf coast. GLRD provided advice and coordination with the FS and Assistant Secretary of Administration, with respect to novel use of housing sharing services for housing firefighters and firefighter use of procurement methods in paying for housing.

Disclosure and Tort Claims

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

GLRD continued handling and supporting DOJ in numerous FOIA cases. Many of these cases involve complex disclosure and privacy issues involving records concerning agencies and private parties. Examples include multiple lawsuits from American Oversight and similar organizations that sought sensitive records from senior USDA officials that GLRD resolved to the satisfaction of those officials and without incurring attorney fees. GLRD assists the Department in responding to governmental requests and private party subpoenas and other discovery requests. GLRD organized and led massive electronic and hardcopy record searches across numerous offices at USDA. GLRD's effort resulted in the timely and efficient disclosure of thousands of responsive records.

GLRD is currently defending USDA, and assisting DOJ, with litigation before Federal courts in numerous cases involving complex and sensitive issues. Examples of FTCA matters include fires in National Forests and elsewhere, such as the Gap Fire and Roosevelt Peake Fire, and significant wrongful-death suits, such as the Cold Spring Flash Flood case, where plaintiffs are seeking millions of dollars in damages. Among successes in FY21, GLRD secured the dismissal of the complaint in the LoLo Peake Fire and Cascadia cases, FTCA suits against the Forest Service in which plaintiffs were seeking tens of millions in damages.

GLRD also assists with the Department's representation in a lawsuit from the United Farm Workers related to the October 2020 Farm Labor Survey data collection and the November 2020 Farm Labor report. With GLRD's assistance, these claims have been resolved favorably to the government, and GLRD began assisting the DOJ to implement a court-approved settlement that released the government from these claims.

GLRD participated in Federal interagency initiatives with respect to biodefense, counterintelligence, and human trafficking. GLRD provided advice and guidance on sensitive matters before the Committee for Foreign Investment in the United States, helping to ensure the security of the Nation's agricultural resources. GLRD continued to advise the Department on numerous cybersecurity and information technology law issues, interpreting and advising on statutes, regulations, and executive orders concerning national security related programs and activities. GLRD also served as the Department's legal advisor to the Office of Homeland Security's Continuity of Operation program,

providing legal advice and guidance to the Department during the planning and execution phases of the largest intergovernmental continuity exercise.

Intellectual Property Law

GLRD provides legal services regarding intellectual property (IP) for agencies and programs throughout USDA. GLRD's IP group oversees and advises on patent procurement, invention rights, assignments, and licenses, providing legal oversight and advice regarding technology transfer, i.e., the transfer of USDA technology for use by the private sector. GLRD's IP group represents USDA before the Patent and Trademark Office regarding patent and trademark matters and at the Department of Justice regarding 28 U.S.C. 1498 litigation for alleged USDA patent and copyright infringement.

IP-related legal services provided by GLRD included: 11 new patent applications; registration of the USDA Organic certification mark for the National Organic Program; renewed registrations for the WIC Acronym and Symbol marks and the BioPreferred mark; advice on enacted legislation affecting protection for the 4-H Club Name and Emblem and the Smokey Bear and Woodsy Owl characters; and advice on the copyright and trademark aspects of revisions to the crop insurance policy regulations for the Risk Management Agency.

Civil Rights, Labor and Employment Law Division

OGC's Civil Rights, Labor and Employment Law Division (CRLELD) provides advice, counsel and litigation support for matters involving civil rights and Federal sector employment, human resources, labor relations, and employee relations. CRLELD provides legal advice to management at USDA offices and client agencies on issues involving personnel and civil rights matters, including disciplinary actions, informal complaints of employment discrimination, and program implementation. CRLELD also defends the Secretary in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other federal statutory and regulatory authorities. CRLELD directly 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 other administrative tribunals. OGC also assists the DOJ in defending the Secretary in similar claims brought in federal district and appellate courts, and the Court of Federal Claims.

CRLELD Litigation Section

ARPA Section 1005 Litigation

ARPA Section 1005 was designed to "provide targeted and tailored support for . . . farmers," and authorizes funds to pay up to 120 percent of certain direct or guaranteed USDA farm loans held by a "socially disadvantaged farmer or rancher" and outstanding as of January 1, 2021. Groups and individuals filed thirteen (13) separate judicial actions challenging § 1005 under the equal protection component of the Fifth Amendment's Due Process Clause, among other constitutional bases, and sought preliminary injunctions to enjoin the Government from distributing funds under § 1005. The Litigation Section worked with the DOJ in crafting arguments and filing pleadings in all of these cases and provided daily updates to the Secretary of Agriculture, subcabinet, and White House counsel on the status of litigation.

Defending All EEOC Complaints Involving Multiple Client Agencies

The Litigation Section continued its major effort to further execute its plan to consolidate OGC's representation of the Secretary in all EEOC litigation. The Litigation Section obtained jurisdiction over all new EEOC hearings and appeals involving the FSA, FAS and RMA, resulting in an increased inventory of cases. This resulted in management of more than 620 EEOC administrative cases and appeals, which improved the consistency in the Department's defense of EEOC cases and prevention of substantive monetary sanctions against USDA.

Administrative Employment Discrimination Class Actions

The Litigation Section successfully defended a 2016 administrative class action that alleged that FSIS's policy of prohibiting employees working in the Alternative Duty Program from working overtime or holidays violated the Rehabilitation Act. The EEOC dismissed the action for untimely EEO Counselor contact and alternatively granted summary judgment for the Agency because the complainant's temporary physical impairment was insufficient to support a claim of disability discrimination. This dismissal resulted in savings to the Agency of at least \$1.5 million. The Litigation Section was also successful in resolving a long-standing Department-wide EEOC class action alleging that deaf and hard-of-hearing USDA employees in the National Capital Region (NCR) have not received qualified sign language services since the Department delegated the funding and responsibility for those services to the sub-agencies in May 2014. The attorneys resolved the action that resulted in savings of at least \$2 million; fundamental changes to the Department's procurement; and provision of sign language services through recentralization at the Departmental level with active input from NCR deaf and hard of hearing employees.

Resolution of Long-Standing Litigation Between OGC Management and AFGE Local 1106

The Litigation Section participated in a Labor/Management Team that initiated and guided new developments focused on improving the relationship between the Agency and the Agency Union as well as protecting both parties' interests in resolving outstanding litigation. During negotiations over a new Collective Bargaining Agreement (CBA) several years ago, several legal proceedings were initiated by both management and the Union. The Litigation Section pivoted and focused on salvaging the relationship between labor and management through compromise and communication. After several years of negotiations and litigation over the successor CBA, the Litigation Section and Union leadership settled all pending litigation. This has ushered in a new era of transparency and engagement among management and Union members.

Finding of Discrimination by Judge Overturned by EEOC Based on Litigation Section Appeal

After a hearing, an EEOC Administrative Judge found that the Agency discriminated against a former USDA employee and awarded her, among other monetary remedies, \$250,000 in compensatory damages. The Litigation Section appealed the decision and EEOC's appellate body held that the Judge erred in finding discrimination and reversed the Judge's decision. This is the first reversal of a Judge's finding of discrimination in a USDA case in at least twenty (20) years that saved the Government over \$2.75 million.

Program Discrimination Group and Class Action Cases

The Litigation Section worked on ongoing implementation issues involving former class action complaints and group complaints such as *Pigford II* and *Keepseagle* and guided and collaborated with DOJ to ensure that *cy pres* funding (funds exceeding those distributed to beneficiaries) in both cases were directed at experienced non-profits, CDFIs, and educational institutions in the agricultural sector.

CRLELD Policy Section

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

COVID-19 Response Safety Plan and Mask Mandates

The Policy Section provided daily counsel to senior political officials, particularly USDA's Office of the Secretary (OSEC) Senior COVID-19 Advisors and Mission Area leadership, on USDA's response to limit the spread of COVID-19 and implement policies to protect the workforce and their families while ensuring that USDA met its mission. The Policy Section advised OSEC in the creation of USDA's Workplace Safety Plan and corresponding Frequently Asked Questions (FAQs) as required by Executive Order 14003 Protecting the Federal Workforce and Requiring Mask-Wearing. With help from the Policy Section's legal expertise, USDA met the White House's January 29, 2021 deadline for establishing its Safety Plan. The Policy Section counseled Mission Areas in creating tailored Workplace Safety plans that focused on the particularized needs of keeping USDA's frontline workforce safe during the pandemic and advised OSEC in its various iterations of USDA's mask requirements as CDC guidance evolved, including drafting USDA's mask mandate policy in accordance with Executive Order 14003 and continuously revising USDA's Safety Plan and FAQs to ensure consistency with CDC guidance.

Implementation of the Vaccine Mandate

The Policy Section guided OSEC with legally defensible solutions to remove barriers to Federal employees receiving a COVID vaccine. The Policy Section also advised OSEC and USDA's leadership in creating a voluntary self-attestation form to collect vaccination information prior to the vaccine mandate under Executive Order 14043 and provided daily counsel to OSEC in USDA's implementation of the vaccine mandate.

Return to Workplace Plans

Policy advised the Office of Customer Experience on USDA's first ever all-employee wide survey on telework, designed to provide senior leadership with feedback from employees and supervisors on telework and equipment needs. The Policy Section reviewed and provided extensive feedback on the Department's revised Telework and Remote Work Departmental Regulation, particularly on the requirements to comply with all labor obligations before implementing any change in working conditions. The Policy Section advised OSEC on the drafting of its OMB required proposed approach to Post-Reentry Personnel Policies and Work Environment that outlined the Department's approach and inclusion of the important principles of labor obligations, civil rights, its employee engagement and outreach, and workplace flexibilities. The Policy Section also reviewed all 26 written plans from agencies for returning employees to the workplace to ensure the plans considered all civil rights requirements and labor obligations.

Diversity, Equity, Inclusion, and Accessibility (DEIA)

The Policy Section strategized with USDA leadership to implement Diversity, Equity, Inclusion, and Accessibility In the Federal Workforce Executive Order 14035 Promising Practices Survey. CRLELD reviewed the USDA DEIA Self-Assessment cover letter for the Secretary's signature, the USDA DEIA Summary, and 21 Agency DEIA Self-Assessments.

Proactive Counsel to Limit the Potential for EEO Complaints

The Policy Section initiated quarterly OGC-OHRM (Office of Human Resource Management) Roundtable Discussions for over sixty Human Resources, Employee Relations, and Labor Specialists from across USDA. The Section provided a forum to discuss recent OPM guidance and USDA guidance, as well as to consider future policy changes to recommend to senior leadership to improve USDA morale. The Policy Section also advised the Office of the Assistant Secretary for Civil Rights (OASCR) regarding USDA's Anti-Harassment Program, including meeting with EEOC and OASCR to ensure USDA complied with EEOC's requirements. Additionally, the Policy Section participated on the Equity Task Force to advise the Department in its implementation of Executive Order 13985, which established a policy that the Federal Government should pursue a comprehensive approach to advancing equity for people of color and other historically underserved or marginalized populations.

Labor Relations

The Policy Section worked closely with OHRM and Departmental Administration to ensure proper and consistent implementation of Executive Order 14003. The Section developed a comprehensive spreadsheet identifying potential bargaining terms in contracts under negotiation that may be impacted by rescission of prior Administration's labor relations EOs, suggested changes, and worked with OHRM to ensure contract language was consistent with EO 14003.

Trainings

The Policy Section provided numerous trainings throughout the year, including training for Resolving Officials, overview of the EEO process, reasonable accommodations, and religious accommodations. The Policy Section substantially revised the modules on The Intersection of Social Media and Civil Rights, Animals in the Workplace as a Reasonable Accommodation, Veterans and the Reasonable Accommodation Process, and Preventing Sex Discrimination. The Policy Section created training modules like Advanced Reasonable Accommodation, Pregnancy Discrimination, Advancing Diversity in the Workplace, and the Interactive Process.

Regional Offices

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

Eastern Region

The Eastern Region of OGC consists of 3 field offices, located in Atlanta, Harrisburg, and Milwaukee, with a total staff of 30 and four managers. The Region encompasses 22 States, along with the District of Columbia, Puerto Rico, and the Virgin Islands. In addition, it services the FS Southern (R8) and Eastern (R9) Regions.

FS Land Acquisition and Title Claims

OGC Eastern Region services the FS Eastern and Southern Regions. It is also home to the Forest Service's largest State and Private Forestry program, collaborating with Tribes, States, communities, Federal agencies, private landowners, and other partners to protect, conserve, and manage forests and community trees.

OGC assists with numerous acquisition transactions. For example, Milwaukee's OGC is currently assisting an extremely large exchange/purchase with Minnesota dealing with the lands designated as School Trust lands that are in the boundaries of the Boundary Waters Canoe Area Wilderness (BWCAW). This involves an exchange for 30,000 acres of land and a purchase of 60,000 acres of land within the BWCAW. The Great American Outdoors Act permanently provided funding for the Land and Water Conservation Fund, the resource that the FS uses to acquire private lands that are critical for the management of the national forests.

FS Oil, Gas and Mineral Development

The Eastern Region assisted the FS in upholding its forest plans and projects in numerous litigation matters, including continuing to defend the FS in matters challenging its oversight of minerals and oil and gas development on NFS lands, including developments in Louisiana, Minnesota, Virginia, and West Virginia. The Eastern Region has defended with DOJ several court cases involving Twin Metals Minnesota (TMM), LLC that owns two Federal mineral leases (1352 and 1353) located under surface lands managed by the Superior National Forest, which is close to and in the watershed of the Boundary Waters Canoe Area Wilderness in northern Minnesota. TMM submitted a Mining Plan of Operations (MPO) to produce copper, nickel, cobalt, and precious metals in early 2020. The Bureau of Land Management (BLM), as the lead agency, and the Forest Service have taken actions related to these lease renewals.

FS Law Enforcement

During FY 2021, the Eastern Region continued to review and advise the FS on numerous Forest Orders which prohibited specified conduct and provided for criminal citations for violations to minimize the spread of COVID-19 on national forests system lands.

FNS

OGC attorneys assisted FNS in upholding the integrity of the SNAP by assisting the U.S. Attorney's Office (USAO) to defend retailers' litigations challenging Agency disqualifications. During FY 2021, USDA implemented additional measures to reduce the prevalence of trafficking. 75 percent of resulting SNAP enforcement cases, brought by FNS, were in the Eastern Region. The Eastern Region also assisted in coordinating USAO and OGC responses to these cases throughout the U.S. since many of them were brought by a Florida-based law firm that specialized in challenging FNS disqualifications.

RD

OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 544 direct loans and in handling a large volume of related litigation, especially bankruptcies. Eastern Region attorneys also assisted RD with numerous issues related to the COVID moratorium. In addition, the number of Community Programs applications was tripled by RD and is expected to continue to grow with the new infrastructure funding.

RUS and RBS

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

Farm Service Agency

OGC Eastern Region provided legal advice to FSA on loan issues and bankruptcies in almost 355 matters, including responding to questions related to the implementation of American Rescue Plan Act payments. It also assisted DOJ in defending FSA in cases challenging its implementation of program funds.

NRCS Easement Acquisition

NRCS offers easement programs to landowners who want to maintain or enhance their land in a way that benefits both agriculture and the environment. The Agricultural Conservation Easement Program (ACEP) provides financial and technical assistance to conserve agricultural lands and wetlands. Agricultural Land Easements help Indian tribes, state and local governments, and non-governmental organizations protect working agricultural lands. Wetlands Reserve Easements help restore, protect, and enhance enrolled wetlands. The Healthy Forests Reserve Program (HFRP) helps landowners restore, enhance, and protect forests on private lands through easements and financial assistance. OGC Eastern Region attorneys assisted NRCS with all three of these programs. During FY 2021, the Eastern Region staff handled 76 conservation easement Title Opinions.

Employment Law

Eastern Region attorneys continued to assist all USDA agencies in the Eastern United States in the defense of personnel action, and employment and program discrimination cases filed in various Federal district courts. In

addition, OGC Eastern Region attorneys successfully defended USDA agencies before the EEOC, with three staff attorneys handling these cases on a near fulltime basis.

Central Region

OGC's Central Region provides legal advice and services to all USDA agencies in a 13 State region that is home to America's most productive farmland and is comprised of thousands of rural communities. The Central Region is also home to many large urban centers¹ that obtain supplemental food assistance from USDA. All these USDA activities require legal advice and representation provided by the attorneys and staff in the Central Region.

FNS

FNS uses a variety of detection methods to monitor retailers that participate in SNAP, resulting in challenges to disqualification actions or to assessments of a civil monetary penalty. OGC provides programmatic support and defensive litigation and advice on these cases. Central Region attorneys continue to litigate issues involving Supportive Living Facilities, or Senior Meal Providers, whose applications to participate as a SNAP authorized meal service provider were denied because such “institutions” are not authorized as retailers by the statute. In other cases, Central Region attorneys are defending numerous retailer challenges where “trafficking” was found using in-person investigators or algorithms that detect suspicious buying patterns under the ALERT system.

FSA and CCC Programs

In order to defend USDA's financial interests, Central Region Attorneys filed numerous claims in bankruptcy proceedings in order to protect the agency's financial interests as to competing creditors involving FSA's over \$10.5 billion in outstanding direct and guaranteed loans. Central Region attorneys worked on program questions involving payment limitation “schemes or devices” and other payment eligibility issues (divorces, deceased producers, etc.) and provided support to review Environmental Assessments and Environmental Impact Statements required by these programs.

RMA and FCIC

Central Region provided legal assistance to RMA, FCIC, and its various components involving approved insurance providers and their administration of the crop insurance program to ensure re-insurance is proper for those policies and to defend any actions taken by RMA.

FPAC (Farm Production Conservation and Business Center)

Central Region attorneys provided legal support to FPAC in a variety of matters. Under the FTCA, OGC defended and processed numerous claims, ensuring that claimants are not only justly compensated but that insurance carriers also pay as required under the terms of various policies. OGC is currently defending a personal injury claim for \$19 million, working with a private insurance provider to allocate compensation and defend under terms of the policy. As a tenant in hundreds of Service Centers, USDA has frequent issues with building owners and related leasing issues and OGC works to ensure that leases are being properly transferred and addresses when owners do not properly maintain the property.

AMS, ARS and APHIS

OGC's Central Region also provides legal advice to AMS on issues as varied as the United States Warehouse Act, the Packers and Stockyards Act, and contracting issues for procurements undertaken by AMS. OGC finalized the acquisition by AMS of a cotton classification facility in Tennessee and is in the process of providing legal advice for a second such facility in Arkansas. OGC provides substantial legal assistance to the staff that administers the United States Warehouse Act, protecting grain depositors at federal licensed facilities and the integrity of electronic warehouse receipts. Similarly, the Central Region provides legal representation to the Packers and Stockyards program by bringing actions to enforce its provisions. OGC attorneys continue to work on an action before a state utility board, to secure adequate electricity to the National Centers for Animal Health that will ensure its ability to conduct its scientific research, maintain accreditation and operate safely.

RD, RHS, RUS, RBS

For RUS, OGC provided legal advice in a complex bankruptcy proceeding to protect debt totaling \$1.8 billion. Following the extreme cold weather event that impacted Texas in February of 2021, electricity prices soared to as much as \$9,000 per MWh. A RUS borrower received a bill for \$1.9 billion for electricity from the Texas electric

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

grid (Electric Reliability Council of Texas or “ERCOT”). The RUS borrower could not make the payment to ERCOT, and filed for Chapter 11 Bankruptcy protection. The RUS borrower has \$1.8 billion in RUS debt. OGC attorneys worked to protect the \$1.8 billion debt from other claimants and received key protections of the \$1.8 billion in RUS debt in bankruptcy proceedings.

RD’s housing programs (both single family and multi-family) continue to need legal services to defend the Agency’s financial interest in bankruptcy, as well as claims made by other creditors. As the Multi-Family program portfolio ages, it continues to require a high volume of legal work to facilitate numerous transfers, assumptions, restructuring, and tax credit transactions all of which are complicated and time sensitive. OGC attorneys defended claims from competing creditors on single family homes in order to protect the financial interests of USDA. The Community Facility Loan Program is a significant part of the workload in the Central Region involving USDA loans and grants for essential community facility projects. Rural hospitals, clinics, libraries, daycare centers, fire stations, fire trucks, ambulances and other essential projects require OGC legal advice for loan-making, loan-servicing, and grants. OGC attorneys continued to work with rural hospitals that are struggling financially, all the while balancing the need for adequate health care in remote/rural areas and protecting the financial interests of the United States against competing creditors.

Water and sewer projects are also part of this loan portfolio. These projects facilitate additional rural economic viability by allowing rural communities to provide safe drinking water and install sewer systems that protect the environment. Central Region attorneys worked on two lawsuits this year that defended small rural water systems from encroachment by neighboring water systems, prevailing on statutory territorial protections granted to rural systems.

NRCS

OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Program, the Emergency Watershed Protection Program, and other issues involving the John D. Dingell, Jr., Conservation, Management, and Recreation Act. Enforcement and management of existing easements continue to increase.

FS

The Central Region assisted the FS with a variety of matters including environmental consultations, land exchanges and acquisitions, closure orders, law enforcement issues, access issues, hunting and recreation issues and title claims. Central Region attorneys provided legal advice to the FS on historic property leases for the Lake Sylvia Recreation Area and Camp Ouachita in Arkansas that re-opened these facilities for public use and enjoyment.

Employment and Discrimination Cases

The Central Region defended USDA in litigation in various forums brought by employees, former employees or job applicants alleging various types of workplace discrimination, and in programmatic cases brought by program participants alleging various types of discrimination or mistreatment.

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.

Forest Service Programs

The Mountain Region supports the FS Regions 1, 2, 3, 4, and the 59 National Forests and 16 National Grasslands that these regions encompass. The majority of legal challenges to Forest Service decisions are to harvest timber, implement projects to reduce the threat of wildfire and restore forest health, authorize private parties to mine, extract oil and gas, construct energy infrastructure and water developments, and operate recreational facilities, brought under the NEPA, the NFMA and the ESA. The Mountain Region provided extensive advice to the Forest Service in FY 2021 regarding compliance with these and other laws in furtherance of the priorities of the USDA and FS, and assisted DOJ in the defense of over 60 new litigation matters. The Region observed an increase in FS legal needs due in part to climate change and the attendant expansion of agency programs to combat those changes.

Wildfire-Related Work

Climate change, including drought, is causing more frequent and catastrophic wildfires. This has translated to an increase in forest closure orders referred for legal sufficiency review, including precautionary fire restrictions, emergency closures during fire suppression, and response to post-fire conditions. In support of active wildland fire programs, the Region reviewed over 300 closure orders, including numerous orders issued to protect public health

and safety from the risk of wildfires, post-fire conditions, and hazardous weather, such as adverse road conditions and flooding. Fire suppression spurs varied legal questions, including those related to the use of water and “dip” agreements (agreements allowing FS helicopters to dip into private bodies of water to help with fire suppression), and inquiries from the media, Congressional and local governmental representatives, or under FOIA. Post fire, the Mountain Region attorneys assisted with affirmative claims for suppression costs and damages, both administrative and judicial and helped the FS with defensive claims, liability, and management questions resulting from post-fire conditions, such as hazard tree liability and removal.

Water Rights

Many uses of NFS land are dependent upon water and water rights, and the Mountain Region assisted the FS in acquiring and protecting water rights necessary for National Forest purposes. The Mountain Region helped the FS participate in water rights proceedings in several states, including 23 separate basin-wide decrees in a Montana water adjudication, five basin-wide adjudications in Idaho, two adjudications with 30 subdivisions in Utah, and two adjudications in Arizona with five subdivisions. OGC also worked with DOJ in judicial water rights proceedings to acquire and protect water rights administered by the FS. OGC also assisted the FS in assuring that authorized users of the National Forests who use water comply with State law water rights requirements.

Mining and Energy Development

OGC advised the FS regarding several controversial proposed oil and gas development projects on NFS land in Colorado, Utah, and Wyoming; coal development in Colorado and Utah; and mines and proposed mining projects throughout the Region. OGC was particularly involved in helping the FS navigate the high profile Resolution Copper land exchange, which resulted in three different lawsuits in 2021 to stop the exchange. With regard to Resolution Copper, OGC helped negotiate and draft complicated transactional documents related to the exchange and advised the FS on the development of NEPA documentation and ongoing tribal consultation responsibilities.

Wildlife Management

OGC advised the FS and assisted DOJ with litigation concerning transplantation of mountain goats by the State of Utah on State land, where transplanted goats may eventually wander onto a National Forest; winter feeding of elk by the State of Wyoming on National Forests; use of lead projectiles by hunters in Arizona; regulation of bison hunting on the National Forest north of Yellowstone Park; and potential impacts to bighorn sheep from diseases transmitted by domestic sheep permitted on National Forests.

Grazing and Range

OGC continued to provide extensive advice and litigation support to the FS regarding its ongoing efforts to reconcile its authorization of livestock grazing with its obligations to protect endangered and sensitive species, including bullhead trout, bighorn sheep, and the New Mexico meadow jumping mouse. OGC helped obtain a favorable result in the long-standing litigation of *Sacramento Grazing Association v. U.S.*, in which the court reversed a prior ruling that found that the FS’s construction of enclosures to protect listed species on the Sacramento Grazing Allotment resulted in a taking of plaintiffs’ water rights. The subsequent court ruling, which held that plaintiffs’ had no established water rights, will have positive ramifications for how the FS manages its grazing program.

Real Property

OGC assisted the FS and agencies such as the ARS in acquiring title to real property to support their programs by evaluating and approving title to land to be acquired. OGC also assisted agencies that hold title to real property, such as the FS and ARS, in protecting and defending title and boundaries. Many trespassing claims, to include those involving former permittees by and against the United States, were resolved with the assistance of OGC before legal action was filed, and many of the lawsuits filed were settled quickly with OGC assistance.

Infrastructure Projects

The Mountain Region assisted the FS and other agencies of the Department of Agriculture in accommodating infrastructure projects on federal land. One particular matter of note was OGC’s substantial efforts in ensuring the effective representation of NRCS interests in the high-profile and complex litigation of *Transwest Express (TWE) LLC v. Perdue*, No. 1:19-CV-03603 (D. Colo.), which asserts NEPA and APA claims in connection with the TWE project, a \$3 billion, 730-mile high voltage transmission system for the delivery of wind energy that will extend across four states.

NRCS Conservation Easement program

OGC assists NRCS in the enforcement and protection of conservation easements acquired or funded by NRCS to protect farmland, wildlife habitat, wetlands, and open space. OGC provided substantial assistance to NRCS throughout the last year.

Pacific Region

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

Alaska Subsistence Program

OGC's Pacific Region plays a unique role in advising the Alaska Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. In FY 2021, Pacific Region attorneys helped defend against a lawsuit from the State of Alaska challenging issuance of a federal permit to a tribe to hunt moose and deer in the Tongass National Forest in order to address food shortages and tribal self-determination in isolated communities. Likewise, OGC attorneys have worked with Department of the Interior attorneys to protect the federal priority for such subsistence activities from conflicting state management actions across Alaska.

Contracts and Contract Disputes

OGC Pacific Region attorneys advise USDA agencies concerning a variety of types of contracts and contract disputes. Areas of contract advice include procurement, stewardship contracts, cooperative agreements, timber sales, leases, and licenses. When client agency contracts are the subject of disputes, OGC Pacific Region attorneys provide first-chair representation of client agencies before the Civilian Board of Contract Appeals and support to DOJ in litigation before the Court of Federal Claims and the Federal Circuit.

Crop Insurance

OGC's Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. During FY 2021, the Pacific Region resolved a multi-million-dollar crop insurance case and pursued sanctions for violations of the Federal crop insurance program requirements.

Employment Law

OGC's Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment litigation before the EEOC, MSPB, and the Federal courts. OGC Pacific Region attorneys continue to provide legal representation to the FS regarding claims brought by firefighters who allege unfair treatment.

Energy

OGC's Pacific Region helped the FS respond to many proposals for hydropower and other alternative energy projects. In Alaska, for example, there are ten newly proposed or recently amended hydroelectric projects on NFS lands. OGC also advised USDA agencies on wind, solar, and biomass renewable energy projects and provided legal advice to the FS on issues related to the proposed 231-mile Pacific Connector Gas Pipeline in southern Oregon, successfully advising the Forest Service as it navigated continuing permitting difficulties in that project throughout FY 2021. .

Farm Loan Programs

OGC Pacific Region attorneys draft and review legal documentation and provide advice to FSA regarding loans to family farmers and small farming operations in the Pacific Region. OGC attorneys help ensure that FSA's use of taxpayer funds complied with applicable legal requirements and that security interests FSA obtained to secure loan repayments are valid and enforceable.

Fire Damages Recovery

OGC's Pacific Region has an extremely active and effective role in helping the FS recover some of the millions of dollars in damages the agency incurs annually as a result of human-caused wildfires. Pacific Region attorneys efforts include: working with FS Law Enforcement & Investigations agents and officers who conduct wildland fire origin and cause investigations to identify parties responsible for starting wildfires on NFS lands; coordinating with FS financial staff to calculate fire-suppression costs; and working with Forest Service natural resource experts and facilities managers to evaluate and value environmental and resource damages to National Forest System lands and to FS facilities. Pacific Region attorneys then partner with the Department of Justice to bring civil cases seeking recovery of these damages. The OGC Pacific Region has helped the FS more than \$4.7 million in FY 2021.

Food and Nutrition Service (FNS)

OGC's Pacific Region handles a significant number of FNS SNAP cases in which store owners are seeking judicial review of a variety of different types of sanctions for trafficking or other program-requirement violations. OGC successfully implemented our coordinated defense strategy with other OGC offices nationally, which included providing training to FNS employees.

Lands Transfers

Attorneys in OGC Pacific Region provide advice and review legal documentation relating to hundreds of transfers of interests in land and related property rights either from or to the United States. Notable efforts include a legislatively mandated land transfer involving the Mt. Hood National Forest that has been subject to ongoing environmental challenges and is now nearing resolution; and completion of a massive land exchange with the State of Alaska that Congress legislated in FY 2017, by which the Tongass National Forest acquired 18,000 acres of protected lands.

Land Management Decisions and Litigation

OGC's Pacific Region advises three FS Regions, with respect to a wide range of public land-management decisions and also help the Forest Service with legal compliance to prevent and prepare for litigation. When the FS is sued, OGC works closely with DOJ in defending the agency and ensuring that the FS can expeditiously implement important land-management decisions. For example, attorneys in the Pacific Region have successfully defended numerous FS vegetation-management decisions designed to protect and restore the environment, maintain and improve public safety, and contribute to the socio-economic wellbeing of local communities. Attorneys also have taken the lead in providing the agency with alternative land-management strategies when the agency's litigation position has not prevailed. In sum, these efforts are resulting in more treatment on the ground, reduced threats to the national forests and nearby communities, and decreased litigation.

Law Enforcement Assistance:

Pacific Region attorneys advised, reviewed and revised hundreds of FS Forest Orders that prohibited specified conduct and provided for criminal citations for violations. A second historic season of catastrophic wildfires in Washington, Oregon, and California resulted in dozens of emergency closure orders being issued which attorneys reviewed and revised as needed on an expedited basis.

Legislative and Congressional Affairs

OGC's Pacific Region provides advice to USDA client agencies concerning proposed legislation and with respect to inquiries from Members of Congress. For example, during FY21, Pacific Region attorneys assisted the FS in responding to congressional requests for assistance and testimony on bills that would transfer portions of national forests in Alaska into private ownership. They also reviewed and assisted the Forest Service in drafting responses to a number of inquiries from Alaska's congressional delegation on various topics including the legality of the Biden administration's 30-by-30 initiative.

Mining and Minerals

OGC's Pacific Region helps the FS address challenging and controversial issues regarding mining on NFS lands, including the defense of environmental challenges to FS decisions to allow proposed mining activities and enforcement of mining laws and regulations. Their work this year included defending the FS in a case challenging its authorization of gold exploration in the western Sierra; and guided the FS in its consideration of continued tailings disposal by two large mining operations in environmentally sensitive areas in Alaska, including in a National Monument.

Rural Development

The Pacific Region provided legal advice and compliance reviews for RD agencies in loan and grant transactions, totaling more than \$168 million in FY 2021. Pacific Region attorneys protected the government's interests by analyzing loan and security instruments, assessing the adequacy of loan security, reviewing contracts and intercreditor agreements, and preparing detailed loan closing instructions, as well as providing advice and representation to USDA agencies with respect to loan servicing issues, delinquencies, debt collection, and bankruptcy matters. Where documents were unavailable or inadequate, Pacific Region attorneys drafted security documents for use by RD. Attorneys helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of maturing loans, and they represented RD in prepayment litigation, including both owner and tenant claims

Special Use Permitting

OGC's Pacific Region provides advice to the FS on a wide range of types of special use permits authorizing individuals and entities to engage in specified activities on NFS lands. Special use permit issues relating to wildfires have been noteworthy this year.

Tort Claims

OGC's Pacific Region adjudicates a variety of FTCA claims. OGC attorneys carefully review the factual and legal basis for the claim to determine whether payment is authorized under the FTCA and, if so, what amount of payment is supported by the evidence. They also represent USDA agencies in FTCA litigation filed by claimants who are dissatisfied with the administrative disposition of their claims.