

**2024 USDA EXPLANATORY NOTES – OFFICE OF THE GENERAL COUNSEL**

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**PREFACE**

This publication summarizes the fiscal year (FY) 2024 Budget for the U.S. Department of Agriculture (USDA). Throughout this publication any reference to the “Budget” is in regard to the 2024 Budget, unless otherwise noted. All references to years refer to fiscal year, except where specifically noted. The budgetary tables throughout this document show actual amounts for 2021 and 2022, enacted levels for 2023, and the President’s Budget request for 2024. Amounts for 2023 estimated levels include: non-enacted amounts such as Full-Time Equivalent levels, fleet levels, information technology investment levels, recovery levels, transfers in and out, balances available end of year, and obligation levels.

Throughout this publication, the “2018 Farm Bill” is used to refer to the Agriculture Improvement Act of 2018. Most programs funded by the 2018 Farm Bill are funded through 2023. Amounts shown in 2024 for most Farm Bill programs reflect those confirmed in the baseline.

Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, sequestration is included in the numbers for mandatory programs in 2021, 2022, 2023 and 2024.

**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 supervised by 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, 2022, there were 223 permanent full-time employees, of which 115 were located in the headquarters office and 108 in the field offices.

**OIG AND GAO REPORTS**

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

**AVAILABLE FUNDS AND FTEs**

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

Item	2021		2022		2023		2024	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Salaries and Expenses:								
Discretionary Appropriations .....	\$45,390	216	\$57,268	211	\$60,537	264	\$65,645	274
Transfer Out:								
Working Capital Fund .....	-200		-1,400	-	-	-	-	-
Total Available .....	45,109	216	55,868	211	60,537	264	65,645	274
Lapsing Balances <sup>a</sup> .....	-109	-	-188	-	-	-	-	-
Total Obligations, OGC.....	45,081	216	55,680	211	60,537	264	65,645	274
Other USDA:								
CCC .....	337	2	-	-	446	2	446	2
Civil Rights EEO Reimbursables.....	2,877	17	2,799	16	3,335	21	3,711	22
Detail Support.....	109	-	150	-	215	1	-	-
OCIO/FOIA Support .....	469	1	426	2	-	-	-	-
FOIAXpress/DOJ Portal.....	260	-	275	-	-	-	-	-
FS Non-Litigation Travel.....	-	-	2	-	3	-	3	-
Hazardous Material Management Program ..	800	4	837	4	866	4	893	4
Records Management .....	267	1	-	-	-	-	-	-
AMS User Fees.....	589	2	505	2	520	2	520	2
APHIS User Fees.....	30	-	15	-	15	-	15	-
Total, Other USDA.....	5,738	27	5,009	23	5,400	30	5,588	30
Total, Agriculture Available .....	50,819	243	60,689	234	65,937	294	71,233	304
Other Federal Funds:								
Department of Army.....	28	-	-	-	-	-	-	-
Total, Other-Federal .....	28	-	-	-	-	-	-	-
Total Available, OGC.....	50,847	243	60,689	234	65,937	294	71,233	304

<sup>a</sup> The lapsing balances as shown in the above table do not include the \$545 thousand in reimbursable lapsing balances.

Note: The details associated with Supplemental appropriations provided to the Office of the Secretary, but implemented in the Office of General Counsel, is found in the USDA Budget Summary and is not reflected above.

**PERMANENT POSITIONS BY GRADE AND FTEs**

*Table OGC-2. Permanent Positions by Grade and FTEs*

Item	2021			2022			2023			2024		
	D.C.	Field	Actual Total	D.C.	Field	Actual Total	D.C.	Field	Estimated Total	D.C.	Field	Estimated Total
EX.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	15	4	19	12	4	16	15	4	19	14	4	18
GS-15.....	23	19	42	28	20	48	39	38	77	40	38	78
GS-14.....	50	41	91	61	39	100	49	41	90	56	48	104
GS-13.....	14	5	19	11	9	20	12	7	19	7	13	20
GS-12.....	5	14	19	5	8	13	7	6	13	21	24	45
GS-11.....	8	18	26	9	6	15	24	31	55	18	5	23
GS-9.....	4	7	11	3	4	7	4	6	10	3	6	9
GS-8.....	3	6	9	3	7	10	2	1	3	2	1	3
GS-7.....	1	4	5	1	2	3	1	5	6	1	1	2
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
Total Permanent.....	125	118	243	135	99	234	155	139	294	164	140	304
Total Perm. FT EOY.	116	114	230	115	108	223	155	139	294	164	140	304
FTE.....	125	118	243	135	99	234	155	139	294	164	140	304

**SHARED FUNDING PROJECTS**

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

Item	2021 Actual	2022 Enacted	2023 Estimated	2024 Estimated
<b>Working Capital Fund:</b>				
Administrative Services:				
AskUSDA Contact Center .....	-	-	\$9	\$9
Material Management Service .....	\$52	\$43	40	42
Mail and Reproduction Services .....	320	165	148	152
Integrated Procurement Systems.....	20	22	15	16
Personnel and Document Security .....	-	-	12	13
Procurement Operations Services .....	54	75	98	103
Human Resources Enterprise Management Systems .....	5	5	4	5
Subtotal.....	451	310	326	340
Communications:				
Creative Media & Broadcast Center .....	1	3	15	19
Finance and Management:				
National Finance Center .....	75	72	77	80
Internal Controls Support Services .....	-	-	8	8
Financial Shared Services .....	186	200	220	235
Subtotal.....	261	272	305	323
Information Technology:				
Client Experience Center .....	1,718	1,708	1,441	1,510
Department Administration Information Technology Office.....	344	421	432	443
Digital Infrastructure Services Center.....	123	59	56	57
Enterprise Cybersecurity Services .....	-	-	105	109
Enterprise Data and Analytics Services .....	-	-	6	6
Enterprise Network Services .....	108	108	255	256
Subtotal.....	2,293	2,296	2,295	2,381
Correspondence Management Services .....	47	60	-	2
Total, Working Capital Fund .....	3,053	2,941	2,941	3,065
<b>Department-Wide Shared Cost Programs:</b>				
Agency Partnership Outreach .....	20	17	20	20
Diversity, Equity, Inclusion and Accessibility.....	-	-	5	5
Human Resources Priority Goals Programs.....	-	-	10	10
Medical Services.....	39	36	40	40
National Capital Region Interpreting Services.....	-	8	41	41
Office of Customer Experience .....	27	23	9	9
Personnel and Document Security Program .....	7	6	-	-
Physical Security .....	12	11	11	11
Security Detail .....	13	12	13	13

Item	2021	2022	2023	2024
	Actual	Enacted	Estimated	Estimated
Security Operations Program .....	18	17	18	18
Talent Group .....	-	-	10	10
TARGET Center .....	3	3	4	4
USDA Enterprise Data Analytics Services .....	15	12	-	-
Total, Department-Wide Reimbursable Programs .....	154	145	181	181
<b>E-Gov:</b>				
Human Resources Line of Business .....	1	1	1	1
Hiring Assessment Tool .....	-	1	-	-
Total, E-Gov .....	1	2	1	1
Agency Total .....	3,208	3,091	3,125	3,249

**ACCOUNT I: SALARIES AND EXPENSES**

**APPROPRIATIONS LANGUAGE**

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

*Salaries and Expenses*

For expenses necessary to the Office of the General Counsel, [~~\$60,537,000~~]\$65,646,000.

**LEAD-OFF TABULAR STATEMENT**

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

Item	Amount
Estimate, 2023	\$60,537,000
Change in Appropriation	+5,109,000
Budget Estimate, 2024	<u>65,646,0000</u>

**PROJECT STATEMENTS**

*Table OGC-5. Project Statement on Basis of Appropriations (thousands of dollars, FTEs)*

Item	2021		2022		2023		2024		Inc. or Dec.	FTE Inc. or Dec.	Chg Key
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE			
Discretionary Appropriations:											
Legal Services.....	\$45,390	216	\$57,268	211	\$60,537	264	\$65,646	274	+\$5,109	+10	(1)
Transfers Out:											
Working Capital Fund .....	-200	-	-1,400	-	-	-	-	-	-	-	-
Total Available .....	45,190	216	55,868	211	60,537	264	65,646	271	+5,109	+10	
Lapsing Balances <sup>a</sup> .....	-109	-	-188	-	-	-	-	-	-	-	-
Total Obligations .....	<u>45,081</u>	<u>216</u>	<u>55,680</u>	<u>211</u>	<u>60,537</u>	<u>264</u>	<u>65,646</u>	<u>271</u>	<u>+5,109</u>	<u>+10</u>	

<sup>a</sup> The lapsing balances as shown in the above table do not include the \$545 thousand in reimbursable lapsing balances.

Note: The details associated with Supplemental appropriations provided to the Office of the Secretary, but implemented in the Office of General Counsel, is found in the USDA Budget Summary and is not reflected above.

*Table OGC-6. Project Statement on Basis of Obligations (thousands of dollars, FTEs)*

Item	2021		2022		2023		2024		Inc. or Dec.	FTE Inc. or Dec.
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE		
Discretionary Obligations:										
Legal Services.....	\$45,081	216	\$55,680	211	\$57,645	264	\$65,646	274	+\$5,109	+10
Lapsing Balances <sup>a</sup> .....	109	-	188	-	-	-	-	-	-	-
Total Available .....	45,190	216	55,868	211	57,645	264	65,646	274	+5,109	+10
Less:										
Total Transfers Out.....	200	-	1,400	-	-	-	-	-	-	-
Total Appropriations.....	<u>45,390</u>	<u>216</u>	<u>57,268</u>	<u>211</u>	<u>57,645</u>	<u>264</u>	<u>65,646</u>	<u>274</u>	<u>+5,109</u>	<u>+10</u>

<sup>a</sup> The lapsing balances as shown in the above table do not include the \$545 thousand in reimbursable lapsing balances.

Note: The details associated with Supplemental appropriations provided to the Office of the Secretary, but implemented in the Office of General Counsel, is found in the USDA Budget Summary and is not reflected above.

### 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.

The numbers and letters of the following listing relates to values in the Change (Chg) Key column of the Project Statement:

(1) An increase of \$5,109,000 and 10 FTEs (\$60,537,000 and 264 FTEs available in 2023).

The funding change is requested for the following items:

A) An increase of \$2,025,000 for 2024 Pay Cost.

This increase will support the annualization of the 2023 4.6 percent Cost of Living pay increase and the 2024 5.2 percent Cost of Living pay increase. Approximately 83 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.

B) An increase of \$3,084,000 and 10 FTEs for legal services.

This increase will also allow OGC to 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 goals: Equity, Climate Change, Addressing Nutritional Needs and Food Safety, and Rebuild the Economy through market competitiveness.

Support for programs refers to OGC's actions to provide legal services to support Departmental new and existing programs, initiatives and activities focusing on climate change; strengthening diversity, equity, inclusion, and accessibility internally and externally for our employees, customers, partners, and stakeholders; increasing food security and nutrition; rebuilding rural communities and supporting farmers, ranchers, and foresters; and increasing market competitiveness. OGC will assist the Department in implementing sections of IRA that addresses equity challenges for farmers and ranchers. OGC staff services are needed to assist Congress, the Department, and the Administration in drafting and analyzing proposed legislation, including appropriations and the Farm Bill consistent with commitments the Department has made to the Congress.

Litigation refers to OGC's ability to conduct administrative enforcement and defensive litigation and support the Department of Justice in defending the Department against increased litigation and affirmatively recoup funds. These activities are critical to support the Administration's core goals relating to equity, climate change (as seen in NEPA and ESA challenges and affirmative fire claims cases) and rebuilding the economy.

Integrity refers to ways OGC helps the Department ensure that its actions are appropriate and comply with civil rights laws, procurement and fiscal law, scientific integrity, and support Department's operations.

This increase will also support and maintain services for an e-discovery system that will sync with the Department's enterprise systems as well as training resources to meet the increasing demands of litigation and legal services provided to the Secretary of Agriculture and USDA. The e-discovery system will be used for housing and producing electronically stored information at industry standards in response to requests for production in a lawsuit or investigation. Funding will be dedicated to staffing an e-discovery team of attorneys and professional staff to oversee OGC e-discovery functions for preservation, collection, and production of USDA records.

An increase is needed to support and maintain services for a Document Management System and training resources. The Document Management system will benefit OGC by allowing OGC staff to organize and share documents that will enhance efficiencies, support succession planning and knowledge management and transfer.

An increase is also needed to maintain on-line legal research services. These services allow OGC attorneys to perform mission critical legal functions and also stay informed about new development in

their respective areas of expertise. On-line legal research tools, such a Westlaw, have provided OGC attorneys necessary electronic access to legal resources that are not affordable to purchase or maintain in hard copy.

**GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs**

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

State/Territory/Country	2021		2022		2023		2024	
	Actual	FTE	Actual	FTE	Estimated	FTE	Estimated	FTE
Alaska.....	\$749	5	\$851	5	\$952	6	\$1,125	6
Arkansas.....	1,167	8	1,113	7	1,199	8	1,298	8
California.....	2,184	10	2,641	10	3,079	15	3,556	15
Colorado.....	1,984	10	2,016	11	2,370	14	2,713	14
District of Columbia.....	26,513	111	35,791	107	37,998	135	40,701	145
Georgia.....	2,919	16	3,250	16	3,400	18	3,581	18
Missouri.....	1,986	12	2,040	12	2,344	12	2,343	12
Montana.....	1,300	8	1,090	6	1,055	8	1,192	8
New Mexico.....	745	4	768	4	1,310	6	1,347	6
Oregon.....	1,693	9	2,138	11	2,434	14	2,785	14
Pennsylvania.....	1,474	9	1,470	8	1,766	11	2,032	11
Texas.....	954	6	880	5	1,042	7	1,289	7
Wisconsin.....	1,413	8	1,632	8	1,588	10	1,684	10
Obligations.....	45,081	216	55,680	211	60,537	264	65,646	274
Lapsing Balances.....	109	-	188	-	-	-	-	-
Total, Available.....	45,190	216	55,868	211	60,537	264	65,646	274

**CLASSIFICATION BY OBJECTS**

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

Item No.	Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
	Personnel Compensation:				
	Washington DC.....	\$14,882	\$14,736	\$17,835	\$20,582
	Personnel Compensation, Field.....	13,737	14,159	16,463	19,383
11	Total personnel compensation.....	28,619	28,895	34,298	39,965
12	Personal benefits.....	9,801	10,190	12,232	14,667
13.0	Benefits for former personnel.....	18	29	29	29
	Total, personnel comp and benefits.....	38,438	39,114	46,559	54,661
	Other Objects:				
21.0	Travel and transportation of persons.....	16	17	100	220
23.1	Rental payments to GSA.....	1,599	1,875	1,823	1,823
23.2	Rental payments to others.....	162	164	164	164
23.3	Communications, utilities, and misc. charges.....	610	401	732	743
24.0	Printing and reproduction.....	155	79	79	79
25.2	Other services from non-Federal sources.....	451	8,523	5,888	3,829
25.3	Other goods and services from Federal sources.....	2,906	3,598	3,950	3,115
26.0	Supplies and materials.....	683	906	917	930
31.0	Equipment.....	23	1,003	325	82
42.0	Insurance Claims and Indemnities.....	38	-	-	-
	Total, Other Objects.....	6,643	16,566	13,978	10,985
99.9	Total, new obligations.....	45,081	55,680	60,537	65,646
	DHS Building Security Payments (included in 25.3)	\$250	\$230	\$240	\$240
	Information Technology Investments:				
	Major Investment 1				
	FOIA WCF – FOIAXpress.....	-	-	-	-
25.2	Outside Services (FOIAXpress- Consulting).....	-	227	236	247
	Total Major Investment 1.....	-	227	236	247
	Mission Area Standard Investment				
11.1	Internal Labor.....	190	211	220	224
25.2	External Labor (ERMS Contractor).....	-	1,854	-	-
25.2	Outside Services (ERMS – Consulting).....	577	2,474	80	-
	Total Internal Labor and ERMS.....	767	4,539	300	224



2024 USDA EXPLANATORY NOTES – OFFICE OF THE GENERAL COUNSEL

Item No.	Item	2021 Actual	2022 Actual	2023 Estimated	2024 Estimated
	Matter Center				
25.2	Outside Services (Matter Center – Consulting).....	-	246	750	250
	Total Matter Center .....	-	246	750	250
	Panum Contractor Support				
25.2	External Labor (Panum Contractors) .....	-	1,619	238	238
	Total Panum Contractor Support .....	-	1,619	238	238
	Mission Area Standard Investment Totals .....	767	6,404	1,288	712
25.3	Mission Area WCF Transfers (Shared Services) .....	2,676	3,801	4,030	4,032
	<b>Total IT Investments</b>	<b>3,443</b>	<b>10,432</b>	<b>5,544</b>	<b>4,991</b>
	Position Data:				
	Average Salary (dollars), ES Position.....	\$192,401	\$194,036	\$201,734	\$208,739
	Average Salary (dollars), GS Position .....	\$124,587	\$131,157	\$133,790	\$136,456
	Average Grade, GS Position .....	14.3	14.3	13.8	14.1

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## **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, constitutional, and fiscal law matters. OGC prepares or interprets contracts, mortgages, leases, deeds, and other legal documents, prepares briefs, and collaborates with the Department of Justice (DOJ) in trial and appellate litigation.

### **Selected Examples of Recent Progress**

- OGC led the legal work for the largest deployment of the Emerson Trust in history, providing \$282 million for purchases of commodities (and \$388 million of CCC money for transportation) to benefit Ukraine and certain North African countries.
- OGC secured the dismissal of the Federal Tort Claims Act complaint in the Roosevelt Fire and Gould cases against the Forest Service (FS) in which plaintiffs were seeking tens of millions in damages alleging wrongful death.
- OGC helped support Rural Development (RD) in New Mexico in closing the two largest infrastructure loans to tribal entities in the State for new sewer connections and wastewater/water infrastructure.
- OGC has helped the FS recover more than \$59.9 million in 2022 for human caused fires, of which almost \$17 million went directly to Forests in the Region to be used for vital post-fire restoration work.
- The Marketing, Regulatory and Food Safety Programs Division completed action on 28 administrative complaints under the Packers and Stockyards Act. Those efforts resulted in \$27 million in civil penalties and in payments of approximately \$9 million to livestock sellers and producers.

### ***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) implemented multiple new grant and cooperative agreement programs and undertook significant rulemaking under the Packers and Stockyards Act and the Organic Foods Production Act; the Food Safety and Inspection Service (FSIS) developed new food safety initiatives; and the Animal and Plant Health Inspection Service (APHIS) finalized several key rulemakings. Examples of the critical work performed by the Division during 2022 appear below:

#### ***Agricultural Marketing Service (AMS)***

##### ***Grants***

The Division was instrumental in AMS's efforts to establish new grant and cooperative agreement programs in response to vulnerabilities exposed during the COVID-19 pandemic and to strengthen weaknesses in the food and agricultural supply chains. The Division provided legal advice and counsel on the establishment of Regional Food Business Centers which made available approximately \$400 million to establish Centers that will serve as the cornerstone of USDA's development of local and regional supply chains.

##### ***Agricultural Commodities Act***

The Division drafted almost 100 reparations decisions involving more than \$3.2 million in disputed claims and completed action on over 30 administrative complaints under the Perishable Agricultural Commodities Act. Those efforts resulted in \$0.1 million in civil penalties and in payments of approximately \$5.1 million to produce sellers and producers.

### *Antitrust/Anticompetition Issues*

The Division worked 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 Packers and Stockyards Act (P&S Act) and published two proposed rules on these topics. The Division also provided critical support to AMS on other antitrust initiatives in coordination with the Department of Justice Antitrust Division, Federal Trade Commission, and Commodity Futures Trading Commission, including establishing a joint complaint portal with the DOJ Antitrust Division, FarmerFairness.gov.

### ***Food Safety and Inspection Service (FSIS)***

#### *Salmonella Initiative*

The Division provided legal counsel to FSIS as it developed its salmonella initiative. The Division worked closely, and continues to work closely, with FSIS in developing the framework, the rollout plan, analyzing legal hurdles, and planning a proposed rule.

#### *Product of the USA Rulemaking*

The Division also provided significant legal support regarding FSIS’s decision to move forward with a rulemaking on Product of the USA labels. The Division worked closely with FSIS throughout the development of the rule and in coordinating discussions with other agencies, such as U.S. Trade Representatives, to ensure cooperation, and recently received the proposed rule to review for legal sufficiency.

### ***Animal and Plant Health Inspection Service (APHIS)***

#### *Biotechnology Regulatory Services*

Two years ago, the Division assisted APHIS in finalizing a rule to revise its biotechnology regulations to make them more effective and efficient. In July 2021 a lawsuit was filed, and on April 5, 2022, USDA lodged the non-privileged Administrative Record with the court and transmitted the same to the plaintiffs and intervenors. The Administrative Record consisted of 1,236 documents totaling 41,623 pages. The agency with OGC worked through a universe of 620,714 documents to arrive at the final product, work that DOJ described as “nothing short of a Herculean effort by all involved”.

#### *Animal Care*

The Division provided substantial assistance to Animal Care in several rulemakings, including a final rule that covered the new area of bird standards and an advanced notice of proposed rulemaking involving wild and exotic animal handling. One rulemaking required complying with court mandated timelines.

The Division also worked with DOJ to defend an appeal to the D.C. Circuit that challenged the withdrawal of a final rule involving the Horse Protection Act from the Federal Register. The D.C. Circuit reversed and remanded the district court and held that a rule is valid once it is filed for public inspection. The government has filed a petition for the panel rehearing requesting that the Court delete one sentence from its opinion indicating that the agency’s withdrawal of the 2017 final rule from the Federal Register should be vacated.

#### *Plant Protection and Quarantine*

The Division provided substantial support to Plant Protection and Quarantine in a pending AQI user fee litigation, as well as in an ongoing rulemaking. The Division has been in constant communication with both APHIS and DOJ to ensure the prompt issuance of a stakeholder notice changing the reserve amount, to review a proposed rule that was updated based on the litigation and to continue to support DOJ and APHIS in other user fee litigation.

The Division also brought an enforcement action against Amazon Services LLC that resulted in the Administrative Law Judge (ALJ) finding violations of the Plant Protection Act and the Animal Health Protection Act and assessing a civil penalty against Amazon of \$1million. The Judicial Officer affirmed the ALJ’s decision and then the D.C. Circuit.

### ***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 RD including in connection with implementation of the CARES Act, the American Rescue Plan Act of 2021, the Consolidated Appropriations Act, 2021, the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43), and the Commodity Credit Corporation (CCC) Charter Act.

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

OGC provided legal advice and assistance in the design and implementation of the Partnerships for Climate-Smart Commodities Grants Program under the authority of the CCC Charter Act. This program both promotes climate-smart production practices and develops markets for commodities so produced. Originally targeted for \$1 billion, this program has proven so successful that the Secretary is proposing an additional \$3.1 billion under the program.

OGC led all legal matters for Notices of Funding Availability and rules to implement the Secretary's Pandemic Assistance agenda such as: (1) Emergency Relief Program (\$6 billion); (2) Emergency Livestock Relief Program (\$750 million); (3) Pandemic Assistance for Timber Haulers and Harvesters (\$200 million); (4) Food Safety Certification for Specialty Producers Program (\$200 million); (5) Dairy Indemnity Payment Program (\$4.7 million); and (6) Supplemental Dairy Margin Coverage Program (\$580 million).

*Foreign Agricultural Service (FAS)*

OGC crafted the legal analysis that ultimately prevailed in the interagency process to allow the CCC Export Credit Guarantee Program (GSM-102) to offer guarantees on terms longer than authorized under the 2014 Memorandum of Understanding between the United States and Brazil to settle a WTO dispute regarding the program. This initiative contemplates an increase in authorized loan terms and a decrease in required premia that in the aggregate are estimated to result in increased exports of U.S. agricultural commodities of between \$500 million and \$1 billion per year.

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

OGC provided legal advice and assistance 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 other matters. OGC's legal guidance assisted RMA in publishing regulations, issuing manager's bulletins, responding to program participants, and managing the Federal Crop Insurance Program, which helped secure approximately \$114 billion of U.S. agricultural production.

*Food, Nutrition and Consumer Services*

OGC provided significant legal assistance to FNS in responding to a recall of infant formula, which exacerbated existing COVID-related infant formula supply chain issues, to ensure availability of infant formula in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Within 48 hours of the recall, OGC approved four types of WIC waivers. OGC also provided rapid-fire technical assistance to Congress on what would become the Access to Baby Formula Act, a bill that was introduced and passed in less than a week. OGC provided legal advice and assistance addressing the need for permanent WIC waiver authority to respond to emergencies or supply chain disruptions. OGC's technical assistance to Congress resulted in crucial new permanent legislative authority for disaster response in WIC.

*Rural Development (RD)*

OGC provided legal advice and assistance to Rural Utilities Service (RUS), Rural Business Cooperative Service (RBCS), and Rural Housing Service (RHS). OGC provided significant assistance to RUS in closing two additional rounds of funding for the broadband ReConnect Pilot and was instrumental in developing and clearing the fourth round of funding. OGC advised RBCS on the development and implementation of the Meat and Poultry Processing Expansion Program, Meat and Processing Intermediary Lending Program, the Food Supply Chain Loan Guarantee Program, and the Fertilizer Producer Expansion Program. OGC also advised on multiple regulations, funding announcements, ongoing litigation, and the implementation of the Build America, Buy America Act, and the Inflation Reduction Act.

*Natural Resources and Environment Division*

OGC advised the 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 Conservation Service (NRCS) and other agencies within the Farm Production and Conservation Business Center. 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) to name just a few. In addition, OGC provided support to FS State and Private Forestry, Business Operations, and Research and Development regarding a myriad of conservation programs. OGC assisted the FS and other USDA offices in drafting legislation and reviewed pending legislation pertaining to the conservation title of the Bipartisan Infrastructure Law (BIL) and the Inflation Reduction Act. OGC also reviewed legislative reports and testimony for congressional hearings and provided legal advice to the FS regarding law enforcement issues and the Secure Rural Schools Act payments.

### *Tribal Co-Management and Co-Stewardship Initiatives*

OGC provided significant legal assistance to the Departmental Office of Tribal Relations and the FS in developing a wide range of tribal co-stewardship initiatives as outlined in the Joint Secretarial Order on fulfilling trust responsibilities. The Joint Secretarial Order is an agreement between USDA and DOI that codifies a policy to facilitate agreements with tribes to collaborate in the co-stewardship of Federal lands and waters and requires the agencies to develop a legal review of current land, water, and wildlife treaty responsibilities and authorities that can support co-stewardship. OGC worked closely with Departmental and agency leadership to identify legal authorities supporting co-stewardship efforts; instrumental in advising on co-stewardship agreements; identifying legal issues; and helping finalize agreements with tribes in advance of the Tribal Nations Summit meeting.

### *Climate Smart Agriculture*

OGC has advised NRCS and the Farm Service Agency in implementing new authorities to address climate change contained in the Bipartisan Infrastructure Law. As a result of the new statutory authorities, the agencies have developed programs to solicit projects to address climate change. OGC advised the agencies on how to structure the program and how to develop the notices of funding opportunity and selection of award recipients. The climate smart agriculture program has thus far awarded over \$1 billion in grants for projects to reduce greenhouse gas emissions from agricultural activities across the country.

### *Forest and Range Management*

OGC has provided extensive legal advice to assist the FS in addressing wildfires and forest management across NFS lands. OGC provided legal advice on the Secretary's Emergency Situation Determination to implement new authority under the BIL, which is intended to help streamline fire treatment and management across millions of acres of National Forest. In addition, OGC provided legal advice on the FS's Community Wildfire Defense Grant program. Finally, OGC advised the FS on ways it could help maximize the impact of new funding and statutory authorities for underserved communities by analyzing match requirements for a wide array of Forest Service partnership programs and providing legal advice on program eligibility and funding match requirements.

### *Infrastructure*

OGC provided legal advice to the FS, RD, and NRCS regarding infrastructure development involving the national forests, rural areas, and NRCS conservation easements. OGC worked with RD on environmental compliance and National Historic Preservation Act compliance for powerline and other energy transmission projects. In addition, OGC provided legal advice to the FS Minerals and Geology program on updating regulations governing mining and critical minerals on NFS lands, as well as on how to address changes in interpretation of the 1872 Mining Law stemming from significant court decision.

### *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 ESA.

### *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, mining, and energy development.

### *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, including the publication of a new proposed Alaska Roadless Rule.

### *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 issues relating to cost recovery for special uses, and insurance and indemnity issues with states that arise when state entities are involved in special use authorizations on NFS lands. OGC has also helped with the FS's efforts to revise the language in all of its special use authorizations governing a wide array of special uses, including ski resorts, communications sites, administrative sites, and campground concessions, among others.

### *Lands, Water, Wilderness and Wild and Scenic Rivers*

OGC advised the FS on a wide array of legal issues connected to the establishment of new national monuments in the Southwest and in Colorado. OGC assisted the FS in developing policies related to recreational climbing access in wilderness areas and advised the FS on numerous 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 settlements between the Department of the Interior and Indian Tribes that involved NFS lands and water rights. OGC has also assisted with a number of issues 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 cleanup of numerous Formerly Used Defense sites. 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. OGC was instrumental in resolving legal issues that helped facilitate the cleanup of toxic debris from NFS lands left behind by the Caldor Fire in California and in addressing Polyfluorinated Substance contamination issues for producers involved in NRCS programs.

### *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 in 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*

The General Law and Research Division (GLRD), in coordination with attorneys from DOJ and other divisions and offices within OGC, is responsible for presenting USDA's legal position in cases on appeal. GLRD's responsibilities include reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court, Federal circuit courts, and State appellate courts.

In 2022, GLRD worked with DOJ and other OGC divisions and offices on many appeals, including an appeal before the Ninth Circuit in *Apache Stronghold v. US*. On June 24, 2022, a panel of Ninth Circuit judges affirmed the district court's denial of Apache Stronghold's motion for a preliminary injunction seeking to stop a land exchange and prevent any copper mining on Oak Flat, a plot of land in Arizona that is sacred to the Apache tribe.

GLRD also worked with DOJ in the *Price v. Garland* appeal before the DC Circuit. In that matter, the appellate court ultimately ruled in favor of the government, holding that, although filmmaking is protected by the First Amendment, the specific speech-protective rules of a public forum apply only to communicative activity. In addition, GLRD worked with DOJ on an appeal in the D.C. Circuit in *Humane Society of the United States v. USDA*, No. 20-5291, that challenged USDA's withdrawal of a rule under the Horse Protection Act after the document was made available for public inspection. The D.C. Circuit found that USDA's withdrawal of the rule was effectively a repeal that required notice and comment under the Administrative Procedure Act because filing a document for public inspection provides notice to the public and carries legal consequences for regulated parties under the Federal Register Act.

GLRD is also responsible for preparing USDA’s official recommendations to DOJ on whether to appeal adverse decisions of various lower courts or to participate as amicus in Supreme Court or other appellate cases. During 2022, GLRD prepared 24 appeal recommendations.

GLRD also defends most USDA Judicial Officer decisions under the P&S Act, PACA, AWA, and the HPA that are appealed to the Federal courts of appeals. During 2022, GLRD attorneys handled appeals challenging decisions issued by the Judicial Officer in the D.C. Circuit, Second Circuit, and the Fifth Circuit.

#### *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, implementing COVID-19 and fiscal-related related authorities, and analyzing procurement, grant, 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.

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 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 Forest Service (FS) wildland firefighting operations. Finally, GLRD aided USDA agencies and offices 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 approximately 30 protest-related matters initiated before the Government Accountability Office (GAO), as well as those continued from the previous fiscal year. For example, GLRD prevailed at both GAO and the Court of Federal Claims against multiple bid protests that suspended the performance of critical updates to the Farm Loan Programs IT system. 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.

#### *Disclosure and Tort Claims*

GLRD handles the legal work and litigation that arises under the Freedom of Information Act, the Federal Tort Claims Act (FTCA), the Privacy Act (PA), and the Federal Advisory Committee Act (FACA) for USDA agencies and offices.

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 The Wilderness Society, Center for Biological Diversity, and similar organizations that sought sensitive records from senior USDA officials that GLRD resolved to the satisfaction of those officials. 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 Hermits Peak and Calf Canyon Fire, and significant wrongful-death suits, such as the Cold Spring Flash Flood case, where plaintiffs are seeking millions of dollars in damages.

GLRD also assists with the Department’s representation in anti-trust litigation concerning turkey and pork production. GLRD represented USDA interests *in re Pork Antitrust Lit.* and served as the primary agency point of



contact in conjunction with subpoenas (both document and testimony) arising out of *in re Turkey* Antitrust Lit. With GLRD's assistance, USDA satisfied its discovery obligations with minimal interference to agency operations.

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: briefings and technical assistance in drafting legislation for protection of the 4-H Club Name and Emblem; coordinating patent application prosecution between the U.S. Patent and Trademark Office (USPTO) and USDA contractors, including 10 new patent applications; USPTO registration for the trail sign of the Nez Perce National Historic Trail; renewal of trail sign registrations for the Pacific Crest, Continental Divide, and Florida National Scenic Trails; advice on the trademark aspects of rule revisions for the National Organic Program in light of registration for the USDA Organic certification mark; prosecuting applications for registration of the certification marks of the National Bioengineered Food Disclosure Standard; and reviews of appearance, location, and publishers' agreements for USDA officers and employees.

#### ***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***

##### *Defending All EEOC Complaints Involving Multiple Client Agencies*

The Litigation Section provided litigation and defense for the Secretary in cases which brought challenging selections to highest level SES positions, challenges by political appointees, challenges to employment decisions at Embassies of Brazil and Paris, and decisions by political and career leaders at the highest positions. The Litigation Section handled one of the Division's highest volume single-year caseloads, with temporary loss of three top litigators who were selected for detail assignments or on mandatory military leave. Remaining attorneys took on 230 new cases and appeals, closed 258 cases and appeals, successfully securing dismissals on dispositive motions for 180 individual administrative employment cases. The Litigation Section worked with DOJ on six (6) program discrimination cases. Attorneys worked closely with DOJ to receive judicial decisions in the Agency's favor in several cases in 2022. Attorneys were successful in four (4) appeals of personnel actions before the MSPB. Resulted in improved defense of the Secretary in all civil rights, labor, and employment complaints, including defeating motions for sanctions in numerous cases.

***Administrative Employment Discrimination Class Actions******Resolution of Department-Wide Employment Discrimination Class Action Involving Deaf and Hard of Hearing Employees***

The Litigation Section resolved, and implemented the resolution of, a Department-wide EEOC class action alleging that deaf and hard of hearing employees in the National Capital Region have not received qualified sign language services since the Department delegated the funding and responsibility for those services to sub-agencies in May 2014. The Litigation Section implemented resolution terms approved by class counsel and the EEOC Administrative Judge, after opportunity for fairness hearing, that resulted in savings of at least \$2 million and fundamental changes to Department's procurement and provision of sign language services through recentralization of that function at the Departmental level, with active input from deaf and hard of hearing employees. The Litigation Section developed lessons learned from resolution for impactful changes for obtaining sign language services for USDA employees throughout the country.

***Dismissal of Forest Service EEOC Administrative Class Action on the Merits***

The Litigation Section successfully defended, and obtained dismissal of, a 2015 employment discrimination class action alleging that Region 5 female firefighters were subjected to a pattern and practice of discrimination based on their gender and in retaliation for prior EEO activity by FS reassignments, hiring promotion, training, and performance. Resulted in savings to Agency of at least \$6.5 million.

***Defense of Fair Labor Standards Act Judicial Class Action***

The Litigation Section defended the Agency in a Fair Labor Standards Act class action related to payment of overtime during 2013 and 2018-2019 government shutdowns involving all Departments. The Litigation Section updated working group of human resources personnel at Mission Areas to ensure timely provision of accurate employee information to DOJ for notices to potential class members and to build best defense for government. This resulted in USDA timely providing relevant information to DOJ to defend government's actions, including information requests during the 2018-2019 shutdown.

***Program Discrimination Cases******ARPA Section 1005 Litigation***

The Litigation Section worked with DOJ to defend the Department in thirteen (13) lawsuits filed in twelve (12) judicial districts challenging the American Rescue Plan Act of 2021 (ARPA) provisions providing debt relief to socially disadvantaged farmers. The Litigation Section provided daily reporting on status of litigation to White House, Secretary, and Subcabinet. The Litigation Section had regular meetings with General Counsel, Deputy General Counsels, White House counsel, Deputy Secretary and Subcabinet on strategies and defense efforts. The Litigation Section reviewed and provided input on over twenty (20) judicial filings and provided guidance to OGC attorneys providing urgent review of documents and work with expert witness. The Litigation Section worked collaboratively with management and staff attorneys in OGC's FAIR Division to ensure FSA programs were adequately explained and relevant information provided. All but three cases were voluntarily dismissed after passage of Inflation Reduction Act. For responses to requests for information from plaintiffs in one of the challenges to ARPA Section 1005, the Litigation Section stood up a team of litigators to review 13,400 of pages of documents in extremely short amount of time or risk sanctions by the Court or releasing documents to opposing counsel without any legal review. The Litigation Section led the successful review, redaction, and categorization of documents to timely provide relevant documentation, saving the Government at least \$3 million in sanctions or other potential damages.

***Dismissal of Section 741 Office of Administrative Law Judges Case and Judicial Action***

The Litigation Section represented the Secretary's interests in the first Section 741 complaint to be docketed and proceeding in ten (10) years. The Litigation Section briefed the General Counsel and Agency political and career leadership on options for litigation or seeking resolution of case and gathered evidence in the case involving loan history from the 1980's and 1990's. Despite offer of substantial debt relief and monetary award, which was rejected by the Complainant, the Litigation Section secured dismissal based on untimely filing of discrimination complaint—and secured dismissal of later judicial action on same grounds. Resulted in saving of \$1.2 million to USDA.

***Defending the Presidential Mandate for Federal Employee COVID-19 Vaccination***

The Litigation Section worked with DOJ to defend implementation and enforcement of Executive Order 14043, which requires COVID-19 vaccination of the Federal workforce. The Litigation Section assisted DOJ in responding to seven (7) separate nation-wide lawsuits by employees and contractors challenging President's authority. The Litigation Section coordinated with DOJ and all Mission Area leadership to ensure legal compliance with injunctions and data collection. The Litigation Section provided weekly written and verbal updates/briefings to

USDA leadership to ensure the Secretary’s compliance with the rapidly changing legal landscape of vaccine mandate and Presidential authority. CRLELD received the General Counsel group award recognizing exceptional legal work on this litigation and the Risk Management Section’s guidance on these issues.

*Defend Agency Guidance on Program Complaint Processing to Include Claims of Discrimination Based on Gender Identity and Sexual Orientation*

The Litigation Section collaborated with attorneys in other OGC Divisions to defend the Secretary in challenges to guidance of FNS implementing the *Bostock* Supreme Court decision. The Litigation Section defended Agency guidance that concluded that recipients of FNS programs could file complaints of gender identity and sexual orientation discrimination. The Litigation Section led the Agency’s defense in a complex lawsuit filed by twenty-six (26) States seeking to preclude FNS from implementation of its guidance to ensure political and policy concerns were properly weighed against the law. The Litigation Section provided guidance to litigators, the Office of the Secretary, FNS leadership, and DOJ in defense of guidance which continues to allow for religious exemptions from its implementation. The Litigation Section’s work led to voluntary dismissal of one lawsuit after the government moved to dismiss the action based on sound and compelling legal arguments.

*Defense of USDA in Case Regarding Hazard Pay for Poultry Inspectors During Pandemic*

The Litigation Section worked with DOJ to defend the government in a class action seeking hazard pay for poultry inspectors and other industry workers during the pandemic. The Litigation Section ensured the Mission Area provided all relevant information and worked to identify personal protective equipment used by inspectors handling poultry, which resulted in assurance that legal liability arguments are limited in scope and duration based on equipment now provided to inspectors, saving potential hundreds of thousands of dollars in damages.

***CRLELD Risk Management Section***

The CRLELD Risk Management Section is responsible for providing advice and counsel across the Department to understand and manage their legal risk in civil rights, labor, and employment matters. The Risk Management Section fulfills this role, in large part, by advising managers of what options are available to them under the law, the litigation risk associated with each option, and what actions are legally defensible. The Risk Management Section also assists agencies in managing their litigation risk by providing training on a variety of civil rights and employment issues. Training gives supervisors the necessary knowledge to avoid violating civil rights laws and to take prompt, corrective action in order to minimize liability when they become aware of a potential civil rights violation. Further, the Risk Management Section assists agencies in managing risk by assessing the litigation risk of EEO complaints pre-investigation, particularly when the complainant is represented by an attorney. Such assessments at the earliest stage of the EEO complaint process allow agencies to resolve meritorious complaints quickly rather than risk that an adjudicator will award substantial damages and attorney’s fees.

*COVID-19 Screening Testing Program and Mask Mandates*

The Risk Management Section provided daily counsel to senior political officials, particularly USDA’s Office of the Secretary, 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 Risk Management Section led legal guidance in USDA’s establishment of its screening testing program, balancing health and safety needs with confidentiality obligations and budgetary constraints and advised on labor obligations prior to implementing the screening testing program. The Risk Management Section also ensured the legal sufficiency of decision letters denying medical and religious accommodation requests for exemptions to the screening testing program. In addition, the Risk Management Section revised the Department’s Workplace Safety Plan and corresponding Frequently Asked Questions (FAQs) as circumstances changed with a court injunction against enforcement of the vaccine mandate, new directions from the Safer Federal Workforce Task Force, and the creation and subsequent cessation of the screening testing program.

*Return to Workplace*

The Risk Management Section advised on the drafting of Post-Reentry Personnel Policies and Work Environment and guided the development of the Department’s approach and inclusion of the important principles of labor obligations, civil rights, employee engagement and outreach, and creative workplace flexibilities. The Section also advised on the implementation of a new Departmental Regulation on *Remote Work and Telework* and created FAQs for managers outlining requirements for screening testing, mask requirements, safety protocols, and telework flexibilities ahead of employees’ return to working onsite.

### *Title IX Religious Exemptions for School Lunch Programs*

The Risk Management Section led USDA in implementing guidance that Title IX's prohibition against sex discrimination includes sexual orientation and gender identity discrimination in all USDA food nutrition programs. The Risk Management Section also advised the Office of the Assistant Secretary for Civil Rights (OASCR) with developing processes and procedures for handling an uptick in Title IX religious exemption requests in response to the guidance and advised on standard language for communications to the public, clarifying how to claim a religious exemption.

### *Diversity, Equity, Inclusion, and Accessibility (DEIA)*

The Risk Management Section led legal guidance to implement Executive Order 14035 *Diversity, Equity, Inclusion and Accessibility in the Federal Workforce* and Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*. The Risk Management Section guided USDA's Equity Action Plan and Equity Action Plans for the Mission Areas and agencies, resulting in USDA becoming a leader in the DEIA space with a real-world approach to diversifying the Federal workforce. The Risk Management Section also assisted in drafting of forthcoming Departmental Gender Equity, Limited English Proficiency, and LGBTQI+ Action Plans, and reviewed the Department's Strategic Plan to prevent and combat discrimination on the basis of gender identity or sexual orientation.

### *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*

The Risk Management Section led the development of legal guidance to Department on this critical initiative, including providing the Agriculture Subcommittee of the Equity Commission historical information about the FSA County Committee system and assisted members as they refined their recommendations. The Risk management Section assisted FSA and the General Counsel in reviewing the historical recommendations report and the presentation on the status of past recommendations, advised on the Department's Equity Action Plan submitted to the White House and released to the public in April 2022, and reviewed and commented on Secretarial memoranda of understanding to better serve Tribal nations and helped brief political appointees for the White House Tribal Nations Summit.

### *Wildland Firefighter Retroactive Pay*

The Risk Management Section oversaw legal implementation of Section 40803 of the Bipartisan Infrastructure Law that increased the salary for Federal Wildland Firefighters and provided legal guidance to the Wildfire Implementation Group.

### *Proactive Counsel to Limit the Potential for EEO Complaints*

The Risk Management Section Provided legal guidance at weekly Pandemic Coordinators meeting and at OGC-OHRM (Office of Human Resource Management) Roundtable Discussions for Reasonable Accommodation Coordinators, Human Resources, and Employee Relations from across USDA. The Risk Management Section also advised OASCR and OHRM regarding the creation of a Department-wide Anti-Harassment Program. The Risk Management Section also provided individual guidance to managers and Employee Relations Specialists in a plethora of employee performance and conduct situations.

### *Trainings*

The Risk Management Section provided numerous trainings throughout the year to Mission Areas and agencies, including the following topics: Overview of the EEO Process, Reasonable Accommodations and the Interactive Process, Preventing Harassment, Avoiding Retaliation, Preventing Sexual Orientation and Gender Identity Discrimination, Preventing Prohibited Personnel Practices, and Resolving Official Training.

### *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 services all USDA Agencies in 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, which encompass 29 National Forests covering 22 States and Territories.

### FS Matters and Tribal Agreements

Pursuant to the Administration's commitment to conducting regular, meaningful, and robust consultation with Tribal Nations the Eastern Region reviewed five complex and politically important agreements involving tribes. These included a review of an MOU proposed by the 1854 Treaty tribes to the Superior National Forest in Minnesota; advising the FS regarding a transfer over 11,000 acres of the Chippewa NF to the Leech Lake Band of Indians; assisting with an issue related to a law enforcement agreement with the Great Lakes Indian Fish and Wildlife Commission. In addition, the Eastern Region reviewed and edited a Master Agreement for the FS, which is a joint agreement between FS Southern and Eastern Regions, Southern Research Station, and the Eastern Band of Cherokee Indians. The purpose of this cooperative effort is to collaboratively promote sustainability, active management, and conservation of culturally significant plant species and habitats within the FS Region 8 and 9 through restoration, utilization, education, and monitoring. Finally, the Eastern Region reviewed and edited an agreement with the Cherokee for the co-management of the Talimena National Scenic Byway's West End Visitor Information Center. These Agreements help develop the next generation of partners for natural & cultural resource conservation which is critical to the long-term sustainability of our public lands' legacy.

### Coordination of the FNS Retailer Disqualification Cases

USDA continues to aggressively enforce measures to reduce the prevalence of trafficking and other violations in the Supplemental Nutrition Assistance Program (SNAP). The Region opened 93 new SNAP cases, which is 75percent of the total new SNAP cases filed nationally. Eastern Region attorneys were able to settle many for civil money penalties or convince Plaintiff's to withdraw their appeals prior to filing answers in many of these cases, thus drastically reducing the number of administrative records that FNS needed to prepare. Eastern Region attorneys also won summary judgments in several existing and new trafficking cases.

### RD Matters

OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 1661 direct loans and in handling a large volume of related litigation, especially bankruptcies that arose out of such a large loan portfolio. Eastern Region attorneys also assisted RD with numerous issues related to the lifting the moratorium on foreclosures. For example, the U.S. Supreme Court enjoined the State of New York from enforcing Part A of the State's COVID Emergency Eviction and Foreclosure Prevention Act, which precluded a property owner from contesting a tenant's self-certification of financial hardship. In response, the New York legislature amended the law to permit the property owner to contest the validity of the tenant's hardship declaration and extended the stay against foreclosures and evictions. OGC Eastern Region, in conjunction with private counsel advised RD that it should provide and serve the Hardship Declaration prescribed by New York law upon SFH borrowers with pending foreclosure actions to preserve the USDA's rights. Only if the borrower failed to respond, could RHS proceed with its foreclosure action.

### Multifamily Housing

The Eastern Region handled a significant amount of multifamily housing related legal work including reviewing loan proposals and preparing closing instructions to guide the agency through the legal completion of multifamily housing transactions. Eastern Region attorneys also frequently drafted subordination agreements wherein the RD borrower has taken out a loan with a private lender, generally for making improvements on the property, and that lender requires that the RD loan be subordinate to its loan.

### Community Facilities Programs

Community Facilities Programs offer direct loans, loan guarantees and grants to develop or improve essential public services and facilities in communities across rural America. The Eastern Region has done a significant amount of work in this area generally related to determining the eligibility of organizations that have applied for funding, including the eligibility of faith-based organizations, and preparing closing instructions for the transactions.

### Farm Service Agency Matters

OGC Eastern Region provided legal advice to FSA on loan issues, bankruptcies, and third-party foreclosures in almost 350 matters. It also assisted DOJ in defending FSA in cases challenging its implementation of program funds as well as bringing affirmative actions to collect improper payments. For example, the Eastern Region continues to assist Alabama FSA in collection of crop program payments. These cases involve FSA Alabama's approval of Noninsured Crop Disaster Assistance Program ("NAP") benefits to farm producers in Houston County, Alabama, for crop years 2015, 2016, and 2017. The FSA state and national office later discovered that hundreds of those claims were fraudulent. The National Appeals Division Director ruled in favor of the Agency allowing the clawback of funds paid to Plaintiffs for alleged crop damage.

### 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 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. While the Healthy Forests Reserve Program helps landowners restore, enhance, and protect forests on private lands through easements and financial assistance.

### Employment Law

Eastern Region attorneys continued to assist all USDA agencies in the Eastern United States in the defense of personnel actions in 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 several 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 centers<sup>1</sup> 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 judicial 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 are defending numerous retailer disqualifications where “trafficking” was found using algorithms that detect suspicious buying patterns, known as “ALERT.” An increase in the volume, and complexity of discovery matters in litigation has added to the workload. Opposing attorneys in several cases are working together to sharpen their litigative posture seeking to find weaknesses in the ALERT fraud detection data and are more frequently seeking stays to the disqualification which results in additional briefing for each case. Examples include *Hamiar Ali v. United States*, and *Mussa Al Shuga v. United States*, where the retailers are attacking the administrative disqualification process along with the ALERT system itself.

### RD, RHS, RUS, RBS

RD's housing programs (both single family and multi-family) continue to need legal services related to their loan portfolio. In particular, the multi-family housing program requires a high volume of legal work to facilitate numerous transfers, assumptions, restructuring, and tax credit transactions, all of which are complex and time sensitive. In one significant case, a group of tenants and a housing preservation advocacy group challenged a property sale and transfer, alleging that the agency violated the pre-payment provisions. OGC worked to resolve this litigation in a way favorable to all parties involved, while maintaining program integrity.

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 worked on reviewing numerous Emergency Rural Healthcare Grants that involved complex organizational structure reviews that are typical in the hospital and medical field. Other work involving hospitals included a \$48.5 million loan involving many corporate sub-entities and another loan for \$30 million to repair damages following an explosion that damaged the facility. In another Health Care Authority bankruptcy, OGC defended its security position, allowing its \$7 million loan to be treated as fully secured. 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.

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<sup>1</sup> The Central Region includes large metropolitan areas such as: Chicago, St. Louis, Houston, Dallas/Fort Worth, San Antonio, Indianapolis, El Paso, Nashville, Memphis, Oklahoma City, Kansas City, Omaha, Minneapolis/St. Paul, Tulsa, New Orleans, Wichita and Austin.

Water and sewer projects are also part of this RD 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.

#### 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 \$11 billion in outstanding direct and guaranteed loans. Other superior creditors are continuing to enforce their interests, as well as tax sale actions brought by municipalities or tax-lien holders, that require legal support to defend USDA's financial position in these defensive actions.

#### 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. In one protracted litigation, OGC is defending the Federal Crop Insurance Corporation's action when a producer was disqualified for failure to pay premiums. This case arose following an OIG investigation that also revealed a "scheme or device" used to evade the payment limitations under the FSA/CCC programs that later led to the crop insurance disqualification.

#### FPAC (Farm Production Conservation and Business Center)

Central Region attorneys provided legal support to FPAC in a variety of matters. As a tenant in hundreds of Service Centers, USDA has frequent maintenance issues with building owners and related leasing disputes with an increase in the number of threatened evictions. Central Region attorneys work to ensure that lessors properly maintain the properties, but also that leases are being legally transferred and managed.

#### NRCS

OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Programs. OGC provided extensive legal advice to NRCS, and its acquisition team related to a Nebraska Executive Order that sought to give counties additional authority to reject the acquisition of the easement by USDA.

#### 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 is working with AMS on a lease involving a cotton classification facility in Arkansas that was destroyed by fire, and where the lessor is refusing to make necessary repairs. OGC also defended AMS in a claim made by a cotton manufacturer under the Economic Adjustment Assistance for Textile Mills that sought to retain funds following a bankruptcy action. 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. In one case, OGC secured a Federal court order for a lifetime ban and a \$0.3 million fine arising from a livestock dealer's repeated violations of the Act.

#### 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 related to a series of complex leases between the Forest Service and the State of Arkansas including drafting standardized lease terms apply to future leases.

#### 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. Discovery and electronic discovery in particular, are time-consuming parts of this litigation portfolio. In one case, OGC attorneys are culling through thousands of records with over 30 witnesses where USDA terminated an employee.

#### *Mountain Region*

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

### FS Programs

The 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 FS 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 FS in 2022 regarding compliance with these and other laws in furtherance of the priorities of the USDA and FS and assisted DOJ in the defense of almost 90 new litigation matters. The Region continued to observe 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 almost 400 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 and inquiries from the media, Congressional and local governmental representatives, or under FOIA. Post fire, Mountain Region attorneys assisted with affirmative claims for suppression costs and damages, both administrative and judicial, including assisting in securing a \$20 million settlement in *United States v. The Durango & Silverton Narrow Gauge RR*, No. 19-cv-01913-REB-NRN (D. Colo.), and helped the FS with defensive claims, liability, and management questions resulting from post-fire conditions, such as hazard tree liability and removal, to include legal issues and pending litigation related to the extensive Hermits Peak/Calf Canyon fires in New Mexico, which ignited in the wake of FS prescribed burns.

### 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 including assistance with affirmative litigation against the State of Idaho challenging on Constitutional grounds State legislation that provides for the forfeiture of Federal stock water rights. OGC also assisted the FS in assuring that water users of the National Forests comply with FS regulations for the occupancy and use of the National Forests, as well as State law water rights requirements.

### Mining and Energy Development and Carbon Reduction Projects

OGC advised and helped defend FS decisions related to several controversial proposed oil and gas leasing or development projects on NFS land in Colorado and Montana; coal development in Colorado and Utah; and mines and proposed mining projects involving critical minerals throughout the Region. For example, OGC is advising the FS on highly complex bonding issues for the only currently authorized cobalt mine in the United States. 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 continues to advise the FS on the development of NEPA documentation and ongoing tribal consultation responsibilities. OGC is also advising the FS on the potential and means for authorizing proposed waste methane destruction and carbon sequestration projects in Colorado.

### Wildlife Management

OGC advised the FS and assisted DOJ with litigation concerning translocation 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 influenced the favorable outcome in *Thiessen v. United States*, No. 21-2053 (10th Cir.) (which, on May 4, 2022, affirmed the District Court's decision in favor of the United States (No. 2:20-cv-00364 (D. N.M., Mar. 22, 2021))) and *U.S. v. Canyon del Buey*,



LLC, et al., No. 2:20-cv-00727 (D. N.M. Dec. 28, 2021), which found that the Defendants were unlawfully trespassing on NFS lands—litigation that stemmed from the FS’s 2018 decision to cancel the grazing permit for Canyon del Buey, operated by Craig and Lance Thiessen, following Craig Thiessen’s conviction in Federal court for violating the ESA by killing a grey wolf.

OGC helped the FS execute a plan to remove feral cattle from sensitive wilderness habitat in the Gila Wilderness via aerial gunning – a project that prompted strong and vocal opposition from the livestock community, with the NM Cattle Grower’s Association ultimately filing suit to enjoin the project. OGC assisted DOJ in preparing for the hearing, which resulted in a February 2022 decision in the FS’s favor denying the request for injunctive relief.

OGC also worked with the FS to develop and implement a plan to remove feral horses from the Apache National Forest in Arizona and supported DOJ in ensuing litigation by a group that filed suit to enjoin the horses’ gather and removal, which ultimately resulted in a decision that also denied the plaintiff’s motion for an injunction.

Additionally, OGC was instrumental in settling highly contentious litigation involving confrontational, anti-government grazing permittees in *Western Watersheds Project v. Forest Service*, No. 4:19-cv-00097-DN-PK (D. Utah) and continues to advise the FS in implementing the settlement.

#### Real Property

OGC assisted the FS and NRCS in acquiring title to real property and interests therein to support their programs by evaluating and approving title to land to be acquired, including assisting with land exchanges and congressionally mandated land exchanges. OGC also assisted agencies that hold title to real property, such as the FS and Agricultural Research Service, in protecting and defending title.

OGC assisted in the defense of numerous Quiet Title Actions throughout the region including *Wilkins v. United States*, which is currently before the Supreme Court. OGC also assisted in advising USDA agencies on land status issues. 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. Settlement of title claims were pursued were warranted.

#### Infrastructure Projects

The Mountain Region assisted the FS and other agencies of the Department of Agriculture in accommodating infrastructure projects on Federal land. One matter of note was OGC’s substantial efforts in resolving high-profile and complex litigation of *TransWest Express (TWE) LLC v. Perdue*, 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. Settlement of the case allows for construction of the transmission line to proceed in a manner consistent with NRCS program responsibilities.

#### RD

The Mountain Region assisted RD agencies in the closing of numerous loans, to include those related to Water and Environmental Programs and Community Facilities, totaling in excess of several million dollars in 2022 and provides ongoing support to RD in working with the Navajo Tribal Utility Authority on a series of planned loans that will total approximately \$60 million in water-related infrastructure.

#### 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 on various easements and program-related legal issues throughout 2022.

#### *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 2022, Pacific Region attorneys helped defend against a Ninth Circuit appeal 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 Court of Appeal.

#### Crop Insurance

OGC's Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. During 2022, the Pacific Region helped FCIC enforce its integrity requirements, including successfully representing the FCIC in imposition of civil monetary fines against a crop insurance agent.

#### 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, including numerous proposals for removal of dams and hydropower facilities. In Alaska, for example, there are twelve recently proposed or 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 about major transmission line rights-of-way on FS land.

#### 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 complies 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 FS natural resource experts and facilities managers to evaluate and value environmental and resource damages to NFS lands and to FS facilities. Pacific Region attorneys then partner with the Department of Justice to bring civil cases seeking recovery of these damages. In 2022, OGC's Pacific Region continued to work with the FS to expand the fire damages recovery practice into FS Region 6, securing settlements and initiating recovery efforts related to multiple recent wildfires in Oregon.

#### 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.

#### Indian Country

Pacific Region attorneys supported multiple important USDA initiatives benefiting tribes and individual Native Americans. We reviewed multiple MOUs establishing co-stewardship responsibilities between the FS and tribes, ensuring that tribal voices will be heard as the FS manages important natural resources. Similarly, we assisted RD with entering a novel MOU on the Umatilla Reservation in cooperation with the Department of Housing and Urban Development to promote greater single-family housing lending on the reservation. We also reviewed and facilitated many RD loans and grants benefiting native communities.

#### Lands Transfers

Attorneys in OGC's 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. In 2022 the Pacific Region helped

USDA agencies acquire many millions of dollars' worth of real property interests, including numerous easements as well as fee title acquisitions that added more than 3,020 acres to NFS lands in the OGC Pacific Region. 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 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 helps the FS 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. Similarly, we recently received a major favorable opinion in a Ninth Circuit appeal challenging planned safety improvements to Spirit Lake, which was created by the eruption of Mt. St. Helens.

#### Law Enforcement Assistance

Pacific Region attorneys advised, reviewed, and revised more than 450 FS Forest Orders in 2022 that prohibited specified conduct and provided for criminal citations for violations. 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 2022, 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 drafted legislative language that would remove legal impediments to Alaska Native tribes' participation in NRCS watershed and flood prevention projects. They also reviewed and provided technical assistance on numerous bills relating to tribal co-stewardship efforts and other measures designed to provide a greater role for tribes.

#### 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 guiding the FS in its consideration of continued tailings disposal by a large mining operation in environmentally sensitive areas in Alaska.

#### RD

The Pacific Region provided legal advice and compliance reviews for RD agencies in loan and grant transactions, totaling more than \$240.8 million in loans, \$13.8 million in loan guarantees, and \$83.4 million in grants in 2022. 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. Notably, our attorneys reviewed dozens of Emergency Rural Healthcare grants authorized by the American Rescue Plan Act, ensuring continuity of critical healthcare services in rural American during the COVID-19 pandemic.

#### 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. In 2022, OGC Pacific Region attorneys advised multiple Forests in California engaged in the process of determining whether to allow recreation residence permit-holders to rebuild cabins that were substantially destroyed by wildfire in preceding years. Additionally, attorneys helped Forests navigate complex permit-based relationship issues with some of the Region's major recreational concessionaires including a large ski resort attempting to mitigate hazards and rebuild in the wake of wildfire damage.

#### 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.