

2008 Explanatory Notes  
Office of the General Counsel

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## OFFICE OF THE GENERAL COUNSEL

Purpose Statement

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

Description of Programs:

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

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

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

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

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

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

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

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

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

Eastern Region:

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

Central Region:

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

Mountain Region:

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

Pacific Region:

San Francisco, California  
Juneau, Alaska  
Portland, Oregon

As of September 30, 2006, the office had 332 employees of which 317 were permanent full-time employees and 15 were other than permanent full-time employees. There were 159 permanent full-time employees and 12 other than full-time employees located in Washington, D.C., and 158 permanent full-time employees and 3 other than full-time employees in the field.

OGC did not have any OIG or GAO evaluation reports during the past year.

## OFFICE OF THE GENERAL COUNSEL

Available Funds and Staff Years  
2006 Actual and Estimated 2007 and 2008

Item	Actual 2006		Estimated 2007		Estimated 2008	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Salaries and Expenses .....	\$39,351,000	295	\$38,957,000	301	\$41,721,000	306
Rescission .....	-393,510	--				--
Subtotal, Salaries and Expenses .....	38,957,490	295	38,957,000	301	\$41,721,000	306
<u>Allocation from:</u>						
Hazardous Materials Management Program ....	1,454,079	11	1,677,000	11	1,677,000	11
<u>Obligations under other</u>						
<u>USDA appropriations:</u>						
FS Non-Litigating Sprt .....	113,445	0	150,000	0	150,000	0
Detail (FS) .....	10,845	--	7,000	--	--	--
Civil Rights Reimbursables....	441,140	4	609,000	5	621,000	5
AMS-User Fees .....	880,000	5	1,042,000	6	1,064,000	6
APHIS-User Fees .....	316,000	2	419,000	2	427,000	2
GIPSA-User Fees .....	14,000	0	7,000	0	7,000	0
FSA-User-Fees .....	10,100	0	12,000	0	12,000	0
FSIS-User-Fees .....	--	--	41,000	0	42,000	0
Total, Other USDA Appropriations .....	1,785,530	11	2,287,000	13	2,323,000	13
Total, Office of the General Counsel .....	42,197,099	317	42,921,000	325	45,721,000	330

## OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff-Year Summary  
2006 Actual and Estimated 2007 and 2008

Grade	2006			2007			2008		
	Wash DC	Field	Total	Wash DC	Field	Total	Wash DC	Field	Total
Executive Level	1	--	1	1	--	1	1	--	1
Senior Executive Service	16	4	20	16	4	20	16	4	20
GS-15	32	27	59	33	26	59	32	27	59
GS-14	63	60	123	60	59	119	59	60	119
GS-13	6	3	9	3	5	8	2	3	5
GS-12	14	6	20	12	7	19	15	10	25
GS-11	10	17	27	9	14	23	13	12	25
GS-10	2	--	2	3	--	3	3	--	3
GS- 9	7	10	17	8	11	19	8	11	19
GS- 8	11	19	30	12	18	30	12	18	30
GS- 7	8	14	22	8	14	22	8	14	22
GS- 6	1	1	2	1	1	2	1	1	2
Total Permanent Positions .....	171	161	332	166	159	325	170	160	330
Unfilled Positions end-of-year.....	-12	-3	-15	--	--	--	--	--	--
Total Permanent Full-time Employment, end-of-year.....	159	158	317	166	159	325	170	160	330
Staff-Year Estimate.....	159	158	317	166	159	325	170	160	330

## OFFICE OF THE GENERAL COUNSEL

## Appropriation Language

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

Office of the General Counsel:

For necessary expenses of the Office of the General Counsel, \$41,721,000.

SALARIES AND EXPENSES – CURRENT LAW

Estimate, 2007.....	\$38,957,000
Budget Estimate, 2008 .....	<u>41,721,000</u>
Increase in Appropriation .....	<u>+2,764,000</u>

SUMMARY OF INCREASES AND DECREASES – CURRENT LAW

(On basis of appropriation)

<u>Item of Change</u>	<u>2007</u> <u>Estimated</u>	<u>Pay Costs</u>	<u>Program</u> <u>Changes</u>	<u>2008</u> <u>Estimated</u>
Legal Services .....	\$38,957,000	+\$1,824,000	+\$940,000	\$41,721,000

Project Statement  
(On basis of appropriation)

	<u>2006 Actual</u>		<u>2007 Estimated</u>		<u>Increase</u> <u>or</u> <u>Decrease</u>	<u>2008 Estimated</u>	
	<u>Amount</u>	<u>Staff</u> <u>Years</u>	<u>Amount</u>	<u>Staff</u> <u>Years</u>		<u>Amount</u>	<u>Staff</u> <u>Years</u>
Legal Services	\$38,876,922	295	\$38,957,000	301	+\$2,764,000	\$41,721,000	306
Unobligated Balance	80,568	--	--	--	--	--	--
Total Available or Estimate	38,957,490	295	38,957,000	301	+ 2,764,000	<u>41,721,000</u>	<u>306</u>
Rescission	393,510	--	--	--			
Total, Appropriation	<u>39,351,000</u>	295	<u>38,957,000</u>	301			

Justification of Increases and Decreases

(1) An increase of \$2,764,000 for the Office of the General Counsel consisting of:

(a) A total increase of \$1,864,000, of which \$997,000 is for 2008 increased pay costs, and \$867,000 is for 2007 pay costs.

It is absolutely critical that OGC be able to support and maintain current staffing levels in order to ensure that agencies of the Department receive adequate predecisional legal advice, training, appeal and litigation legal services. Approximately 93 percent of OGC's budget is in support of personnel compensation, which leaves no flexibility for absorbing increased cost for personnel benefits, lump sum payments, career ladder promotions, within-grade increases and other salary adjustments. OGC can only absorb these increases by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, law library purchases and supplies. A staff reduction would result in backlogs and delays in reviewing and clearing agency rulemakings and correspondence, and in providing legal advice within requested time frames.

(b) An increase of \$440,000 to maintain and support current staff.

Unlike large program agencies which have more flexibility concerning budget implementation, OGC can only absorb this increase by reducing staff. A staff reduction would result in backlogs and unavoidable delays in reviewing and clearing agency rulemakings and correspondence, and in providing legal advice within requested time frames. In addition, the Department's various enforcement and compliance programs would be adversely affected. OGC attorneys would be unable to be involved at the critical planning or predecisional stage of client agency initiatives when agency policy is being developed and key decisions are made.

(c) An increase of \$500,000 and 5 staff years for additional legal services.

This increase will enable OGC to meet its objective of providing effective legal services in a responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture. Staffing will consist of 5 attorney positions. The resources are needed in the following areas:

International Affairs and Commodity Programs Division (2): OGC's International Affairs and Commodity Programs (IACP) Division provides legal services in support of the commodity support, disaster payment, and other programs of the Farm Service Agency (FSA) and the international programs and trade-related activities of the Foreign Agricultural Service (FAS). The Division's trade-related workload has increased measurably within the past 3-4 years. Specifically, IACP attorneys have been called upon to assist in the negotiation of international trade agreements, and in the prosecution and defense of trade-related claims before international bodies. The Under Secretary for Farm and Foreign Agricultural Services and the Administrator, FAS, have made repeated requests for additional OGC assistance in these areas.

As a result, there is a strong demand to add two additional entry-level attorney positions in the International Affairs and Commodity Programs Division.

Regulatory Division (1): OGC's Regulatory Division provides legal advice and services principally to the Animal and Plant Health Inspection Service and the Food Safety and Inspection Service. As a result of previous findings of BSE in the United States and the enormous threat posed by highly pathogenic avian influenza (HPAI), the Division's attorneys have faced huge challenges in the areas of rulemaking and defense of lawsuits challenging USDA's activities. Additional substantial challenges have been posed by citrus canker and other serious and potentially devastating diseases of animals and plants, as well as substantial changes in USDA meat and poultry inspection programs. As a result, there will be a clear need during FY 2008 to add one additional entry-level attorney position in the Regulatory Division.

General Law Division (1): OGC's attorneys in the General Law Division are faced with huge challenges in the areas of contracts and procurements and in defense of USDA's competitive sourcing activities. In addition, the demands on the Division's staff have increased greatly in the areas of USDA's BioPreferred Program (formerly the Federal Biobased Product Preferred Procurement Program) and respecting confidentiality issues arising from USDA's animal identification program activities. Further, the Division has faced, and will continue to face into FY 2008, increased demands for assistance in connection with personnel law matters, tort claims, Freedom of Information, Privacy, and Federal Advisory Committee Act matters, and in the areas of patents, copyrights, and intellectual property. The demands for services in these areas, presented by all agencies and offices of USDA, have risen substantially from FY 2004 through FY 2006. As a result, there is an undeniable need to strengthen the staff of the General Law Division by the addition of one new entry-level attorney position during FY 2008.

Kansas City (1): OGC's Kansas City, Missouri, Regional Office is receiving increasing numbers of requests for legal assistance from USDA client agencies, in areas including USDA farm and loan programs, bankruptcy, risk management, and government contract law. These requests are coming from FSA Kansas City Commodity Office, Risk Management Agency officials in Kansas City, and State offices of both FSA and Rural Development serviced by OGC's Central Region. With a current attorney staff of only 7, the Kansas City office is staffed with three fewer attorneys than was the case in the early 1990's, and it is anticipated the office will experience additional attorney retirements in the next year or two. As a result, there is a strong need to add one additional, entry-level attorney to the Kansas City office in FY 2008.

## OFFICE OF THE GENERAL COUNSEL

Geographic Breakdown of Obligations and Staff Years  
2006 Actual and Estimated 2007 and 2008

	2006		2007		2008	
	Amount	Staff Years	Amount	Staff Years	Amount	Staff Years
Alabama	\$505,242	5	\$512,000	5	\$518,000	5
Alaska	481,971	4	488,000	4	494,000	4
Arkansas	1,010,084	10	1,036,000	10	1,063,000	10
California	1,959,639	15	2,068,000	16	2,173,000	16
Colorado	1,909,718	14	2,014,000	14	2,112,000	14
District of Columbia	21,952,042	144	21,418,000	149	23,614,000	153
Georgia	1,919,259	18	2,015,000	18	2,113,000	18
Illinois	785,454	6	801,000	6	818,000	6
Minnesota	747,588	7	762,000	7	776,000	7
Missouri	1,100,493	11	1,182,000	11	1,215,000	12
Montana	791,331	7	807,000	7	824,000	7
New Mexico	512,216	5	519,000	5	526,000	5
Ohio	390,381	4	394,000	4	398,000	4
Oregon	1,433,818	12	1,487,000	12	1,542,000	12
Pennsylvania	1,040,615	12	1,068,000	12	1,097,000	12
Texas	958,592	8	982,000	8	1,006,000	8
Utah	497,257	5	503,000	5	510,000	5
Wisconsin	881,222	8	901,000	8	922,000	8
Subtotal, Available or Estimate.....	38,876,922	295	38,957,000	301	41,721,000	306
Unobligated balance ....	80,568					
Total, Available or Estimate.....	<u>38,957,490</u>	<u>295</u>	<u>38,957,000</u>	<u>301</u>	<u>41,721,000</u>	<u>306</u>

## OFFICE OF THE GENERAL COUNSEL

Classification by Objects  
2006 Actual and Estimated 2007 and 2008

	<u>2006</u>	<u>2007</u>	<u>2008</u>
<b>Personnel Compensation:</b>			
Washington, DC.....	\$14,832,360	\$15,390,000	\$16,482,000
Field.....	<u>13,237,053</u>	<u>13,735,000</u>	<u>14,709,000</u>
11 Total personnel compensation .....	28,069,413	29,125,000	31,191,000
12 Personnel benefits .....	6,459,954	7,231,000	7,856,000
13 Benefits for former personnel .....	<u>720</u>	<u>1,000</u>	<u>1,000</u>
Total pers. comp. & benefits .....	34,530,087	36,357,000	39,048,000
<b>Other Objects:</b>			
21 Travel and Transportation of persons	192,375	215,000	240,000
22 Transportation of things .....	15,160	15,000	15,000
23.3 Communications, utilities and misc. charges .....	835,607	823,000	832,000
24 Printing and reproduction .....	88,354	78,000	78,000
25.2 Other services .....	1,370,582	859,000	870,000
26 Supplies and materials .....	1,195,225	545,000	545,000
31 Equipment .....	<u>649,532</u>	<u>65,000</u>	<u>93,000</u>
Total other objects .....	<u>4,346,835</u>	<u>2,600,000</u>	<u>2,673,000</u>
Total direct obligations .....	<u>38,876,922</u>	<u>38,957,000</u>	<u>41,721,000</u>
<b><u>Position Data:</u></b>			
Average Salary, ES positions .....	\$153,262	\$158,295	\$164,459
Average Salary, GS positions .....	\$ 89,446	\$94,170	\$94,460
Average Grade, GS positions .....	12.35	12.31	12.26



OFFICE OF THE GENERAL COUNSEL

STATUS OF PROGRAM

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

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

Highlights of OGC's fiscal year (FY) 2006 operations are described below:

Selected Examples of Recent Progress:

ADMINISTRATION AND RESOURCE MANAGEMENT

OGC continues to focus on development of shared resources. In FY 2006, OGC centralized its resources by replacing Novell NetWare file servers nationwide with Power Edge Microsoft Windows servers centrally located in the Washington, D.C. Headquarters office. The electronic messaging GroupWise server was also replaced with Microsoft Exchange using Outlook as the client application. In addition, OGC replaced obsolete computer monitors and workstations nationwide.

OGC also entered into an Enterprise Agreement with Microsoft to provide server and desktop software in the new environment. The addition of Microsoft Suite 2003 software on OGC desktops has greatly enhanced document sharing with agencies external to OGC.

An increase in bandwidth for current telecommunication lines was accomplished during FY 2006.

## MARKETING, REGULATORY, AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders: OGC attorneys reviewed over 100 rulemaking actions, as well as many other documents relating to marketing orders, and provided daily legal advice to client agencies in connection with a wide variety of matters arising under the fruit and vegetable and milk marketing order programs. These activities included assistance in connection with formal and informal rulemaking actions, and with the enforcement and defense of the programs. OGC also provided assistance regarding the interpretation and effect of provisions of the Milk Equity Act.

OGC provided assistance in connection with formal rulemaking proceedings which proposed changes to the milk pooling standards and related issues involving the Mideast, Upper Midwest and Central milk marketing orders. For fruit and vegetable programs, OGC provided assistance in connection with formal rulemaking proceedings involving changes to the California nectarine and peach orders, the California walnut order, and the South Florida avocado order.

OGC attorneys have assisted DOJ in connection with several actions pending in the district courts to obtain payments from milk handlers into the producer-settlement fund, and has filed a number of administrative actions to enforce marketing order provisions. In addition, OGC has assisted in the defense of various administrative and judicial challenges to marketing orders, involving issues such as the constitutionality of using assessments to conduct promotional activities, the definition of "handler" under the raisin marketing order, and a handler's obligations for the regulated milk it handles.

Research and Promotion Programs: Working independently and with DOJ, OGC expended enormous resources defending approximately 190 administrative and Federal court cases challenging the constitutionality of various commodity research and promotion programs. These cases involved some of the most important, complex, and controversial legal and public policy issues in constitutional and agricultural law. In Johanns v. Livestock Marketing Association, 544 U.S. 550 (2005), the Supreme Court held that the generic advertising at issue is the government's own speech and therefore is exempt from First Amendment scrutiny. Since then, OGC has been involved in resolving the multitude of cases filed against the Department involving the pork, cotton, beef, watermelon, honey, and avocado programs. At present, all of the cases have been resolved favorably to the Department.

Animal Welfare and Horse Protection Acts: OGC expended substantial resources in connection with the Animal Welfare and Horse Protection Act programs. OGC attorneys serve as agency counsel in administrative enforcement actions brought under these two statutes, and, in FY 2005, OGC initiated 36 enforcement cases, and 37 decisions were issued in ongoing cases.

Perishable Agricultural Commodities Act (PACA): OGC devoted substantial resources to provide legal services in connection with PACA in FY 2006. OGC received 15 new enforcement referrals, and attorneys filed 21 new administrative enforcement cases under the provisions of the PACA. Attorneys closed 38 administrative enforcement cases, and collected \$105,000 in civil penalties levied in enforcement actions under the authority of the PACA. In FY 2006, OGC again committed legal resources in the negotiation of settlement in PACA "no pay" cases. Since many businesses that have violated the PACA by failing to pay promptly are in bankruptcy seeking reorganization, or have been purchased by other companies, and may do well after reorganization, the PACA branch may agree to settle a disciplinary no-pay case, which would ordinarily result in a revocation of the company's license, if the company pays all produce creditors in full, submits to periodic audits to ensure compliance with the PACA and pays a civil penalty. A considerable amount of OGC time is necessary to negotiate the plan and to gain approval from the bankruptcy court for these settlements, but as a result of this work, three cases settled in FY 2006, with debtor companies pledging to pay over \$1.5 million dollars in produce debt. In FY 2006, we litigated 9 cases in which individuals petitioned for review of their "responsibly connected" status. In these cases, principals in companies that were the subject of enforcement action are attempting to rebut their responsible connection to the violating company, and avoid employment sanctions.

In addition to the prosecution of enforcement actions under PACA, OGC attorneys act as presiding officers in reparations cases. In FY 2006, attorneys acting as presiding officers issued opinions on the merits in 7 disputes between private party litigants in the perishable agricultural commodities industry under PACA's reparations provisions, issued 36 decisions on reconsideration, default or other grounds, and reviewed an additional 105 decisions on the merits, 169 default decisions and 17 orders on reconsideration drafted by PACA specialists. The total amount of awards in reparation proceedings in FY 2006 was just over \$6 million.

Packers and Stockyards Act (PS&A): During FY 2006, OGC received 57 referrals from the Grain Inspection, Packers and Stockyards Administration, Packers and Stockyards (P&S) Programs for administrative action. These referrals seek the issuance of a complaint for the enforcement of the requirements of P&SA, legal review of agency action, or referral of a matter to DOJ. In FY 2006, 25 new enforcement actions were filed by OGC for the P&S Program, 24 enforcement actions were closed with decisions and orders, and two matters were referred to DOJ. OGC collected approximately \$196,350 in civil penalties arising from enforcement actions under the P&SA.

Liason with Antitrust Agencies: Under a Memorandum of Understanding between USDA, DOJ and the Federal Trade Commission, the agencies agree to cooperate and share information (within statutory confidentiality limitations) on issues related to competition in agriculture. In this fiscal year, OGC continued to coordinate the responses of the various agencies of the Department to DOJ requests for information or expertise in agricultural industries related to a number of merger or acquisition reviews. OGC also provides legal counsel and services to the USDA Committee charged with oversight of the Department's responsibility under the Capper-Volstead Act.

Animal and Plant Health Laws and Wildlife Services: During FY 2006, OGC reviewed, assisted in drafting or revising, and cleared for legal sufficiency over 180 proposed rules, final rules or notices for publication in the Federal Register. OGC continued to assist Animal and Plant Health Inspection Service (APHIS) in the development of Bovine Spongiform Encephalopathy (BSE) related rules, including the final rule allowing the importation of boneless beef from Japan and the evaluation and development of a proposal to allow the importation of additional animals and products from minimal risk regions. OGC also assisted APHIS with the preparation of an interim final rule improving the National Poultry Improvement Program to better prepare for a potential incursion of the highly pathogenic strain of avian influenza found in Asia. In addition, numerous criminal, civil, and claims collection cases involving APHIS matters were referred for prosecution or otherwise handled during the fiscal year.

Meat, Poultry, and Egg Products Inspection Acts: During FY 2006, OGC worked on a substantial number of criminal, civil, and administrative cases. OGC provided assistance to DOJ in prosecuting numerous criminal and civil cases involving violations of the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA) and the Egg Products Inspection Act. OGC prepared indictments and complaints and provided other assistance for the successful prosecution of these cases. Additionally, OGC attorneys assisted DOJ in civil actions brought against USDA and Food Safety and Inspection Service (FSIS) employees in their individual capacities (Bivens cases) in regard to FSIS programs and regulations. OGC attorneys worked with DOJ attorneys in the defense of civil actions involving humane slaughter requirements and a user fee program for voluntary ante-mortem inspection of horses. OGC attorneys handled approximately 20 administrative cases brought by FSIS to withdraw or deny Federal meat and poultry inspection or custom exempt services under the FMIA and PPIA based on criminal convictions or violations of FSIS regulations, including the Hazard Analysis and Critical Control Point (HACCP) and sanitation standard operating procedure regulations. Many of these cases resulted in the successful negotiation of comprehensive consent settlements.

OGC assisted FSIS in the preparation, review and clearance for legal sufficiency of approximately 55 FSIS rulemaking dockets, notices and directives in FY 2006, including the BSE rules relating to specified risk materials and several rules to allow the importation of meat and poultry products from various countries.

INTERNATIONAL AFFAIRS, COMMODITY PROGRAMS  
AND FOOD ASSISTANCE PROGRAMS

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

- During this past fiscal year, OGC provided substantial assistance with respect to commodity loan, conservation, and producer income programs authorized under various statutes, including the Farm Security and Rural Investment Act of 2002 and the Food Security Act of 1985. These efforts concerned the provision of legal advice with respect to the participation of individual producers in the major commodity programs and producer-oriented conservation programs administered by FSA. Several billion dollars are expended annually under these programs involving the participation of several million producers.
- OGC assisted FSA and senior Departmental officials in the administration of disaster programs, especially in response to the devastation caused by Hurricane Katrina. OGC attorneys provided legal advice in the development of actions that could be taken under existing statutes to help alleviate the decline in commodity prices due to the closure of the port of New Orleans and attendant closures of transit facilities throughout the Mississippi River Basin.
- OGC attorneys continued to assist FSA officials with respect to the development of individual Conservation Reserve Enhancement Program agreements (which address, in cooperation with the States, individual State environmental needs) and the procurement of commodities for use in the National School Lunch Program and other domestic nutrition assistance programs.
- OGC provided advice on a number of issues arising under the domestic sugar allotment and price support programs, including issues involving the defense of CCC actions in administrative cases involving the allocation of allotments to domestic processors of sugarcane and sugar beets, as well as other litigation involving issues related to the sugar program.

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

- OGC assisted the Foreign Agricultural Service (FAS) in implementing the Department's international food aid and developmental programs, including the Food for Progress Program and the McGovern-Dole International Food for Education and Child Nutrition Program.
- OGC attorneys provided advice regarding efforts to assist FAS in the deployment of USDA personnel to Iraq. These efforts were in response to a Presidential initiative to assist the Iraqi government in establishing a sound agricultural infrastructure, including an agreement with the Department of State for agricultural extension and education in Iraq.
- OGC attorneys provided legal advice on behalf of USDA with respect to activities of the National Security Council (NSC), the Departments of State, Commerce, and Treasury and the Central Intelligence Agency regarding agricultural trade to Cuba, Iran, North Korea and other sanctioned countries. At the onset of the crisis in Lebanon, OGC assisted FAS in the diversion to Lebanon of CCC-purchased grain under existing contracts in response to a NSC directive to USDA to help ensure immediate availability of food in Lebanon.
- OGC attorneys provided extensive assistance to the Office of the United States Trade Representative and FAS on a variety of issues and disputes that arose concerning the obligations of the United States under World Trade Organization (WTO) agreements and other bilateral

agreements, including the drafting and review of briefs filed by the United States in cases brought in the WTO by Brazil regarding U.S. cotton and export credit programs and in the WTO case brought by the United States regarding the European Union's approval process for genetically-engineered products.

OGC also provided extensive legal advice to and reviewed documents for FAS regarding international agricultural cooperative efforts and arrangements.

OGC provided extensive counsel regarding actions taken by FAS to protect the interests of the United States in the context of the administration of export credit guarantee programs. Most notably, this included the review of the actions in Iraqi grain transactions involving Australian companies and individuals identified by the report of the Independent Inquiry Committee into the United Nations Oil-For-Food Programme and the subsequent action of the Australian Government in its Report of the Inquiry into certain Australian companies in relation to the UN Oil-for-Food Programme.

Nutrition Assistance Programs: During the past year, OGC frequently assisted in furthering the program policy and integrity objectives of the nutrition assistance programs. OGC provided innovative solutions for the determination of cost neutrality under provisions of the Child Nutrition and WIC Reauthorization Act of 2004 (2004 Act) that limit the participation in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) of stores that are not subject to normal market forces. OGC provided legal review and assistance regarding the interim regulations and numerous policy guidance memoranda to implement the complex WIC cost-containment provisions of the 2004 Act. OGC's efforts further the purposes of the legislation by limiting the participation of high cost WIC vendors in the program and assuring that such vendors' participation does not result in higher costs, thus achieving significant cost savings for WIC. OGC also played a significant role in the Food and Nutrition Services' (FNS) review of the use of electronic signatures under Texas Integrated Eligibility Redesign System, a proposal for the privatization of many of the eligibility functions in the Food Stamp Program (FSP). OGC intervened to cease the sale of Food Stamp Coupons on the eBay internet marketing website and counseled FNS regarding the practice of FSP participants seeking cash refunds for items purchased with FSP benefits. OGC also provided legal advice regarding the administrative review before the State Food Stamp Appeals Board of a FSP strict liability claim brought by FNS against a State agency for loss of food stamp benefits. OGC continues to work closely with Department officials engaged in evaluating and sanctioning States for their performance in administering the FSP under the quality control system, including defending an appeal filed by a State agency which was assessed a liability amount for an excessive FSP error rate.

OGC participated in the preparation and review of numerous significant documents, memoranda, and correspondence. Included among these were 127 pieces of controlled correspondence related to the nutrition assistance programs signed at the Under Secretary level or above. OGC also provided insightful review of numerous proposed and final Federal Register publications, including proposed revisions to the WIC Program's food package regulations which represent the first significant update to the food package requirements in more than 20 years and will bring them into line with current science and the *Dietary Guidelines for Americans*. OGC cleared a final rule implementing the Senior Farmers' Market Nutrition Program. OGC achieved important judicial precedent in the successful defense of a major challenge to USDA's implementation of the new WIC cost-containment requirements in National Women, Infants and Children Grocers Association, et al. v. Food and Nutrition Service.

## RURAL DEVELOPMENT

Community Development Division (CDD): CDD provides legal advice to the Rural Housing Service (RHS), the Risk Management Agency (RMA), the Rural Business-Cooperative Service (RBS), and the farm lending arm of the FSA in all their major areas of activity. Implementation of the Bankruptcy Abuse Prevention and Consumer Protection Act and the Debt Collection Improvement Act of 1996 in conjunction

with offset and debt collection activities of the Department of the Treasury affects all of CDD's client agencies and involves significant time of several OGC attorneys. CDD has also been extensively involved with trying to assist hurricane disaster areas primarily through the use of the multi-family housing (MFH) and community facilities programs. CDD works with all their client agencies on advice concerning environmental matters.

Farm Loan Programs of the Farm Service Agency: CDD continues to provide extensive assistance to the Civil Rights Division (CRD) of OGC concerning FSA program issues arising in the context of several discrimination class actions by FSA borrowers. The division spent significant time assisting FSA in its efforts to streamline the direct farm loan regulations and implement the new Tobacco Transition Payment Program. CDD has also provided extensive assistance to FSA in coordinating the defense of several lawsuits concerning its Shared Appreciation Agreements and several qui tam False Claims Act actions involving its guaranteed loan program.

Rural Development (RD): During FY 2006, CDD has provided extensive and comprehensive assistance to RHS on its Multifamily Revitalization Demonstration Program (Revitalization Program) and its Multifamily Voucher Demonstration Program (Voucher Program). It is RHS' hope that through the Revitalization Program, MFH borrowers will be less likely to fall into non-monetary default or to request prepayment. CDD is currently working with RHS on drafting the legal documents that will be necessary for demonstration restructuring of the borrowers' loans.

CDD continues to be extensively involved with numerous MFH loan prepayment cases filed across the country which challenge statutorily mandated prepayment restrictions which were retroactively imposed on MFH borrowers. There are approximately 300 pending prepayment cases in the Court of Federal Claims, encompassing approximately 700 plaintiff owners with claims on 800 properties. CDD has spent an extensive amount of time in the past year working closely with the DOJ to negotiate a settlement for nearly all of these plaintiffs, made possible by the fact that nearly all of these plaintiffs are represented by the same two law firms.

RMA and the Federal Crop Insurance Corporation (FCIC): CDD was heavily involved in assisting RMA in its major rewriting and combining of policies into a single policy and converting many of RMA's pilot programs to permanent crop insurance programs through the rulemaking process. CDD has assisted in drafting guidance and final agency determinations for many issues that have arisen under the new Standard Reinsurance Agreement and the Common Crop Insurance Policy Basic Provisions and Crop Provisions. CDD has provided guidance with respect to the various mergers and acquisitions of crop insurance books of business and the impact on programs such as the Premium Reduction Plan.

Rural Utilities Division (RUD): RUD provides legal services required for the administration of the electric, telecommunications, broadband, water and waste disposal services of the Rural Utilities Service (RUS). RUS also furnishes legal services required for the dissolution of the Rural Telephone Bank (RTB). Principal legal services include the drafting of loan documents, negotiation of complex, transaction-specific documents, the drafting and review of program regulations, and general advice and counseling on program implementation, environmental issues, and loan servicing and collection activities.

Examples of specific legal services provided by OGC through RUD in FY 2006 include:

- Provided legal advice and assistance to RUS in advancing the President's Broadband Initiative by making major revisions to the RUS Broadband Program regulations in order to increase its effectiveness.
- Negotiated, reviewed and drafted documents necessary to implement new authorities under the Rural Electrification Act to significantly extend the maturities of existing obligations of borrowers to the government under certain circumstances.

Examples of significant shifts or trends in the existing workload of the RUD include:

- The Energy Policy Act of 2005 (EP Act) is expected to have profound impacts on the workload of RUD. The EP Act provides significant inducements for the development of nuclear power. Some RUS borrowers have already indicated that they intend to participate in at least some of these projects.
- Congress recently amended the Rural Electrification Act of 1936 by adding new authority for RUS, in collaboration with the Department of the Treasury, to extend the maturities for outstanding loans associated with power plants and transmission lines which have been determined to have longer useful lives, e.g., in the case of a nuclear plant whose license has been extended by the Nuclear Regulatory Commission for an additional 20-year term. The documentation and procedures for implementing this new authority, which also involves assessing a fee for this service, have been developed. RUD expects that it will close the first transaction under this new program early in 2007 and that, thereafter, this program will be used extensively.

### NATURAL RESOURCES

Forest Service (FS) Programs: OGC provided advice regarding compliance with Federal environmental and administrative laws governing public lands and assets and regarding Federally permitted activities and contracts.

In the area of land management planning and projects, OGC counsels FS regarding compliance with environmental laws, particularly the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), and the Endangered Species Act (ESA), and assists in the defense of regulations, policies, plans and projects involving these laws. Specifically OGC has provided assistance in:

- Planning. OGC has been assisting the FS in developing direction for implementation of the 2005 Planning Rule. It has also been providing counsel regarding plans being developed under that Rule, as well as planning that continues under prior planning regulations.
- Programs and projects. OGC continues to provide legal advice to the FS regarding compliance with relevant laws and regulations, executive orders and other applicable authorities. These authorities include not only NEPA, NFMA, ESA the Appeals Reform Act and other administrative laws such as the Administrative Procedure Act, Data Quality Act, Federal Advisory Committee Act, Freedom of Information Act, Paperwork Reduction Act, Privacy Act. Of particular note are the State Roadless Area Petitioning Rule, the President's Healthy Forest Initiative and the Healthy Forest Restoration Act.
- Administrative appeals. OGC continues to advise the FS regarding the application of the agency's plan and project administrative appeal regulations, particularly in the aftermath of the Earth Island Institute v. Ruthenburg and Wilderness Society v. Rey decisions regarding administrative appeals of decisions categorically excluded from NEPA documentation.
- Litigation. The heavy caseload of recent years continues: 46 cases with NEPA, NFMA and/or ESA issues were filed in FY 2006. As of September 30, 2006, approximately 118 cases involving these issues were pending.

In legislative matters, OGC provided extensive assistance to FS in reviewing drafts of, and providing legal advice on issues relating to, legislation, including:

- Additional authority to carry out post-catastrophic event recovery efforts, including recovery efforts after hurricanes and fires.
- FS budget legislative proposals, including proposals to expand and clarify FS authority to enter into

partnership agreements with cooperators, to improve tribal relations, and to authorize the Secretary to enter into contracts or other agreements for wildland fire risk reduction and restoration projects and to establish rural healthy forests partnership zones to help increase investment in infrastructure.

- Grazing and range issues.
- Reauthorization of the Secure Rural Schools Act.

OGC has continued to provide substantial legal services in the forest management program area, including managing a substantial amount of litigation.

- OGC provided legal assistance on the defense of approximately 25 lawsuits seeking tens of millions of dollars based on challenges related to timber sale suspensions, modifications and cancellations, and alleging breach of contract.
- OGC provided legal assistance in drafting contract provisions to be published for notice and comment that limit liability for contractual damages, clarify the obligations of the parties to the timber sale contract, and attempt to reasonably allocate contracting risk between the parties.
- OGC provided legal advice and assistance to the FS regarding implementation of stewardship contract projects aimed at harvesting timber while simultaneously advancing forest resource management objectives, such as road trail maintenance, watershed restoration and restoration of wildlife habitat.

Forest Service components continue to undergo outsourcing review under OMB Circular A-76 and OGC continues to monitor the law in this area, and to provide advice and assistance as needed to the in-house offerors.

In support of the FS recreation program, OGC performed several significant tasks, including:

- Defending litigation involving the national trail classification system and drafting directives incorporating and updating the system.
- Defending cases involving implementation of the Federal Lands Recreation Enhancement Act, the sole authority for charging recreation admission and use fees on Federal lands.
- Drafting interagency memoranda of understanding (MOU), including an MOU between the Federal land management agencies and hunting, fishing, and shooting sports organizations regarding hunting, fishing, and shooting sports activities on Federal lands; an MOU regarding implementation of the interagency recreation pass under REA; and an MOU regarding the national Leave No Trace environmental ethics program.
- Overhauling standard special use authorization forms governing recreation residences, concessions, and other land uses and developing a standard form for electric transmission line easements and permits.

In real property matters, OGC works closely with USDA agencies which manage real property assets, primarily the FS, Natural Resources Conservation Service (NRCS), and Agricultural Research Service (ARS) on a variety of legal issues relating to land ownership. For the fiscal year ending September, 2006, OGC provided legal services for FS land acquisition programs for which approximately \$28.5 million was appropriated.

OGC also provides legal services regarding access and rights of way to public lands, title claims and disputes, treaty rights, land appraisal and survey, and other issues incident to the ownership and management of real property assets of the government.

In the minerals area, OGC has provided legal advice concerning a rulemaking governing the authorization needed by persons proposing to commence mining on National Forest System lands under the United States mining laws as well as litigation concerning the surface disturbance caused by mining. OGC also provided extensive legal assistance regarding oil and gas leasing, including a proposed categorical exclusion for certain small scale activities, an inter-agency MOU, and Congressional reports.

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

OGC has continued to assist in the defense of claims against FS involving road culvert maintenance and fish passage as they relate to tribal treaty rights in the Pacific Northwest, as well as claims by multiple Indian tribes alleging violation of the Religious Freedom Restoration Act related to development of a ski area in Arizona.

OGC provided extensive assistance to FS regarding hydroelectric licensing projects on National Forest System lands, including counseling FS regarding conditions on licenses and compliance with the Federal Energy Regulatory Commission licensing procedures. OGC has provided legal services in implementing the hydropower licensing provision of the Energy Policy Act of 2005, including the provisions for trial-type hearings and alternative licensing conditions.

OGC provided a range of assistance related to FS's efforts to expand their cooperative relationships with State and local governments. OGC assisted with revisions to FS directives related to overhead assessments, drafted guidance on ethics and conflict of interest in partnership activities, helped craft proposed legislation designed to respond to non-fire emergencies, and counseled the FS on its authority to accept and solicit donations for FS programs.

NRCS Programs: OGC provided legal advice and services to the NRCS in support of programs for natural resource conservation on private or other non-Federal farm, range, pasture, and non-industrial forest lands, including programs authorized by the Food Security Act of 1985 and other statutory authorities. OGC assisted the agency in developing new or revised regulations, standard form documents, and internal guidance needed to administer the Environmental Quality Incentives Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, and the Healthy Forest Reserve Program. The following are examples of natural resource conservation program areas where legal advice and services were provided by OGC to NRCS and the Department in FY 2006:

- Developing departmental comments on the oil storage and spill prevention regulations and National Ambient Air Quality Standards for particulates promulgated by Environmental Protection Agency (EPA).
- Negotiating and reviewing of cooperative agreements, conservation easements, and restoration agreements and/or providing title review across the 5 easement programs.
- Providing training sessions for NRCS and OGC employees related to NRCS easement program implementation.

Pollution Control: The OGC Pollution Control Team (PCT) provided legal services and advice for all USDA agency matters related to the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). During the most

recent fiscal year, the PCT negotiated with responsible parties to obtain substantial contributions to cleanup costs or cleanup work performed by responsible parties of more than \$18 million. OGC also provided advice on compliance with pollution control standards concerning USDA programs and facilities, and provided advice on hazardous materials liability in real property transactions. Specific PCT efforts on behalf of USDA on pollution control matters include the following:

- OGC is continuing to provide legal support to FS as the lead agency for the cleanup of 9 phosphate mine sites contaminated with selenium in southeastern Idaho where total response costs to address the contamination are projected to run as high as \$225-450 million.
- OGC has committed significant resources in establishing the FS's proof of claim and building its case for possible estimation hearings in the largest environmental bankruptcy claim the United States has ever filed - the ASARCO bankruptcy matter.
- The enactment of the Underground Storage Tank Compliance Act, which was part of the 2005 Energy Policy Act, is projected to result in a greater need for environmental defense advice and services as the new authority is implemented by states and EPA and they exercise their respective regulatory compliance duties over USDA facilities.

#### LEGISLATION, LITIGATION, AND GENERAL LAW

Legislation: During FY 2006, OGC reviewed approximately 270 legislative reports on bills introduced in Congress or proposed by the Administration, and cleared for legal sufficiency written testimony of approximately 385 witnesses testifying on behalf of the Administration before Congressional committees. The Legislation Division provided extensive assistance to USDA policy officials in drafting and analyzing legislative proposals and amendments, and reviewed and coordinated the legal review for USDA in the clearance of legislation and ancillary legislative materials. The Legislation Division drafted or provided technical assistance in the preparation of bills and amendments for the Secretary, members of Congress, Congressional committees, Senate and House Offices of Legislative Counsel, and agencies within USDA, including:

- Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act for FY 2007 (not yet enrolled or enacted);
- Several disaster assistance legislative proposals; and
- Legislative proposals related to next year's farm bill.

Litigation: OGC is responsible for the development and communication of the Department's position in cases on appeal. During FY 2006, Litigation Division attorneys were assigned full responsibility for 15 appellate cases, and obtained favorable results in 4 of them, and 1 case was settled. The other 10 appellate cases are pending briefing, oral argument, or decision by the court.

The Litigation Division is responsible for briefing and arguing all cases before the appellate courts arising under P&SA, PACA, the Animal Welfare Act (AWA), and the Horse Protection Act (HPA). During FY 2006, the Litigation Division defended the Secretary's decision in an HPA case before the United States Court of Appeals for the Sixth Circuit. In McConnell v. USDA, the Circuit upheld the Secretary's decision which found that two individuals violated the HPA by shipping and entering a "sore" horse into a horse show. The Circuit also upheld the Secretary's interpretation of "entry" as including those individuals who just present a horse for inspection.

The Litigation Division represented the Secretary before the Second Circuit in Hunts Point Tomato Co., Inc. v. United States of America, in which the court upheld the Secretary's sanction of a PACA licensee that had failed to make full, prompt payment to its produce suppliers, and found that the Secretary properly

adhered to long-standing policy when he denied Hunts Point Tomato's request to postpone the administrative hearing.

Litigation Division attorneys also assisted DOJ in preparing the government's positions in lawsuits, including reviewing and advising on Supreme Court briefs affecting USDA programs. Finally, OGC's appellate lawyers prepared the Department of Agriculture's 37 recommendations to the Solicitor General on whether to appeal adverse decisions of various trial courts, or to participate as amicus in appellate or Supreme Court cases, during FY 2006. For example, based on a Litigation Division recommendation, an appeal was filed in the District of Columbia Circuit in Johanns v. Holly Sugar Corp., and the court upheld the Secretary's interpretation of the relevant statute which committed rate setting to agency discretion.

In sum, the Litigation Division's attorneys were responsible for 52 appellate cases during the last fiscal year.

General Law Division (GLD): This division is responsible for handling on behalf of all of the agencies and offices of the Department the legal work and litigation that arise under the many statutes and regulations that apply generally to all agencies of the Federal government. These include, but are not limited to, the following: the Federal Tort Claims Act (FTCA), the Freedom of Information Act (FOIA), the Privacy Act (PA), the Federal Advisory Committee Act (FACA), the personnel laws and regulations, the Federal Service Labor-Management Relations Statute, Federal procurement statutes and regulations, and Federal intellectual property statutes.

During FY 2006, GLD provided extensive services to client agencies under these statutes and regulations including:

- Reviewing and deciding approximately 70 FTCA claims that exceeded \$100,000;
- Reviewing approximately 190 FOIA and PA requests and appeals;
- Litigating with DOJ attorneys 12 newly filed FOIA and PA lawsuits, in addition to those suits pending from previous years;
- Litigating with DOJ attorneys 33 newly filed FTCA lawsuits, in addition to pending FTCA cases from previous years; and
- Litigating other cases filed under the Fair Labor Standards Act, the FACA, the Whistleblower Protection Act, and other Federal personnel laws.

GLD also represented USDA, or assisted DOJ representation, in:

- 25 procurement protests before the General Accounting Office;
- 7 contract claims before the Agriculture Board of Contract Appeals;
- 4 agency-level protests;
- 2 procurement protests before the United States Court of Federal Claims;
- 9 contract claims before the United States Court of Federal Claims;
- 5 qui tam lawsuits;
- 2 class actions;
- 2 interagency agreement dispute; and
- 1 Service Contract Act administrative action before the Dept. of Labor.

In FY 2006, GLD reviewed 8 MOUs between various agencies and non-Federal parties.

Applications for patents were prepared on inventions by USDA employees with the objective of obtaining patent protection for the government - 63 patent applications were prepared and submitted to the U.S. Patent and Trademark Office during FY 2006 and 46 patents were obtained, 13 applications were abandoned, and 22 cases otherwise were closed.

## CIVIL RIGHTS

OGC's Civil Rights area is organized into two separate and distinct divisions, each lead by an Assistant General Counsel, under the umbrella of the Associate General Counsel for Civil Rights. The Civil Rights Litigation Division (CRLD) defends USDA in cases filed under the equal employment opportunity laws, the Equal Credit Opportunity Act, and other Federal statutory and regulatory authorities.

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

During FY 2006, CRPCCD provided extensive EEO training for a variety of agencies including APHIS, ARS, FSA, RD, and training on program discrimination for NRCS, RMA, and FNS. Other accomplishments include comprehensive legal sufficiency reviews of proposed personnel actions; reviews of bills, draft MD 715 and No FEAR Act reports for the Department; and participation in the mediation of several informal EEO matters.

FY 2006 was a challenging year for CRLD. CRLD filed briefs in response to the Class Agent's appeals of the dismissal of the Department-wide and FS class actions in Spencer v. Johanns filed on behalf of African-American employees. CRLD participated in the successful defense of FS which resulted in the expiration of the Donnelly v. Johanns Consent Decree on January 6, 2006. The Donnelly Consent Decree resolved a class action filed on behalf of female employees of FS, Region 5, who alleged sexual harassment or retaliation.

CRLD also defends USDA in Section 741 cases, administrative program discrimination cases, before Administrative Law Judge. CRLD was successful in the dismissal of In re Ben Terry, and defended USDA in a four day hearing in Richard Banks v. Mike Johanns, a program discrimination case where the allegations spanned twenty years. CRLD continues to coordinate the defense of USDA in a myriad of program class action cases brought by plaintiffs who allege discrimination in the delivery of USDA direct loan and other programs:

- Chiang v. Johanns - Class action alleging discrimination by RHS in the Virgin Islands; class certified by U.S. District Court and upheld by the Third Circuit; case proceeding with discovery on the merits;
- Garcia v. Johanns - Class action alleging discrimination by FSA against Hispanic farmers and ranchers; class certification denied by U.S. District Court; upheld by the D.C. Circuit;
- Keepseagle v. Johanns - Class action alleging discrimination by FSA against Native American farmers and ranchers; class certified by U.S. District Court; discovery is proceeding;
- Wise v. Johanns - Class action alleging discrimination by FSA against female, African-American (*Pigford* op-outs) and older farmers and ranchers; the putative class was waiting for the D.C. Circuit court's ruling in Love and Garcia class actions in determining whether class action certification should be pursued, and subsequently plaintiffs filed for class certification;
- Love v. Johanns - Class action alleging discrimination by FSA against female farmers and ranchers; class certification denied by U.S. District Court; upheld by the D.C. Circuit; and

- Pigford v. Johanns - Class action alleging discrimination by FSA against African American farmers and those who attempted to farm; class certified by U.S. District Court; continuing to implement Consent Decree.

Implementation of the April 14, 1999, consent decree in Pigford/Brewington, the class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefit programs, continues to require significant effort by CRLD. As of November 21, 2006, 59 percent of the 22,268 Track A claims filed were decided in favor of the claimant. The government has paid over \$710 million to prevailing Track A claimants and provided approximately \$25.6 million in debt relief. CRLD continues to provide assistance in responding to claims and petitions for review by the Monitor, as well as a variety of other activities relating to implementation of the Consent Decree.

In addition to the class action cases, CRLD litigates a substantial number of employment cases pending before the Equal Employment Opportunity Commission (EEOC), Merit Systems Protection Board (MSPB) or Federal district courts and individual program cases filed administratively or in court. CRLD has gone to hearing this fiscal year several times in EEOC cases.

#### REGIONAL OFFICES

OGC currently has four regional and thirteen branch offices which provide legal services to numerous USDA agencies with field organizations.

The OGC field offices provide legal advice and services on a wide range of legal matters. Generally, attorneys in the field locations advise USDA officials who have been charged with program implementation duties at the regional, State and local level. Field attorneys also provide a wide range of assistance to the United States Attorney concerning the conduct of litigation in which USDA agencies are involved. OGC field offices provide essential services in nationally significant litigation in coordination with the Washington OGC office and with DOJ. Civil Rights issues, debt collection matters, natural resource litigation, Food Stamp Program violations and FSA program matters form the core workload of the field attorneys. Field attorneys provide legal services in connection with, and legal representation on, cases before administrative law judges of the Agriculture Board of Contract Appeals, the Interior Board of Land Appeals, the Federal Energy Regulatory Commission, EEOC, the Merit System Protection Board, and the National Appeals Division. The types of cases include contract appeals, mining and patent contests, hydro-electric licensing procedures, Title VII employee complaints, appeals of adverse personnel actions, and appeals of farmers aggrieved by adverse decisions on certain farm programs.

Examples of types of litigation and other matters handled by the field include the following:

##### Eastern Region

The Eastern Region of OGC encompasses 29 States, along with Puerto Rico and the Virgin Islands. With total staff of 47, the Eastern Region ended the FY 2006 with a pending caseload of 10,979 active cases. This includes 40 administrative cases, 10,638 civil cases, 17 criminal cases, 207 non-judicial foreclosures and 77 Hearings Officer/Claims Adjudicator cases. In addition, the Eastern Region staff drafted, or reviewed 4,995 documents or pieces of correspondence on behalf of its clients.

Law Enforcement. Eastern Region attorneys have increased their involvement in advising FS Law Enforcement Officers (LEO's) on a wide variety of issues, including handling searches and seizures by LEO's, legality of all-terrain vehicle usage on FS roads, propriety of issuance of closure orders, and questions arising out of vehicle check points at group use events on national forests. Eastern Region attorneys have also assisted in such serious issues as whether the federal law enforcement officers have jurisdiction over killings that occur on a national forest, such as in U.S. v. Gabrion No. 1:99-CR-76.

FS Litigation. Eastern Region attorneys served as USDA legal counsel on 53 litigation matters. Most of these cases dealt with challenges to the FS's implementation of its plans pursuant to the NEPA and the act NFMA. For example, in Nickel v. Lisowsky, No. 5:05cv 123 - (W.D. Ky August 31, 2006), Plaintiffs filed suit to stop a work project that included a timber harvest on 237 acres, timber stand improvement on 40 acres, road improvement on 2.1 miles of road and prescribed burning on 893 acres. In granting the FS's motion for summary judgment, the Court held that, in addition to complying with the NEPA, the FS properly abided by the processes prescribed by the National Historic Preservation Act in adopting its Land Resource Management Plan.

Native American Relations. Eastern Region attorneys in the Milwaukee Branch office worked with the FS, DOJ, Michigan state officials and the Chippewa Tribal Officials to draft and finalize a settlement agreement in the U.S. v. Michigan case, a matter that dealt with the exercise of treaty rights in the Great Lakes and on public lands in the state. Milwaukee attorneys also assisted FS Region 9 in developing a MOY between Michigan National Forests and the Native American Tribes addressing the use of lands within the Hiawatha and Huron-Manistee National Forests pursuant to the Washington Treaty of 1836.

Natural Resource Conversation Service. Eastern Region attorneys advised and assisted NRCS in carrying out various easement acquisition programs. The Farm and Ranch Land Protection Program (FRPP) was implemented with substantial involvement from OGC. Specifically the easements acquired in the Harrisburg and Milwaukee Branch Offices represent the majority of easements to be acquired nationally for this program.

Single Family Housing. Eastern Region Attorneys continued to provide significant legal resources to assist RD in implementing its mission. Rural Development's Rural Housing Service's largest single-family housing loan portfolios are in states served by the Eastern Region. Thus, considerable OGC Eastern Region resources were spent on liquidating delinquent housing loans.

Multi-Family Housing. Eastern Region attorneys also dealt with a significant number of issues arising from the Rural Development's Multi-Family Housing loan program. For example, only three intermediaries were selected to receive funding under the 515 Multi-Family Housing Preservation Revolving Loan Fund pilot program, all three in the Eastern Region. In May 2006, attorneys in the Eastern Region worked with National OGC and the Delaware state RD officials to assist with closing the first such loan for \$2,000,000.

National Appeals Division (NAD) Proceedings. Eastern Region attorneys continued to devote significant time representing RD, FSA, and NRCS in appeals to the NAD. For example, Eastern Region attorneys have been in the forefront in defending RBS's decision to construe strictly the loan servicing requirements of private lenders who have made business loans that are guaranteed by USDA.

Board of Contract Appeals and Court of Federal Claims. Attorneys in the Eastern Region represented agencies before the Agriculture Board of Contract Appeals and the U.S. Court of Federal Claims in a number of cases.

Civil Rights. Eastern Region attorneys currently handle EEOC matters for Forest Service Regions 8 and 9 and many of the EEOC cases for the other USDA agencies in the Eastern United States. Employment discrimination and programmatic discrimination claims filed administratively and in federal court constituted a large and growing segment of the cases handled by the Eastern Region attorneys.

#### Central Region

FSA/RMA Fraud. The Kansas City office continued to assist DOJ in pursuing civil false claims cases and obtaining criminal convictions for farm, insurance and bank fraud. A civil frauds complaint filed against a large crop lender in Iowa seeks damages in excess of \$500,000. Another \$600,000 has been collected from producers previously sentenced in a wide-ranging scheme involving crop insurance and bankruptcy fraud, as well as from other producers engaged in fraudulent schemes. Another producer was indicted for grain

conversion, bank fraud and bankruptcy fraud, adding to the two prior convictions reported. Other farm fraud is being pursued by this office in pending producer bankruptcy cases, and as part of administrative appeal cases.

Kansas City Commodity Office. The Kansas City office provided contract advice for a contract solicitation in excess of \$75,000,000 which will provide commodity foods to low income households, including the elderly living on Indian reservations and to Native American families residing near the reservations, as well as to women, infants, children and the elderly who require supplemental food and nutrition assistance.

NRCS. The Little Rock, Arkansas office provided closing advice for over 600,000 acres of wetland acquisitions, comprising 1/3 of all acquisitions nationwide. The Kansas City office provided closing advice for over \$21,091,600 of such acquisitions in the last fiscal year.

### Mountain Region

National Forest Management Act. Mountain Region attorneys provided assistance to DOJ lawyers in all phases of a 10<sup>th</sup> Circuit case entitled UEC v. Bosworth III, which was a companion case to other 10<sup>th</sup> Circuit NFMA cases adjudicated in 2004 and 2005. The primary issues addressed in this case, as well as many other cases litigated in various United States District Courts (e.g., Forest Guardians v. U.S. Forest Service, (D.N.M.)), were compliance with regulations dealing with wildlife diversity and Management Indicator Species and the difficult issue of which planning rule provisions apply to particular projects.

National Environmental Policy Act. Mountain Region attorneys continued to handle a wide range of legal issues arising under NEPA. Examples include successful decisions in Goodrich v. U.S. Forest Service (D. Mont.) and Navajo Nation v. U.S. Forest Service (D. Ariz.).

Mining Law. In 2006, Mountain Region attorneys were involved with many different legal issues and cases involving the 1872 Mining Law and regulations codified at 36 C.F.R. 228. For example, successful trespass litigation was concluded in U.S. v. Fennell and Marquez (D.N.M.).

Water Rights. Mountain Region attorneys achieved significant progress in the Montana Reserved Water Rights Negotiations and successfully defeated a petition for *rehearing en banc* in the a key case, Trout Unlimited v. USDA (10<sup>th</sup> Cir.).

Civil Rights and MSPB Cases. Mountain Region attorneys continued to expand their role in defending USDA agencies against challenges arising under Title VII of the 1964 Civil Rights Act and various personnel laws. One key win involved removal of an employee for failure to cooperate in an administrative investigation.

Farm Program/Rural Development Legal Advice and Litigation. Mountain Region attorneys provide regular assistance to FSA and RD by reviewing program eligibility criteria and drafting detailed closing instructions for loans administered or guaranteed by those agencies throughout the states of Colorado, Wyoming, Arizona, New Mexico, Montana, and Utah. Mountain Region attorneys also provide representation when the debtor on those loans does not pay. An example of that is the Fort Defiance Bankruptcy which has resulted in a guarantee claims of \$14 million.

Healthy Forests Initiative (HFI) and the Healthy Forests Restoration Act (HFRA). Mountain Region attorneys assisted in the first litigation challenging a project approved under the HFRA, Native Forest Network v. Bull (D. Mont.).

Contract Litigation. Mountain Region attorneys assisted several USDA agencies in large contract disputes involving FS and NRCS. In one of the more significant cases in the Region, The Sweetwater, A Wilderness Lodge LLC v. United States, the court agreed with FS's position that a term permit for a lodge

is not a contract, and, thus, contract remedies are not available to the permit holder. The Region also achieved a victory in Kadri v. U.S. Forest Service, a contract appeal to the Court of Appeals for the Federal Circuit.

Land and Property Law. Mountain Region attorneys were instrumental in reaching settlement of 15 of the hotly contested Mt. Sopris quiet title cases. Mountain Region attorneys also crafted a complex settlement agreement in the Middle Hunt Road quiet title litigation.

Off-Highway Vehicle Issues. Mountain Region attorneys continued to handle appeals and litigation of travel management decisions. For example, in Alliance for the Wild Rockies v. U.S. Forest Service (D. Mont.), Mountain Region attorneys successfully defended a challenge to motorized access amendments to the several Forest Plans in Idaho.

Grazing Litigation. Mountain Region attorneys assisted FS with a large number of grazing related issues and litigation. In one such case, Center for Native Ecosystem v. Cables (D. Colo.), the Region defeated the plaintiffs' Endangered Species Act and Clean Water Act challenges to continue grazing on the Medicine Bow National Forest.

Affirmative Litigation. Mountain Region attorneys assist FS and DOJ with various types of affirmative litigation, much of which is devoted to recouping the costs of fire suppression and fire damage. One such case, United States v. Truett (D. Mont.) netted the government 3.4 million dollars for the cost of a fire that burned over 5000 acres.

#### Pacific Region

Civil Rights. Pacific Region attorneys spent a significant amount of time representing the Department in the Hispanic class action lawsuit entitled Brionez v. USDA. The Pacific Region continued to expand its role in defending agency officials against employee Title VII complaints before the EEOC. The Pacific Region also began representing agency officials in cases before the MSPB and FLRA.

Affirmative Fire Trespass Claims. The Pacific Region aggressively pursued cost recovery against parties that were responsible for starting fires on the national forests. Attorneys assisted in recovering \$14 million from a major utility company for suppression costs and resource damages resulting from a single fire. This is the largest affirmative fire claim recovery in the Pacific Region.

Lands/Land Acquisition/Title Review. Pacific Region attorneys assisted the NRCS in acquiring WRP, Grassland Reserve Program, and Farm and Ranch Protection Program easements, resolving issues relating to conveyance of mineral rights, boundary establishment and encroachment, lien subordination, access, and 1031 exchanges. NRCS's backlog of wetlands easement acquisitions in California was eliminated with our assistance. The Forest Service Realignment and Enhancement Act of 2005 increased the Pacific Region's workload, as we assisted FS in the successful disposal of several high-value administrative sites.

Law Enforcement Assistance. Pacific Region attorneys provided assistance to FS law enforcement personnel on a wide variety of issues, including jurisdictional questions, advice concerning ongoing investigations, and responses to *Henthorn* requests from defense counsel.

Pre-Decisional Natural Resource Advice. The Pacific Region provided pre-decisional advice on many significant matters to reduce the vulnerability of agency decisions to environmental litigation. These matters included green timber sales, timber salvage sales, and thinning projects, as well as advice on land and resource management plans and wilderness management plans. Projects such as the Tongass forest plan revision, a new flat-fee system for special use permits in Alaska, an amendment to the Sierra Nevada forest plans regarding the monitoring of species, and an amendment to the Survey and Management Guidelines of the Northwest Forest Plan will receive substantial pre-decisional advice this coming year.

Natural Resource Litigation . Pacific Region attorneys provided extensive assistance to the DOJ and United States Attorneys' Offices in defending these cases, including defense of the 2004 Sierra Nevada Framework, the Herger-Feinstein Quincy Library Group Forest Recovery Act projects, the Giant Sequoia National Monument Plan, the massive Biscuit Fire Recovery Project in Oregon, the large Power and Freds timber salvage projects in California, challenges to commercial pack stock outfitting, and challenges to FS's fire management plans.

Grazing. OGC successfully defended FS before a United States District Court and the Ninth Circuit Court of Appeals regarding a decision to cancel a grazing permit. Pacific Region attorneys are defending FS in a takings claim brought by a grazing permit holder who alleges that the termination of his permit deprived him of his state water law rights.

Energy Development. Pacific Region attorneys provided substantial assistance regarding a plan to enable resumption of oil and gas leasing on the Los Padres National Forest. OGC advised the Angeles National Forest on a proposed transmission line to facilitate wind-power development in Southern California.

Hydroelectric Relicensing. Pacific Region attorneys were instrumental in the successful negotiation of several mutually beneficial settlement agreements that eased the relicensing process for applicants while increasing the benefits to the environment.

Water Rights. The Pacific Region provided substantial assistance in the Yakima Water Rights Adjudication. The court issued a final order, granting FS the water rights necessary to appropriately manage National Forest System lands.

Mining. Discharges from long inactive mining sites, and approval of miners' plans of operation without compliance with Clean Water Act Sections 401 and 313 were at the forefront of mining litigation this past year. The Region represented FS in several significant mining contests before the Interior Board of Land Appeals.

Recreation. Pacific Region attorneys provided substantial advice to FS on special use and recreation residence permit administration. One rapidly increasing issue is the desire of recreational residence permit holders to transfer their permits into trusts for the benefit of their heirs. Permit decisions by FS were successfully defended, including heli-ski permits on the Chugach National Forest. A great deal of assistance was provided in the development of a policy and process for controlling off-highway vehicle use in the national forests.

Cultural Resources. Pacific Region attorneys provided substantial assistance in obtaining a favorable district court ruling upholding a FS decision to protect Cave Rock, a spiritual and cultural place of importance to Native Americans, located in the Lake Tahoe basin.

Farm and Rural Development Work. Pacific Region attorneys assisted the RD mission area by providing review of loan documents and other security instruments that were required to transfer ownership of properties involved in the prepayment litigation. The properties were transferred to eligible borrowers, thereby mooting the litigation and preserving the housing for tenants covered by the program. The Region assisted in recovering several million dollars to satisfy property liens and reduced its large backlog of delinquent single-family housing loans by representing the United States in bankruptcy court proceedings.

Contract Litigation. Pacific Region attorneys defended FS decisions to suspend a number of timber sale contracts as the result of environmental litigation. A \$3.9 million claim against the Tongass National Forest was settled for less than \$600,000. These kinds of claims are being filed more frequently because of the continuing increase in environmental litigation. The amount of money at issue in current cases exceeds \$20 million.

Touhy. Pacific Region attorneys spent substantial time working with USDA agencies to determine whether USDA employees should be allowed to testify in matters in which the United States is not a party. We expect that this will continue to be a significant workload for the Pacific Region.

Pollution Control. Pacific Region attorneys made decisions about whether FS should pursue enforcement actions against potentially responsible parties at CERCLA sites. Other significant accomplishments by Pacific Region attorneys included: (a) an order by the district court approving a Consent Decree among three Potentially Responsible Parties to begin remedial action on the White King/Lucky Lass uranium mines, which are listed on the EPA national priority list; and (b) a negotiated settlement agreement with J. R. Simplot for diversion of a creek away from selenium contaminated material associated with a portion of the Smoky Canyon Mine. We also were a key participant in extensive negotiations to clean up the Holden Mine, a copper mine located in Washington State, where the cleanup costs could exceed \$60 million.

Alaska Subsistence Program. Pacific Region attorneys advised the Federal Subsistence Board on several controversial issues regarding provision of subsistence resources to Alaska rural residents. These included implementation of new regulations on customary and traditional uses of subsistence resources, and FACA committee membership.

## OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance  
Statement of Goals and Objectives

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

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

Strategic Objective and Funding Matrix

## OFFICE OF THE GENERAL COUNSEL

STRATEGIC OBJECTIVE 1.1: Review all draft regulations submitted by USDA agencies, and provisions of advice to USDA officials as to their sufficiency.

STRATEGIC OBJECTIVE 1.2: Preparation and review for legal sufficiency of all legal documents, memoranda, and correspondence.

STRATEGIC OBJECTIVE 1.3: Conduct litigation before courts and administrative forums, and provision of litigation support services to the Department of Justice, in connection with litigation arising out of all USDA programs and activities.

STRATEGIC OBJECTIVE 1.4: Drafting of legislation, and review for legal sufficiency of legislation reports and testimony, in connection with proposals to establish or amend USDA programs and activities.

STRATEGIC OBJECTIVE 1.5: Provision of advice and counsel to USDA officials concerning legal issues arising out of USDA programs and activities.

Strategic Objective and Funding Matrix  
(On basis of appropriation)

	<u>2006 Actual</u>		<u>2007 Estimated</u>		Increase or Decrease	<u>2008 Estimated</u>	
	<u>Amount</u>	<u>Staff Years</u>	<u>Amount</u>	<u>Staff Years</u>		<u>Amount</u>	<u>Staff Years</u>
Legal Services	\$38,957,000	295	\$38,957,000	301	+\$ 2,764,000	\$41,721,000	306
Total Available	<u>38,957,000</u>	<u>295</u>	<u>38,957,000</u>	<u>301</u>	<u>+</u>	<u>2,764,000</u>	<u>41,721,000</u> <u>306</u>

Selected Accomplishments Expected at the FY 2008 Proposed Resource Level: OGC will provide effective legal services in a responsive manner in order to ensure that agency officials can implement their programs.

Summary of Budget and Performance  
Key Performance Outcomes and Measures

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

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

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

Key Performance Targets:

Performance Measure	FY 2003 Actual	FY 2004 Actual	FY 2005 Actual	FY 2006 Actual	FY 2007 Target	FY 2008 Target
Performance Measure #1 Percentage of USDA regulations reviewed and cleared within statutory and assigned OGC timeframes.	90% of USDA regulation reviewed and cleared timely	90% of USDA regulation reviewed and cleared timely	90% of USDA regulation reviewed and cleared timely	92% of USDA regulation reviewed and cleared timely	92% of USDA regulation reviewed and cleared timely	95% of USDA regulation reviewed and cleared timely
Performance Measure #2 Percentage of formal legal memoranda and other legal documents prepared within assigned timeframes.	80% of legal documents prepared within timeframes	80% of legal documents prepared within timeframes	80% of legal documents prepared within timeframes	82% of legal documents prepared within timeframes	82% of legal documents prepared within timeframes	85% of legal documents prepared within timeframes
Performance Measure #3 Items of controlled correspondence reviewed for legal sufficiency within assigned timeframes.	90% of legal documents prepared within timeframes	90% of legal documents prepared within timeframes	90% of legal documents prepared within timeframes	92% of legal documents prepared within timeframes	92% of legal documents prepared within timeframes	95% of legal documents prepared within timeframes
Performance Measure #4 Litigation before administrative forums, including EEOC, MSPB, USDA's ALJ's and JO, and other administrative bodies, conducted in effective and timely manner.	80% of pleadings and filings made timely	80% of pleadings and filings made timely	80% of pleadings and filings made timely	82% of pleadings and filings made timely	82% of pleadings and filings made timely	85% of pleadings and filings made timely
Performance Measure #5 Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in effective and timely manner.	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely	Litigation assistance provided effectively and briefs filed timely
Performance Measure #6 Drafts of legislation in support of USDA goals and priorities, and provision of drafting services when requested by Committees and Members of Congress, provided timely and effectively.	Draft legislation provided timely					
Performance Measure #7 Legislative reports and testimony reviewed within assigned timeframes.	90% of legislative reports and testimony reviewed timely	90% of legislative reports and testimony reviewed timely	90% of legislative reports and testimony reviewed timely	92% of legislative reports and testimony reviewed timely	92% of legislative reports and testimony reviewed timely	95% of legislative reports and testimony reviewed timely
Performance Measure #8 Legal advice and counsel to USDA officials and agencies provided timely and effectively.	Legal advice provided timely					
Total Costs	\$ 34,466,000	\$ 34,420,000	\$ 35,574,000	\$ 38,957,000	\$38,957,000	\$41,721,000

Summary of Budget and Performance  
Full Cost by Strategic Goal

<u>PROGRAM</u>	<u>PROGRAM ITEMS</u>	<u>2006 AMOUNT (\$000)</u>	<u>2007 AMOUNT (\$000)</u>	<u>2008 AMOUNT (\$000)</u>
Legal Services	Direct Costs	\$34,530	\$36,357	\$39,048
All performance measures apply	Other Direct Costs	4,347	2,600	2,673
	Total Costs	\$38,877	\$38,957	\$41,721
	FTE's	295	301	306