

**2021 USDA EXPLANATORY NOTES – EXECUTIVE OPERATIONS:
OFFICE OF THE GENERAL COUNSEL**

Agency-Wide 2
 Purpose Statement 2
 Available Funds and Staff Years 4
 Permanent Positions by Grade and Staff Years 5
 Shared Funding Projects 5
Account 1: Salaries and Expenses 6
 Lead-Off Tabular Statement 6
 Appropriations Language 6
 Project Statement 5
 Geographic Breakdown of Obligations and Staff Years 9
 Classification by Objects 10
 Status of Programs 11

PURPOSE STATEMENT

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

OGC determines legal policy and directs the performance of all legal work conducted for USDA. All Department legal services are centralized within OGC, and the General Counsel reports directly to the Secretary. The General Counsel is the chief law officer of USDA and is responsible for providing legal services for all programs, operations, and activities of USDA. Three Deputy General Counsels, five Associate General Counsels, and four Regional Attorneys assist the General Counsel in managing the work of the office.

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

Legal Advice

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

Legislation and Document Preparation

OGC prepares draft legislation, patent applications arising out of inventions by USDA employees, contracts, agreements, mortgages, leases, deeds and any other legal documents required by USDA agencies.

Administrative Proceedings

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

Federal and State Court Litigation

OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation involves the defense of claims brought against the USDA. OGC serves as USDA's liaison with DOJ and assists in the preparation of all aspects of the government's case.

OGC refers matters involving allegations of criminal conduct and assists DOJ in preparation and prosecution of criminal cases. In some instances, OGC attorneys represent USDA as Special Assistant United States Attorneys, both in civil and criminal matters. By delegation, the Associate General Counsel for General Law and Research represents USDA in certain classes of cases before the United States Courts of Appeals.

Law Library

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

Geographic Location

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

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

As of September 30, 2019, there were 222 permanent full-time employees of which 118 were located in the headquarters office and 104 in the field offices.

AVAILABLE FUNDS AND STAFF YEARS

**OFFICE OF THE GENERAL COUNSEL
(Dollars in Thousands)**

Item	2018		2019		2020		2021	
	Actual	SY	Actual	SY	Enacted	SY	Budget	SY
Salaries and Expenses:								
Discretionary Appropriations	\$44,546	222	\$45,146	208	\$45,146	238	\$45,878	236
Transfers In	-	-	-	-	1,357	2	-	-
Transfers Out	-400		-900		-		-	
Adjusted Appropriation	44,146	222	44,246	208	46,503	240	45,878	236
Total Available	44,146	222	44,246	208	46,503	240	45,878	236
Lapsing Balances	-174	-	-197	-	-	-	-	-
Obligations	43,972	222	44,049	208	46,503	240	45,878	236
Ob. Under Other USDA Appr.:								
Hazardous Materials Management Program	887	4	891	4	891	4	891	4
FS Non-Litigation Travel	4	-	5	-	10	-	10	-
CCC	245	2	-	-	303	2	303	2
Detail Support	502	3	6	-	20	-	-	-
Ombudsperson	161	1	119	1	-	-	-	-
Civil Rights Reimbursable	1,935	13	2,509	15	2,921	20	2,921	20
AMS User Fee	624	3	612	3	612	3	612	3
APHIS User Fee	60	-	30	-	30	-	30	-
Total, Other USDA	4,418	26	4,172	23	4,787	29	4,767	29
Total, OGC	48,390	248	48,221	231	51,290	269	50,645	265

PERMANENT POSITIONS BY GRADE AND STAFF YEAR

Item	2018			2019			2020			2021		
	Actual			Actual			Enacted			Budget		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Enacted	D.C.	Field	Total
EX	1	-	1	1	-	1	1	-	1	1	-	1
SES	12	4	16	14	4	18	15	4	19	15	4	19
GS-15	32	25	57	26	23	49	28	22	50	27	22	49
GS-14	64	48	112	62	50	112	69	47	116	65	47	112
GS-13	10	3	13	8	4	12	5	-	5	15	2	17
GS-12	5	5	10	3	-	3	13	1	14	7	14	21
GS-11	7	14	21	12	14	26	10	23	33	6	13	19
GS-10	-	-	-	-	-	-	-	-	-	-	-	-
GS-9	7	2	9	6	2	8	5	6	11	5	3	8
GS-8	5	10	15	2	7	9	3	9	12	4	11	15
GS-7	1	3	4	2	3	5	2	5	7	1	2	3
GS-6	1	-	1	1	-	1	1	-	1	1	-	1
Total Permanent	145	114	259	137	107	244	152	117	269	147	118	265
Unfilled, EOY	20	5	25	19	3	22	-	-	-	-	-	-
Total Perm. FT EOY	125	109	234	118	104	222	152	117	269	147	118	265
Staff Year Est	136	112	248	197	34	231	206	63	269	202	63	265

SHARED FUNDING PROJECTS

Item	2018	2019	2020	2021
	Actual	Actual	Enacted	Budget
Working Capital Fund:				
Administration:				
Material Management Service.....	33	26	55	54
Mail and Reproduction Services.....	291	312	328	341
Integrated Procurement Systems.....	30	24	17	17
Procurement Operations Services.....	55	57	59	43
Human Resources Enterprise Management Systems.....	3	3	3	3
Subtotal.....	412	422	462	458
Communications:				
Creative Media & Broadcast Center.....	22	3	31	27
Finance and Management:				
National Finance Center.....	83	77	74	69
Financial Shared Services.....	177	175	174	187
Subtotal.....	260	252	248	256
Information Technology:				
Client Experience Center.....	-	1,268	696	694
Department Administration Information Technology Office....	-	-	201	239
Digital Infrastructure Service Center.....	-	102	231	222
Enterprise Network Services.....	-	96	212	220
Subtotal.....	0	1,466	1,340	1,375
Correspondence Management.....	29	44	44	48
Total, Working Capital Fund.....	723	2,187	2,125	2,164

SHARED FUNDING PROJECTS *continued*

Item	2018 Actual	2019 Actual	2020 Enacted	2021 Budget
Department-Wide Shared Cost Programs:				
Agency Partnership Outreach.....	21	21	21	21
Honor Awards.....	1	-	-	-
Human Resources Self-Service Dashboard.....	2	2	2	-
Human Resources Transformation.....	2	-	-	-
Medical Services.....	10	8	10	-
Office of Customer Experience.....	5	7	8	8
People's Garden.....	1	-	-	-
Personnel and Documents Security.....	6	5	6	6
Physical Security.....	-	-	15	12
Security Detail.....	12	12	12	12
Security Operations.....	29	28	16	17
TARGET Center.....	4	3	3	3
USDA Enterprise Data Analytics Services.....	-	-	15	15
Virtual University.....	3	-	-	-
Total, Department-Wide Reimbursable Programs.....	96	86	108	94
E-Gov:				
Budget Formulation and Execution Line of Business.....	-	-	-	-
Disaster Assistance Improvement Plan.....	-	-	-	-
Enterprise Human Resources Integration.....	-	-	-	-
E-Rulemaking.....	-	-	-	-
E-Training.....	-	-	-	-
Financial Management Line of Business.....	-	-	-	-
GovBenefits.gov.....	-	-	-	-
Grants.gov.....	-	-	-	-
Human Resources Line of Business.....	-	-	-	-
Integrated Acquisition Environment.....	-	-	-	-
Total, E-Gov.....	0	0	0	0
Agency Total.....	819	2,273	2,233	2,258

LEAD-OFF TABULAR STATEMENT

OFFICE OF THE GENERAL COUNSEL

2020 Appropriations.....	\$45,146,000
Change in Appropriation.....	732,000
2021 Department Estimate, Current Law.....	45,878,000
Change Due to Proposed Legislation.....	0
2021 Request, Including Proposed Legislation.....	45,878,000

APPROPRIATIONS LANGUAGE

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

For necessary expenses of the Office of the General Counsel, [~~\$45,146,000~~] \$45,878,000.

PROJECT STATEMENT

Office of the General Counsel
(Dollars in Thousands)

Program/Activity	2018		2019		2020		2021		Change from	
	Actual		Actual		Enacted		Budget Request		2020 Estimate	
	B.A.	SY	B.A.	SY	B.A.	SY	B.A.	SY	B.A.	SY
Direct Appropriations:										
Legal Services	\$44,546	222	\$45,146	208	\$45,146	238	\$45,878	236	\$732	-2
Subtotal, Direct Appropriations	44,546		45,146		45,146		45,878		732	0
Transfers In:										
FOIA	0		0		1,357	2	0		-1,357	-2
Subtotal, Transfers In.....	0	0	0	0	1,357	2	0	0	-1,357	-2
Total, Discretionary Funding.....	44,546	222	45,146	208	46,503	240	45,878	236	-625	-4
Transfer Out	-400		-900		-		-		-	0
Total Available.....	44,146	222	44,246	208	46,503	240	45,878	236	-625	-4
Lapsing Balances.....	-174		-197		-		-		-	0
Total Obligations	\$43,972	222	\$44,049	208	\$46,503	240	\$45,878	236	-\$625	-4

JUSTIFICATIONS OF INCREASES/DECREASES

Legal Services

The FY 2021 President’s Budget request will allow the Office of the General Counsel to continue to provide legal oversight, responsively serve legal needs, and support all activities of the Department.

The funding change is requested for the following items:

(1) **An increase of \$732,000 (\$45,146,000 and 238 staff years available in 2020) for the Office of the General Counsel consisting of:**

A) **An increase of \$414,218 for pay costs (\$189,703 for annualization of the 2020 pay increase and \$224,579 for the 2021 pay increase).**

This increase will support the pay increase for civilian employees. This increase will allow the OGC to continue to determine legal policy and direct the performance of all legal work conducted for USDA. This critical increase is needed to support and maintain current staffing levels to meet the program demands and statutory requirements

imposed on OGC. Approximately 87 percent of OGC's budget is expended in support of personnel salaries and benefits, which leave no flexibility for absorbing increased costs for pay or any other salary adjustments. OGC can absorb any such increases only by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, law library purchases, training, IT end user support, and supplies. As these items comprise only 13 percent of the overall budget, OGC's flexibility to reduce expenses is extremely limited and, when increased pay costs and salary adjustments are not fully funded, the only available option is to consider staff reductions.

B) An increase of \$299,438 for performance awards.

This increase will support a 1 percentage point increase in awards spending, consistent with objectives outlined in the President's Management Agenda, to enhance workforce development. Without this additional funding, OGC will be unable to absorb these costs in FY 2021, resulting in reductions to planned hiring levels, eroding USDA's ability to meet key Administration priorities contained in this Budget.

C) An increase of \$377,591 for the Department's increased contribution to the Federal Employees Retirement System (FERS).

This increase will cover the expenses for the mandated increase of USDA's contribution to FERS. These increases were effective January 1, 2020, and impact approximately 250 employees' retirement packages

D) A decrease of \$359,247 and 2 staff year in legal services.

A decrease of funding in personnel costs and two SY in legal services.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND STAFF YEARS

State/Territory/Country	2018		2019		2020		2021	
	Actual	SY	Actual	SY	Enacted	SY	Budget	SY
Alaska	640	3	567	3	573	4	671	4
Arkansas	1,012	6	1,026	6	1,025	8	1,090	8
California	2,585	12	2,694	12	2,543	14	2,787	14
Colorado	2,067	12	2,035	9	1,640	11	1,750	11
District of Columbia	25,592	113	24,754	107	26,970	124	26,902	120
Georgia	2,831	17	2,915	17	2,951	16	2,959	16
Missouri	1,804	12	1,798	12	2,007	12	2,013	12
Montana	1,358	8	1,304	8	1,096	8	1,107	8
New Mexico	519	4	612	4	677	6	692	6
Oregon	1,872	10	1,924	8	1,941	12	1,958	12
Pennsylvania	1,115	8	1,885	8	1,169	9	1,376	9
Texas	1,102	7	1,225	7	1,261	8	1,266	8
Wisconsin	1,475	10	1,310	7	1,293	8	1,307	8
Obligations	43,972	222	44,049	208	45,146	240	45,878	236
Lapsing Balances	174	-	197	-	-	-	-	-
Total, Available	44,146	222	44,246	208	45,146	240	45,878	236

CLASSIFICATION BY OBJECTS

Item No.	Item	2018 Actual	2019 Actual	2020 Enacted	2021 Budget
	Personnel Compensation:				
	Washington D.C.	\$14,526	\$14,234	\$15,209	\$15,730
	Personnel Compensation, Field	13,957	13,675	14,040	14,520
11	Total personnel compensation	28,483	27,909	29,249	30,250
12	Personal benefits	8,896	8,580	9,537	10,047
13.0	Benefits for former personnel	13	17	29	29
	Total, personnel comp. and benefits	37,392	36,506	38,815	40,326
	Other Objects:				
21.0	Travel and transportation of persons	139	215	167	117
22.0	Transportation of things	10	5	5	5
23.1	Rental payments to GSA	1,256	1,419	1,469	1,469
23.2	Rental payments to others	134	132	133	133
23.3	Communications, utilities, and misc. charges	903	899	885	885
24.0	Printing and reproduction	133	197	197	197
25	Other contractual services				
25.2	Other services from non-Federal sources	2,721	3,763	2,572	2,238
25.3	Other goods and services from Federal sources	258	167	176	184
26.0	Supplies and materials	697	679	707	304
31.0	Equipment	329	67	20	20
	Total, Other Objects	6,580	7,543	6,331	5,552
99.9	Total, new obligations	43,972	44,049	45,146	45,878
	DHS Building Security Payments (included in 25.3).....	\$248	\$165	\$169	\$177
	Position Data:				
	Average Salary (dollars), ES Position	\$169,814	\$173,343	\$185,339	\$194,753
	Average Salary (dollars), GS Position	\$127,417	\$123,896	\$126,015	\$122,598
	Average Grade, GS Position	14.6	14.6	14.4	14.3

2021 STATUS OF PROGRAMS – OFFICE OF THE GENERAL COUNSEL

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

Current Activities

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

Selected Examples of Recent Progress

- OGC provided extensive support to AMS including the active engagement of three staff members and a senior executive to meet the compressed timeframes and ensure a legally defensible and well drafted rule in ten short months that outlines provisions for the USDA to approve plans submitted by States and Indian Tribes for the domestic production of hemp. It also establishes a Federal plan for producers in States or territories of Indian tribes that do not have their own USDA-approved plan.
- OGC successfully supported RD in the restructuring of a \$400M delinquent water loan debt to the Puerto Rico Aqueduct and Sewer Authority. This negotiation required coordination with Treasury, EPA, DOJ, the Financial Oversight and Management Board for Puerto Rico, and several Commonwealth instrumentalities.
- OGC is supporting the transfer from the Department of Homeland Security to USDA of operational responsibility for the National Bio and Agro-Defense Facility (NBAF), including operational planning and future operations of the facility. This complex transfer requires advising on navigating several statutory frameworks, including requirements that DHS retain responsibility for completing construction of NBAF, handling the authorization that DHS transfer certain unexpended balances to USDA for contract support of NBAF operations, and the eventual transferring of responsibility for operational planning and future operations of NBAF to USDA.

Administration and Resources Management

OGC consolidated IT End User services under USDA's Client Experience Center (CEC) to delete duplication of services which will result in a cost savings to OGC and the stakeholders. To facilitate the consolidation and migration effort, OGC purchased additional laptop computers and monitors to replace out of warranty equipment. In addition, OGC is in the process of debuting its new case management solution, Legal Matter Center. The deployment of Legal Matter Center will result in increased work productivity for OGC's employees by allowing the integrated use of the Government Community Cloud's Office 365 and Dynamics 365 applications. OGC is also in the process of migrating its printer infrastructure in FY2020 to USDA's Managed Print Services. This will be a significant cost savings to OGC and stakeholders by sharing printer maintenance costs with other USDA agencies.

Marketing, Regulatory and Food Safety Programs

The Division provides legal advice and litigation support to two mission areas: Food Safety and Marketing and Regulatory Programs. The workload has increased significantly as AMS undertakes new national programs, APHIS continues to combat an increasing number of plant and animal diseases, and FSIS makes steady progress in furthering the administration's deregulatory agenda and in modernizing swine slaughter. A few examples of the critical work performed by the MRFSPD during FY 2019 appear below.

Food Safety

Swine Slaughter Modernization

MRFSPD provided legal counsel to FSIS as it finalized a significant rule to modernize the inspection process in swine slaughter using science-based approaches to food safety. This rule established the New Swine Slaughter Inspection System, which allows Agency resources to be utilized more efficiently in participating market hog slaughter plants. In addition, the rule requires that all swine slaughter establishments develop written sanitary dressing plans and implement microbial sampling to monitor process control for enteric pathogens.

Poultry Line Speed Waivers

MRFSPD also provided significant legal support regarding FSIS' development of criteria for considering requests to increase line speeds at young chicken establishments. These waivers allow establishments to test new equipment, technologies, or procedures in order to operate at faster line speeds, provided process control is maintained. The data generated from plants operating under line speed waivers is being used to inform future rulemaking. This deregulatory action would provide a balance between the Agency's mission to ensure effective carcass inspection and the stakeholders' interest in production efficiency.

Cellular Agriculture

MRFSPD continues to assist FSIS with defining its role in the regulation of cell-based meat products, and with enabling FSIS to carry out its food safety mission as these new products are developed and brought to market.

Overtime for Inspection Services

Lastly, MRFSPD provided guidance to FSIS regarding legislative and regulatory options to reimburse overtime inspection services, in order to allow for more scheduling flexibility and to reduce the overtime burden on inspectors.

Agricultural Marketing Service

Hemp Production Program

The 2018 Farm Bill directed USDA to establish a national regulatory framework for hemp production in the United States for which MRFSPD provide substantial support. With farm acreage devoted to hemp in the US increasing threefold from 25,713 in 2018 to 78,176 in 2019, the rule was necessary to support the astronomic growth in this industry.

Packers and Stockyards Act Administrative Enforcement

MRFSPD developed and executed a plan to involve field offices in the enforcement of the Packers and Stockyards Act, thereby expanding legal support beyond Washington, D.C. This initiative allows OGC to deliver legal services to AMS staff regionally and has more than doubled the number of OGC attorneys actively working on P&S cases. As a result, OGC was able to initiate legal action on more than 100 identified priority cases in eight months, where previously such action would have taken at least 18 months. PSD leadership and staff have expressed high satisfaction with the ability to interact with attorneys whose duty stations are in their region. Continued funding is needed to expand training efforts and sustain the success of this effort, which is anticipated to have a substantial impact on industry as real-time enforcement will bring about greater compliance.

Perishable Agricultural Commodities Act (PACA)

MRFSPD supports AMS in its enforcement of the PACA. These efforts can result in the assessment of civil penalties, suspension or revocation of a license, and the termination of employment with any PACA licensee or individual found to be responsibly connected to a violating entity. MRFSPD received 19 new referrals and filed 14 new administrative enforcement complaints alleging violations of the fair-trade requirements of the PACA. MRFSPD also closed more than 20 disciplinary cases resulting in over \$300,000 in civil penalties. In FY 2019, MRFSPD reviewed and cleared over 100 PACA reparation decisions that represented over \$2.1M in disputed claims.

2018 Farm Bill

MRFSPD provided extensive drafting and technical assistance to the Department and Congress on legislative proposals and assisted the Department in briefing Congress in response to inquiries, including assisting AMS in developing Farm Bill language. After enactment, MRFSPD provided wide-ranging legal advice and support to AMS's efforts to implement various provisions of the Farm Bill. In addition to its work on the Domestic Hemp Production Program, MRFSPD reviewed and cleared several rulemaking dockets to implement provisions of the Farm Bill including the Dairy Donation Program, the Class I skim milk pricing under the Federal milk marketing orders, and the extension of Plant Variety Protection Act intellectual property protection to asexually reproduced varieties.

Animal and Plant Health Inspection Service

Endangered Species Act Compliance

MRFSPD worked extensively with APHIS officials to develop a conservation plan under the Endangered Species Act (ESA) to comply with a remand order issued by the court. Because this was a novel case, MRFSPD staff worked closely with APHIS officials and with DOJ to guide the Agency through their decision-making framework and documentation. MRFSPD's oversight of APHIS' proposed conservation plan was critical to ensure that the Agency complied with the court order and that future USDA liability on this issue was limited. The conservation plan was timely filed with the court and plaintiffs have not raised any challenge.

Wildlife Services Litigation and Training

For the last few years, MRFSPD has dedicated the equivalent of two FTEs in support of this Agency. MRFSPD has addressed multiple Notices of Intent to Sue under the ESA and has worked in close coordination with DOJ to defend Wildlife Services in federal litigation. In an attempt to curtail the growing number of new lawsuits, MRFSPD has been providing extensive training to the Agency in NEPA compliance, including education in relevant case law. Additionally, an MRFSPD attorney is stationed at Wildlife Services one day every week to assist the Agency in responding to the influx of Freedom of Information Act (FOIA) requests, which often either impact ongoing litigation or serve as the precursors to litigation. MRFSPD also has worked extensively with the Agency to streamline Administrative Record preparation, review and compilation. Multiple DOJ attorneys have applauded MRFSPD and the Agency on its excellent Administrative Records, which typically encompass the only evidence that can be presented to the court in support of the Agency's decision-making process.

Biotechnology Regulations

MRFSPD assisted APHIS in developing a proposed rule to revise its biotechnology regulations in order to make them more effective and efficient. The proposed rule marks the first comprehensive revision of the regulations since they were established in 1987, and responds to advances in genetic engineering and APHIS' understanding of the plant pest risk posed by genetically engineered organisms. MRFSPD identified legal vulnerabilities in early Agency drafts and proposed revisions to ensure that the rule will achieve OMB clearance and be legally defensible. In addition, throughout the process, APHIS has consulted MRFSPD on various NEPA and ESA components of the proposal.

Plant Protection Act

MRFSPD provided excellent legal support in six cases in which importers sought to import commodities contained in noncompliant and infested wood packaging material (WPM). Because of the potential catastrophic damage estimated to reach billions of dollars in just a few years if the pests were to escape, these cases were handled expeditiously and with great care. In one case that arose during the government shutdown, an MRFSPD attorney prepared witnesses for an expedited hearing and actively participated in the hearing, and the court ultimately denied the requested injunction. APHIS prevailed in all six cases. The APHIS Administrator applauded MRFSPD for its efforts in handling these cases, which strike at the heart of APHIS'

mission to protect American agriculture from foreign pests and diseases and represent the textbook illustration of how devastating pests, such as the Asian longhorned beetle, the pine shoot beetle and the emerald ash borer, enter our country via the WPM pathway.

Technical Assistance (to all mission areas)

MRFSPD provided critical technical assistance on several Farm Bill provisions including the National Organic Program's enforcement authorities, regulation of hemp production, and exceptions to the U.S. Grain Standards Act. Additionally, MRFSPD was instrumental in providing guidance in establishing new tools for animal and plant disease prevention and management, including the creation of the National Animal Disease Preparedness and Response Program, the National Animal Vaccine and Veterinary Countermeasures Bank, the National Plant Diagnostic Network, and the National Plant Disease Recovery System. The committee staff expressed appreciation and noted on each occasion the input was very valuable.

International Affairs, Food Assistance, and Farm and Rural Programs

OGC provided extensive legal advice to FSA, FAS, RMA, FNS, and RD in connection with implementation of the Agriculture Improvement Act of 2018. Eight of twelve titles involved these agencies.

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

OGC provided extensive advice to FSA and the Secretary in connection with the development of up to \$16 billion in the second tranche of a suite of programs addressing mitigation of damage to agricultural producers arising from tariffs imposed by China and other countries. This included the Market Facilitation Program and the Food Purchase and Distribution Program, conducted under the authorities of the CCC. OGC was also extensively involved in the development of the \$3 billion Wildfire and Hurricane Indemnity Program, known as WHIP+, to compensate producers for losses incurred from wildfires and hurricanes in 2018 and 2019. OGC was instrumental in the development of the Dairy Margin Coverage Program, the revamped Conservation Reserve Program, and numerous other programs under the Agriculture Improvement Act of 2018.

Foreign Agricultural Service (FAS)

OGC advised the Department on various World Trade Organization (WTO) and other international matters. This included continuing support in two successful WTO cases the United States brought against China; extensive review and advice with respect to ongoing bilateral negotiations with China over numerous agricultural trade issues, including tariff rate quotas, domestic support, and sanitary and phytosanitary issues; the successful culmination of the United Kingdom's and United States' organic equivalence recognitions; and analysis of the potential for implementation issues related to USDA programs under the United States-Mexico-Canada Agreement, a.k.a. USMCA. OGC also advised extensively on the interplay between new Farm Bill authority liberalizing domestic hemp production and U.S. obligations under United Nations drug control conventions.

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

OGC provided extensive legal advice to RMA and the FCIC Board of Directors on new crop insurance policies and maintenance of existing programs and regulations. RMA has relied on OGC's legal guidance to respond to disasters and other emergencies, publish regulations, conduct compliance activities, issue manager's bulletins, correspond with program participants including approved insurance providers, and otherwise manage the \$6.5 billion Federal crop insurance program.

Food, Nutrition and Consumer Services

OGC provided legal advice to the Center for Nutrition Policy and Promotion on the 2020 Dietary Guidelines for Americans. OGC reviewed and cleared for legal sufficiency several rules to increase integrity and economic self-sufficiency in the Supplemental Nutrition Assistance Program (SNAP). Those rules involved requirements for able-bodied adults without dependents, categorical eligibility, education and training requirements, and standard utility allowances. OGC supported FNS in two separate legal challenges to its Child Nutrition meal flexibilities rule. SNAP and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) represent the largest mandatory and discretionary programs of USDA.

Rural Development (RD)

OGC reviewed and cleared for legal sufficiency several rules to support rural e-connectivity: ReConnect pilot, Farm Bill Broadband final rule, and Telecommunications loan servicing rule.

Natural Resources and Environment

OGC advised the FS on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). 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 Farm Bill and the John D. Dingell, Jr. Conservation, Management and Recreation Act of 2019. OGC also reviewed legislative reports and testimony for congressional hearings, and provided legal advice to the FS regarding law enforcement issues and the Secure Rural Schools Act payments. In the past year, OGC provided legal services to the FS on a wide range of agency activities:

Energy and Mineral Development

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

Infrastructure

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

Regulatory Reform and Forest Planning

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

Litigation

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

Forest and Range Management

OGC provided informal advice concerning shared stewardship and contracting authority, and assisted the FS in the development of Good Neighbor agreements with several States. OGC also provided advice and represented the agency in various administrative forums, including appeals before the Civilian Board of Contract Appeals (CBCA), suspension and debarment proceedings, bid protests before the General Accounting Office (GAO), small business set-aside appeals, and export sourcing area proceedings. OGC assisted the FS with development of its Forest Products Modernization initiative. OGC devoted significant resources to support a controversial 2019 wild horse gather on the Modoc National Forest and advised the agency on wild horse and burro management issues in Utah, and Oregon.

Roadless Area Management

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

Wildlife Management

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

Recreation

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

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

Lands, Water, Wilderness and Wild and Scenic Rivers

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

Natural Resources Conservation Service (NRCS)

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

Environmental Law

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

Deepwater Horizon Oil Spill

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

Real Property Matters

OGC worked closely with USDA agencies that manage real property assets on a variety of legal issues relating to land ownership transactions and stewardship responsibilities. OGC provided legal services regarding access and rights of way to public lands, title claims and disputes, treaty rights, land appraisal and survey, and other issues incident to the ownership and management of real property assets of the government.

General Law and Research***Appellate Litigation***

The General Law and Research Division (GLRD), in coordination with attorneys from DOJ and other divisions within OGC, is responsible for presenting USDA's legal position in cases on appeal. During FY 2019, GLRD consulted on 145 such appellate matters and prepared 36 appeal recommendations for DOJ's consideration.

In FY 2019, GLRD coordinated USDA's participation in two cases where USDA appeared before the Supreme Court: *Food Marketing Institute v. Argus Leader* (where the Court rejected the D.C. Circuit's National Parks test and determined that the SNAP redemption data at issue is confidential under FOIA Exemption 4); and *United States Forest Service, et al., v. Cowpasture River Preservation Assoc., et al.*, (examining whether the Forest Service (FS) has authority to grant rights-of-way under the Mineral Leasing Act through lands traversed by the Appalachian Trail within national forests). GLRD also coordinated USDA's participation in a notably high number of cases where the United States Supreme Court sought the views of the Solicitor General, including: *Kisor v. Wilke* (examining the scope of judicial deference to agencies' interpretation of ambiguous regulations under *Auer*); *PDR Networks v. Carleton & Harris* (examining whether the Hobbs Act precludes a challenge to the validity of a final agency order as a defense to an enforcement action between private parties in federal district court); and *U.S. Fish and Wildlife Serv., et al. v. Sierra Club, Inc.* (examining whether Exemption 5 of the Freedom of Information Act protects against compelled disclosure of certain draft documents prepared by a federal agency as part of a formal interagency consultation process under Section 7 of the Endangered Species Act of 1973). GLRD continued to assist DOJ with *Atlantic Richfield Co. v. Gregory A. Christian, et al.* (examining whether the Comprehensive Environmental Response, Compensation, and Liability Act preempt state-law claims for restoration damages) In addition, GLRD coordinated with DOJ regarding USDA's interests relating to *Raymond J. Lucia Industries, Inc., and Raymond Lucia v. SEC*, in which the Supreme Court considered the application of the Appointments Clause to enforcement proceedings presided over by administrative law judges. Specifically, GLRD assisted DOJ defend before the D.C. Circuit an Appointments Clause challenge to USDA's administrative law judges and judicial officer in three consolidated cases: *Fleming, Joe v. USDA*, *Perkins, Sam v. USDA*, and *Bradley, Jarrett v. USDA*. GLRD is assisting DOJ in an affirmative appeal before the D.C. Circuit in *Solenex v. Bernhardt, et al.*, that defends BLM's decision to cancel a mineral lease in the Badger-Two Medicine area of the Lewis and Clark National Forest in Montana. GLRD is also assisting DOJ with an affirmative appeal before the Ninth Circuit in *2 Bar Ranch Limited Partnership, et al. v. Forest Service, et al.*, that defends the FS' choice of grazing standards on the Dry Cottonwood Allotment on the Beaverhead-Deer lodge National Forest in Montana. GLRD continued to assist DOJ in an affirmative appeal before the D.C. Circuit in *Humane Society v. Perdue* concerning payment for the trademark "Pork, The Other White Meat." GLRD is assisting DOJ in *State of Alaska, et al. v. Perdue*, where Alaska is challenging USDA's Roadless Rule.

GLRD defends most USDA Judicial Officer decisions that enforce the P&S Act, PACA, AWA, and the HPA, and that are appealed to the Federal courts of appeals. GLRD attorneys brief and argue these cases before the courts of appeals. During FY 2019, five petitions for review of the Judicial Officer's HPA decisions were filed before the Court of Appeals for the D.C. Circuit, and one was filed before the Court of Appeals for the Sixth Circuit. However, because each petition challenged the constitutionality of the appointment of the presiding ALJ pursuant to the Supreme Court's decision in *Raymond J. Lucia Industries, Inc.*, and *Raymond Lucia v. SEC*, GLRD assisted DOJ's Civil Appellate Division litigate these appeals.

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

GLRD provides the primary legal support for Departmental Administration (DA) and for the Research, Education and Economics (REE) mission area. For DA, GLRD provided legal guidance in support of the Secretary's general efforts to reorganize the Department, including specific efforts to realign the Office of the Chief Information Officer to report directly to the Office of the Secretary, establish an Office of Safety, Security and Protection within Departmental Administration, re-establish the position of Under Secretary for RD, and other matters. For REE, GLRD provided legal guidance supporting implementation of the 2018 Farm Bill. For example, significant changes removed the matching requirements on National Institute of Food and Agriculture (NIFA) competitive grants imposed under the 2014 Farm Bill. For programs that existed prior to October 1, 2014, the removal of the 2014 Farm Bill's matching requirement required reverting to earlier legislative matching requirements, resulting in no matching requirement in some cases. However, the changes also resulted in some programs requiring a 100% match that could not be waived by NIFA or the Secretary. GLRD also advised NIFA on 2018 Farm Bill changes on recovering indirect costs. Finally, GLRD advised numerous USDA agencies and offices on both legal funding of programs following expiration of the 2014 Farm Bill, and the extent to which funds were available (both appropriated and apportioned) under continuing resolutions. GLRD also supports other matters involving agriculture-related legislation and litigation.

In supporting Departmental and agency procurement actions, GLRD defended the Department in litigation before the CBCA and in over 19 bid protests before the Government Accountability Office (GAO) or the United States Court of Federal Claims. For example, GLRD successfully defended the FS at the GAO against a protest by Far North Forestry, LLC Protest (B-417502.2), who protested the FS's award of a contract for timber cruise data collection. This victory supported FS programs as the contracted timber cruise data collection may be used in valuation of a subsequent timber cruise and land exchange benefiting the Alaska Mental Health Trust Authority.

GLRD attorneys respond to emergency inquiries regarding the use of funds for emergency food distribution under the Stafford Act. In the past year, GLRD has provided legal assistance dealing with the aftermath of devastating wild fires in the American West, including the Camp Fire. GLRD also handles on behalf of the Department's agencies and offices the legal work and litigation that arises under FOIA, the Federal Tort Claims Act (FTCA), the Privacy Act (PA), and the Federal Advisory Committee Act.

GLRD continued handling and supporting DOJ in numerous FOIA cases. Many of these cases involve complex disclosure and privacy issues concerning numerous agencies and private parties and a multitude of records. Examples include litigation that led to the Supreme Court's June 24, 2019, opinion in *Food Marketing Institute v. Argus Leader*, and related matters affected by the Court's ruling as to what information is "confidential" and exempt from mandatory disclosure under FOIA exemption 4. Plaintiffs in these cases target records relating to important policies, programs, and leadership throughout the Department. Over the past year, FOIA suits pending increased by 11 percent, and FOIA appeals pending increased 29 percent. The proliferation of FOIA requests government-wide indicates that GLRD's workload likely will continue to increase substantially in the coming year.

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. To illustrate, GLRD handled USDA's responses to third-party subpoenas for documents and testimony in connection with a large private antitrust litigation concerning the poultry industry.

GLRD is currently defending USDA, and assisting DOJ with judicial litigation, in numerous cases involving complex and sensitive issues. Examples of FTCA matters being handled by GLRD include fires in National Forests and elsewhere, such as the North Schell Fire and the Pautre Fire cases where plaintiffs are seeking hundreds of millions of dollars in damages. Among successes in FY 2019, GLRD secured the dismissal of complaints in the Dog Head Fire case, a FTCA suit against the FS in which plaintiffs were seeking over \$100,000,000 in damages. FTCA suits pending increased by 9 percent, and FTCA administrative claims pending increased by 12 percent.

GLRD also assists with the Department's representation in other civil litigation. Examples include a class action asserting approximately \$1.3 billion in Fifth Amendment takings claims on behalf of several thousand raisin growers challenging a marketing order reserve following the Supreme Court's 2015 decision in *Horne v. Dept. of Agriculture*. With GLRD's assistance, these claims have been resolved favorably to the government.

GLRD continued to provide legal oversight in the development of the Department's cybersecurity, defensive counterintelligence, insider threat detection initiatives and other

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

GLRD provides legal services in patent, trademark, and copyright law for programs throughout the USDA. This includes legal oversight and advice in the transfer of USDA technology to the private sector – oversight and advice on patent procurement, invention rights, assignments, licenses, and Federal Register notices. In FY 2019, GLRD directly handled about sixteen new patent application filings, directly handled on-going prosecution for FS and APHIS domestic and foreign patent applications and provided oversight and advice to the ARS patent advisors regarding ARS patent filings. GLRD also advised on the rule change expanding the types of media that may be used to advertise USDA invention and patent licenses.

GLRD also advises on intellectual property (IP) rights arising in connection with numerous other USDA activities, including infringement upon USDA symbols and program trademarks, alleged USDA infringement of others' patents, trademarks, and copyrights, the proper use of and protection for USDA symbols and trademarks, and the proper use of copyrighted material. GLRD also files trademark applications and maintains USDA trademark registrations at the U.S. Patent and Trademark Office (PTO). In FY 2019, GLRD prosecuted an application to register the Bio based certification mark for the BioPreferred program, worked to maintain applications for symbols for USDA's National Bioengineered Food Disclosure Standard, advised on legislation potentially affecting protection for the 4-H Club name and emblem and the Smokey Bear and Woodsy Owl characters, handled allegations of infringement of copyrighted photographs appearing on USDA websites, and advised the Deputy Secretary on potential patent infringement. Other USDA insignia, symbols, and marks, on which GLRD advised, included the USDA Symbol, the FS Insignia, and FS scenic and historic trail symbols. GLRD also advises on patent rights, trademark rights, copyright, data rights, trade secrecy, confidentiality, and publicity rights in transactions. In FY 2019, GLRD advised on the respective rights in the mark Leave No Trace between the FS and the Leave No Trace Center for Outdoor Ethics and on rights in the trail symbol for the Arizona National Scenic Trail between the FS and the Arizona Trail Association. GLRD also advised on the National Arboretum's authority to allow the National Bonsai Foundation to act as the Arboretum's licensing agent for the name and symbols of the Bonsai Museum. Finally, GLRD cleared numerous publishing agreements and appearance releases.

Civil Rights, Labor and Employment Law

OGC's Civil Rights, Labor and Employment Law Division (CRLELD) provides advice, counsel and litigation support for matters involving civil rights and employment, human resources, labor relations, and employee relations. CRLELD provides 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 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 before other administrative tribunals. OGC also assists the Department of Justice (DOJ) in defending the Secretary in similar claims brought in federal district and appellate courts, and the Court of Federal Claims. CRLELD's litigation work and policy work regarding the aforementioned matters is subject to certain criteria.

CRLELD's Litigation Section defends the Secretary in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other federal statutory and regulatory authorities. In FY2019, CRLELD's Litigation Section was responsible for defending the Secretary in more than 550 administrative complaints of employment and program discrimination, including complaints related to labor and employee relations decisions, in various forums across the country. CRLELD's Litigation Section also represented the Secretary's interests regarding whistleblower retaliation allegations, where the Office of Special Counsel conducted investigations or pursued resolution. The Litigation Section, which was responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices, held numerous in-person and videoconference training sessions for both Agency representatives and managers throughout USDA, to carry out the Department's vision of upholding civil rights. Some of the major work of the Litigation Section is summarized below.

Defending All EEOC Complaints Involving Multiple Client Agencies

The Litigation Section absorbed more than 205 administrative cases and appeals pending before the EEOC, involving USDA's FS, during FY2019, bringing the Litigation Section's total FS caseload to more than 150. The Litigation Section worked directly with FNS leadership on the next phase of absorbing all of that Agency's civil rights litigation, which currently consists of approximately 30 administrative cases. The Litigation Section also worked with OCIO's Information Technology staff to acquire OCIO's administrative civil rights cases, which involved transitioning cases from attorneys at the Bureau of Public Debt who were previously assigned to defend USDA.

Administrative Employment Discrimination Class Actions

The Litigation Section continues to represent the Secretary in six administrative class actions of employment discrimination pending before the EEOC against RD, APHIS, FSIS, FS, and DM. Specifically, the Litigation Section represents USDA in a formal class complaint filed by a group

of USDA employees alleging that the Agency has failed to accommodate their disabilities since it decentralized sign language interpreting services for deaf and hard of hearing employees in USDA's National Capital Region in May 2014. The EEOC certified this class action this year and CRLELD commenced the discovery phase of litigation while helping Departmental leadership determine whether resolution of the class action outside of the litigation process was in the Secretary's best interest. The Litigation Section continues to represent USDA in a formal class complaint alleging that FS, OASCR, and OHRM failed to accommodate applicants' and employees' learning disabilities during selection and promotion processes. The Litigation Section is also defending the Secretary at the pre-certification litigation stage in a putative administrative class action in which female firefighters in Region 5 allege that FS discriminates and retaliates against women with respect to reassignments, hiring and promotions. The Litigation Section is defending the Secretary at the pre-certification litigation stage in a class action complaint against APHIS in which employees allege they were subjected to age discrimination when a December 2012 change in a collective bargaining agreement altered work schedules. The Litigation Section continues to defend the Secretary at the pre-certification litigation stage in a class action complaint in which employees allege that FSIS' policy prohibiting employees who have alternative duty assignments from working overtime or on holidays violates the Rehabilitation Act; this year, the Litigation Section filed a dispositive motion in this class action.

Judicial Employment Complaints Involving 2018-2019 Government Shutdown

The Litigation Section assisted DOJ in defending claims from non-exempt employees under the Fair Labor Standards Act (FLSA), government-wide, who worked during the 35-day government shutdown between December 2018 and January 2019. During the shutdown, Plaintiffs—the National Treasury Employees Union and other Unions with USDA employees as members—filed cases in the District Court for the District of Columbia on behalf of federal employees who were designated “excepted” and who were required to work during the lapse in appropriations. Plaintiffs filed several cases challenging the Executive Branch's response and implementation regarding the lapse in appropriations. Plaintiffs in each case sought preliminary injunctions prohibiting the government from requiring “excepted” employees to report to work during the lapse in appropriations. The Litigation Section assisted DOJ during the shutdown by identifying USDA employees subject to the scope of the lawsuits and providing guidance about legal arguments that pertain to the funding structure of USDA sub-agencies and offices.

Program Discrimination Group and Class Action Cases

The Litigation Section worked on the following ongoing implementation issues involving former class action complaints and group complaints of program discrimination:

Hispanic and Women Farmers Claims Process (HWFCP)

In *Garcia, et al. v. Vilsack*,² and *Love, et al. v. Vilsack*,² Hispanic and women farmers and ranchers alleged that FSA subjected them to discrimination in loan making and loan servicing, respectively. After a court denied class certification, USDA established a voluntary, non-

judicial, adjudicative claims process to address the decades-old discrimination allegations as an alternative to federal court litigation. Individual claimants filed more than 50,000 claims via the non-judicial process. Approximately 22,000 claims have been adjudicated, and the claims process yielded more than 3,000 payments to prevailing claimants in 2016. Multiple federal district courts dismissed all of the collateral cases challenging the HWFCP. In 2019, the Litigation Section continued to work with DOJ to defend the Secretary in the appeal of a dismissed class action by African American farmers alleging that they were improperly excluded from the HWCFP litigation.

Pigford I and II

In 1997, a group of African-American farmers brought suit against USDA for alleged racial discrimination in *Pigford v. Glickman (Pigford)*. The parties entered into a Consent Decree, which established a claims process through which approximately 22,721 farmers filed timely claims. There were more than 66,000 additional late claims filed, of which only 2,500 were initially permitted to proceed through the *Pigford* claims process. In June 2008, Congress enacted legislation which afforded judicial recourse for late *Pigford* filers in U.S. District Court for the District of Columbia. The legislation further required the Secretary of USDA to make \$100,000,000 available for payments and debt relief in satisfaction of the *Pigford* claims. The Claims Resolution Act of 2010 appropriated an additional \$1.15 billion in monetary relief for the agreement, consolidated under the name *In re Black Farmers Discrimination Litigation (Pigford II)*. In 2019, the Litigation Section assisted DOJ in drafting motions to dismiss District Court complaints in the *Charles Kennedy*, *Corey Lea*, and *Michael Stovall* cases. When two news articles related to a former sugar cane farmer who was a *Pigford* claimant were published, the Litigation Section briefed USDA leadership about the claim and the potential litigation vulnerabilities. Additionally, when a large group of *Pigford* claimants-- including Carl Parker, the Estate of Gary Parker, and Lucious Abrams—filed a complaint in the Court of Federal Claims, the Litigation Section drafted a motion to dismiss that the Court granted. In July 2019, the Litigation Section's Contracting Officer Technical Representative for the *Pigford* class action ensured that FSA balanced contractor invoices that had been in arrears since 2017. The Litigation Section also assisted DOJ in successfully opposing when Plaintiff Maurice McGinnis filed a motion asking the court to reverse its prior decision to dismiss his individual complaint, the Litigation Section assisted DOJ in persuading the court to stand by the dismissal decision. Additionally, the Litigation Section provided information to DOJ that helped defeat Plaintiff Wayne Watson's motion for a temporary restraining order on debt relief. The Litigation Section continues to be lead counsel in *Pigford II* by serving as USDA's primary point-of-contact regarding distribution of the \$12 million *cy pres* fund, Congressional communication plans, and other issues pertaining to the 10-year old case.

CRLELD Policy Section

The Civil Rights, Labor and Employment Law Policy Section (Policy Section) is responsible for providing advice and counsel prior to the request for a hearing in employment matters before the EEOC. The section is also responsible for advising agencies on a variety of labor relations matters, including grievances, Unfair Labor Practice allegations, midterm bargaining, and

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

Guidance on Personnel Issues Related to Relocation of ERS/NIFA

When the Secretary decided to relocate employees from ERS and NIFA to Kansas City, Missouri, the Policy Section worked directly with USDA and Agency leadership to answer questions regarding early retirements, reasonable accommodation requests, the scope and timing of roll-out of the decision, and all other civil rights, labor and employment law issues. Notably, the Policy Section worked on issues involving ERS and NIFA union elections and all other union issues involved in this large-scale relocation.

Title IX and Religion and Applicability to USDA Assisted Programs

The Policy Section continued to work on issues by stakeholders and members of Congress with Title IX applicability to rodeo events segregated by gender that are financially supported by land grant institutions funded by USDA. The Policy Section also provided advice to FNS to address religious issues that were raised by organizations and individuals regarding program and service delivery.

Guidance to implement three May 2018 Executive Orders

The Policy section provided guidance and advice in coordination with OHRM about implementation of the three May 2018 Executive Orders that promote accountability and streamline removal procedures; ensure transparency, accountability, and efficiency in taxpayer funded union time use; and develop efficient, effective and cost reducing approaches to federal sector collective bargaining. The Policy section prevented implementation of unenforceable settlement terms, and advised client agencies on timely holding employees accountable with discipline up to and including terminations based on comprehensive documentation to reduce litigation risk and exposure.

Advice and Counsel

The Policy Section advised and counseled client agencies about the treatment of individuals in the workplace in light of the Department's anti-harassment policy; concerns raised by religious organizations that feel impeded to carry out their missions in FNS programs; high dollar settlements and how the agencies plan to hold appropriate employees accountable; proposed

revisions to dress code and grooming policy, and eligibility for grant applications by religious organizations for USDA funds.

Review of USDA Labor Contracts

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

OGC Collective Bargaining Agreement

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

Regional Offices

Attorneys in OGC's field offices play a critical role in the Department, advising the USDA agencies and officials charged with implementing programs at the regional, State and local levels. Attorneys in all the Regional Offices handled a wide variety of matters critical to the Department's programs and goals. In addition, the varied resources and needs of the clients in each of OGC's field regions require OGC to provide a host of legal services to its client agencies and officers, specific to each region of the country. The Regions represent all USDA. In respond to advising agencies on program specific matters, their staffs respond to state and federal subpoenas, especially in cases in which the U.S. is not a party; review administrative tort claims and program debarments; litigate contract disputes and leasing questions; defend civil rights cases and EEOC discrimination cases; and assist the Justice Department and U.S. Attorney's offices in litigation in Federal Courts

Eastern Region

The Eastern Region of OGC consists of 3 field offices, located in Atlanta, Harrisburg and Milwaukee with a total staff of 27 and four managers. The Region encompasses 22 States, along with the District of Columbia, Puerto Rico and the Virgin Islands.. During FY2019, the Eastern Region Offices, opened almost 2,200 new matters in FY2019. They also completed and closed an additional 2,500 matters. Attorneys in the Eastern Region adjudicated over 89 Federal Tort Claims Act claims seeking damages against USDA agencies of more than \$1,900,000. OGC Eastern Region provided legal advice to FSA on loan issues and bankruptcies in almost 451 matters. It also assisted DOJ in defending FSA in cases challenging its implementation of program funds. OGC Eastern Region attorneys successfully defended USDA agencies in employment and program-related discrimination litigation, including litigating cases before the EEOC. Additionally, Eastern Region attorneys assisted the USAO's in defending such cases in U.S. District Courts.

FS Oil, Gas and Mineral Development

OGC Eastern Region assisted the FS in upholding its forest plans and projects in numerous litigation matters, including continuing to defend the FS in several matters challenging its oversight of minerals and oil and gas development on NFS lands including developments in Minnesota, Virginia and West Virginia. One matter handled by the Eastern Region is Twin Metals Mining, which relates to the Bureau of Land Management's (BLM) process to renew the expired hard-rock minerals leases; and related litigation. Another mining matter handled by the Eastern Region is the Polymet Land Exchange and four related lawsuits. The FS exchanged 6,650 acres of federal land located for 6,690 acres of non-federal lands offered by the Polymet Mining Company. The exchange allowed Polymet's proposal for an open pit mine to go forward. OGC assisted the USAO in successfully defending four lawsuits seeking to stop the land exchange.

FNS

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

RD

OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 1,297 direct loans and in handling a large volume of related litigation, such as bankruptcies and foreclosures that arose out of such a large loan portfolio. Eastern Region attorneys consulted on several multi-million-dollar Multi-Family Housing (MFH) projects that have significant problems. Loans made under the MFH programs in the late 70's and 80s are maturing. The uptick in properties maturing out of the program rose significantly (from 136 in 2018 to 1152 in 2019) most of which are in the Eastern Region. RD wants to keep these properties in the program. One step to retain these properties is facilitating a transfer of ownership to a new owner; each transfer is reviewed by an OGC attorney. In addition, there are also a lot of legal questions related to having this many aging properties in RD's portfolio. Eastern Region attorneys worked with the RD state and National offices to address many of these legal issues.

Tribal Issues

OGC Eastern Region handled several tribal issues faced by the FS Eastern Region. This year that included working on issues with Leech Lake Band of Chippewa Indians in north central Minnesota. The extensive work on this project resulted in the successful signing of a MOU on October 8, 2019. The MOU provides a framework for consultation and collaboration between both the Band and the FS. The U.S. FS's Chippewa National Forest shares a significant geographical area with the Leech Lake Indian Reservation. The MOU acknowledges the unique

history of the Chippewa National Forest, which was originally set aside and preserved for the use and benefit of the Ojibwe people and the general public. The MOU addresses consultation, communication and establishes a shared decision-making model, in accordance with federal laws. As a result of OGC efforts, Eastern Region Milwaukee staff was invited to attend and speak at the 20th anniversary celebration of the signing of the MOU between the FS and the Chippewa tribes represented by the Voigt Task Force and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC). FS Eastern Region Tribal issues also included working with Forest County Potawatomi Band of Indians, meeting with Counsel for the Potawatomi Band and discussing long range plans for land exchanges; as well as explaining the FS land exchange and acquisition processes

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, thousands of rural communities, as well as many large urban areas. All of the USDA activities in these varied areas require legal advice and representation provided by the attorneys and professional staff in the Central Region's Office of the General Counsel.

FNS

Legal advice and representation in the Courts for the FNS and its Supplemental Nutritional Assistance Program requires OGC litigation support. Store owners routinely challenge actions brought by FNS to disqualify their stores or to assess a civil monetary penalty in transfer of ownership cases. In *Amadou Ndiaye v. U.S.*, OGC successfully defended the permanent disqualification of a retailer following findings of trafficking. In *Corner Market, Patel, v. U.S.*, OGC defended the decision to impose a monetary penalty in a transfer of ownership case. In other cases, OGC worked to sustain cases that challenged the ALERT systems, which uses complex algorithms to detect abusive transactions. Coordinated efforts by Plaintiffs' bar is also adding a new level of complexity to defending challenges to FNS actions, requiring additional legal services.

FSA and CCC Programs

In the Central Region, FSA has over \$5 billion in outstanding direct and guaranteed loans. Home to over one million farms, with farm product sales totaling almost \$180 billion, FSA, as part of that equation, requires significant legal counseling and representation for these loan, commodity and farm programs. To protect the agency's financial interests, OGC represented FSA in several complex bankruptcies and adversary proceedings, such as in *Hanzel*, where OGC sought to have a debt declared non-dischargeable due to the debtor's failure to turn over loan proceeds following the sale of the collateral. These routine actions comprise a large part of the Central Region's practice, but are also of significant importance to protect the financial interests of the United States. FSA also administers Commodity Credit Corporation (CCC) programs, and ensures that program funds are spent consistent with program parameters. In *Sandahl Farms*, following successful litigation, OGC resolved a large payment limitation case that spanned multiple years involving a "scheme or device" to evade the payment limitation rules.

NRCS

OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Program. The Central Region's topography and prevalence of wetlands require significant amounts of legal assistance in those acquisitions. Enforcement and management of existing easements is becoming a larger part of the challenges facing NRCS and requiring OGC legal support. In *David's v. U.S.*, OGC successfully defended NRCS and its determination that the Plaintiff converted a wetland and that such a conversion did not have a "minimal effect" on the wetland. In *Maple Drive*, OGC facilitated the resolution of a long running wetland conversion case that involved several appeals and remands.

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

OGC provided legal assistance to RMA, FCIC and its various components that operate in the Central Region. Compliance cases involving the approved insurance providers and their administration of the crop insurance program required legal assistance to ensure re-insurance is proper for those policies. In *Oberg*, OGC RMA and resolved a Civil Board of Contract Appeals case filed by the Approved Insurance Provider (AIP) contesting an RMA compliance finding that the company improperly paid a prevented planting indemnity. In *Struss Farms*, OGC successfully defended a provision of the Crop Insurance Policies, challenging the producers' duty to provide full and accurate information to the AIP and to RMA. In *Carnahan*, OGC is currently working to defend a collateral attack by a producer on policy provisions that relate only to re-insurance between the AIP and RMA.

Agricultural Marketing Service (AMS)

OGC's Central Region also provides legal advice to staff that administers the United States Warehouse Act, protecting grain depositors at federally licensed facilities. This user-fee funded program and support by OGC is integral to the integrity of the federally licensed warehouses, but also to the electronic warehouse receipts that are issued under the Act. Similarly, OGC's Central Region provides legal representation to the Packers and Stockyards program by bringing actions to enforce its provisions. This work was new to the Regional Offices in FY19, and the Central Region has filed several of these actions, seeking monetary penalties and compliance actions.

RD, Rural Housing Service, Rural Utilities and Rural Business Programs

The Central Region continued its efforts to assist the RD mission area in making and servicing loans to rural areas of the United States. RD's housing programs continue to need legal services to defend the Agency's financial interest in bankruptcy, as well as claims made by other creditors and adjoining landowners. Water and sewer environmental programs require significant legal advice to facilitate loan making and servicing actions. In *City of Schertz*, OGC successfully defended a lawsuit that sought to enjoin a loan for wastewater treatment service. In the Community Facilities Program, OGC provided legal advice to facilitate loan-making to help make rural America economically viable and provide services necessary for rural areas to thrive and grow. Rural medical facilities continue to apply for loans to build and upgrade their

facilities and equipment consistent with modern technological demands and expectations.. However, rural hospitals continue to struggle, and OGC provided legal assistance in several Chapter 9 bankruptcies, balancing the need for adequate health care with protecting the financial interests of the United States against competing creditors. *Iron County, Atoka County Healthcare Authority, and Pushmataha County-City of Antlers, Hospital Authority* are three examples. Other OGC legal work includes issues related to debt restructuring, parity transactions and revitalization loans. As the Multi-Family program portfolio continues to age, it continues to require a high volume of legal work to facilitate numerous transfers, assumptions, restructuring, and tax credit transactions such as the Pine Ridge and Pineview transactions in Mississippi. Pre-payment questions also require significant legal assistance as multi-family borrowers begin aging and phasing out of the program.

FS

OGC's Central Region assisted the FS with a wide variety of matters including environmental consultations, land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, title claims and fire cost recovery actions. Challenges brought by adjacent landowners involving boundary disputes, title challenges, title questions and access rights continued to necessitate legal representation for the Central Region. OGC also provided litigation support in several fire recovery tort claims, such as in *Reed (also known as the Gatlinburg Fire)* where a forest fire engulfed substantial parts of this Tennessee resort and vacation town.

Employment and Discrimination Cases

The Central Region defended USDA in litigation in various forums brought by employees, former employees or job applicants alleging various types of workplace discrimination. In addition, the Central Region defended the Department in programmatic cases brought by program participants alleging various types of discrimination or mistreatment. EEOC defensive work has added to the caseload for attorneys as OGC transitions to handling more of these cases directly. In District Court, the Central Region successfully defended actions brought against the agency involving cases of non-selection, or alleging various types of discrimination based on disability, reprisal, sex (gender), race or age. Examples in District Court include *Arnold v. Perdue*, and *Jerabek v. Perdue*, wherein OGC is defending against claims the agency discriminated in terminating the employees. In *Del Pozo*, OGC is defending the agency in a claim alleging discrimination on the basis of age, race, color and national origin, and retaliation for engaging in protected activities.

Miscellany

The Central Regions defended and processed numerous claims brought under the Federal Tort Claims Act, ensuring that claimants are justly compensated but that that insurance carriers also fully pay as required under the terms of various policies. In *Meza*, OGC finalized settling several claims involving a multi-vehicle accident, protecting the financial interests of the United States, and negotiating full payment by the insurance companies. The National Center for Animal Health, the National Bio-Agri Defense Facility and the Meat Animal Research Center are all

located in the Central Region; the former requiring legal representation involving electrical supply and territorial disputes with a municipal power company. USDA's National Finance Center (New Orleans) and the National Financial and Accounting Operations Center (St. Louis) are all located in the Central Region with significant numbers of employees, and this requires additional legal support to defend collection actions but also to defend in litigation and in employment and discrimination cases brought by employees.

Mountain Region

OGC's Mountain Region provided legal services including: advice and counsel; assisting the Department of Justice to provide representation in litigation; representation in administrative litigation before tribunals such as NAD, USDA, IBLA, CBCA, MSPB, EEOC, and State Engineers; and drafting of transactional and other legal documents to USDA agencies in 12 States in the Rocky Mountain and western areas of the country. Region provided extensive advice relating to hazardous materials cleanup on NFS lands and recovery of costs from potentially responsible parties. OGC provided legal advice to RMA, FSA, RD, and NRCS for hundreds of loans, grants, crop insurance, and conservation easement transactions during the past year. Attorneys in the Mountain Region adjudicate administrative claims under the FTC under \$500,000. Most claims are in the range of \$3500 to \$25,000. The Mountain Region adjudicated over 50 cases.

FS Programs

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

Water Rights

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

Mining and Energy Development

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

Wildlife Management

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

Grazing and Range

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

Fire

The four FS regions served by the Mountain Region of OGC have active wildland fire programs, which led to a large number of claims for collection of fire suppression costs and damages totaling in excess of \$50 million. Numerous cost collection suits are pending, and OGC routinely assists the FS with administrative cost collection efforts. OGC assisted the FS in securing access to a new air tanker base in Colorado Springs, CO, which will be able to accommodate the largest air tankers in use.

Real Property

Federal agencies are required by law to obtain approval of title from their Departmental Counsel when acquiring land or interests in land. OGC assisted the FS and agencies such as the ARS in acquiring title to real property to support their programs by evaluating and approving title to land to be acquired. OGC also assisted agencies that hold title to real property, such as the FS and ARS, in protecting and defending title and boundaries. Many trespass claims by and against the United States were resolved with the assistance of OGC before legal action was filed,

and many of the lawsuits filed were settled quickly with OGC assistance. Where title disputes could not be resolved by settlement, OGC assisted the DOJ in defending and prosecuting quiet title and trespass actions.

Infrastructure Projects

The Mountain Region assisted the FS and other agencies of the Department of Agriculture in accommodating infrastructure projects on federal land. OGC assisted the FS in implementing new legislation to facilitate maintenance of utility corridors on NFS and reduce fire hazards by negotiating standard templates for authorization of these activities with Xcel Energy, which will be used as national standards for FS authorizations. OGC is assisting NRCS with modification of a conservation easement to allow development of two interstate electrical power transmission projects connected to wind farm generators.

Pacific Region

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

Alaska Subsistence Program

The Pacific Region plays a unique role in advising the Alaska Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. In this fiscal year, OGC advised on a wide range of topics, including: (a) a 2019 U.S. Supreme Court opinion limiting a federal agency's regulatory jurisdiction in navigable waters in Alaska that also potentially limits federal jurisdiction over subsistence in those waters; (b) a new management strategy to ensure both a sustainable population and better harvest reporting of Tongass wolves, which recently have been considered for listing under the Endangered Species Act; and (c) continuing to comply with a court order by proposing a rule that identifies areas of marine submerged lands that were improved and therefore reserved from conveyance to the State of Alaska at statehood.

Contracts and Contract Disputes

The Pacific Region 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, the 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. This year, the Pacific Region helped to limit the United States' liability for suspending contracts during a lapse in government appropriations by negotiating a favorable settlement of a claim involving a Tongass timber contract.

Crop Insurance

The Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. During this fiscal year, the Pacific Region continued its litigation representation of RMA in a multi-million dollar crop insurance case.

Employment Law

The Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment litigation before the EEOC and the Federal courts. OGC Pacific Region attorneys continue to provide legal representation in the Bush class action and to provide legal advice to the FS regarding claims brought by female firefighters. During this fiscal year, OGC Pacific Region attorneys working with the Department of Justice obtained a favorable ruling from the Ninth Circuit in the Alguard case, bringing closure to six years of litigation. OGC Pacific Region attorneys also ably represent multiple USDA agencies in individual EEO complaints pending before EEOC Administrative Judges and in appeals pending before the EEOC Office of Federal Operations

Farm Loan Programs

The Pacific Region drafts and reviews legal documentation and provides advice to FSA regarding loans to family farmers and small farming operations in the Pacific Region. OGC attorneys helped ensure that FSA's use of taxpayer funds complied with applicable legal requirements and that security interests FSA obtained to secure loan repayments are valid and enforceable. OGC Pacific Region attorneys also provided advice and representation to FSA in loan servicing, borrower default, debt collection and bankruptcy situations where OGC helped FSA to enforce its security interests and to recover debts owed to the United States. During this fiscal year, OGC Pacific Region attorneys have also provided advice to FSA on the provisions of the Farm Bill dealing with industrial hemp production.

Fire Cost Recovery

The Pacific Region has an extremely active and effective role in helping the FS recover some of the millions of dollars in costs the FS incurs annually in fighting human-caused wildfires. OGC Pacific Region attorneys work with the FS in accounting for fire cost expenditures and in calculating associated damages to FS facilities and natural resources. OGC then plays a central role working with the Department of Justice in civil cases seeking recovery of these damages. The Pacific Region has helped the FS obtain more than half a billion dollars in fire cost recovery over the years, including more than \$11 million in FY2019.

FNS

The Pacific Region handles a significant number of FNS Supplemental Nutrition Assistance Program (SNAP) cases in which store owners are seeking judicial review of their disqualification from SNAP participation. OGC Pacific Region attorneys defend these cases and we worked with FNS and DOJ to create model responses to written discovery and a unified

litigation strategy. OGC Pacific Region also created deposition training for FNS personnel in response to the growing trend of demands for depositions of FNS personnel in these cases.

Lands Transfers

Attorneys in the Pacific Region offices provide advice and review legal documentation relating to hundreds of transfers of interests in land either from or to the United States. OGC helps ensure that these transactions comply with legal standards and that the interests of the United States are protected. Examples of significant lands transaction issues during FY 2019 include: 5,527 acres of land, valued at more than \$8 million, transferred to the FS as part of the fire cost recovery compensation that Sierra Pacific Industries agreed to pay in the FS's Moonlight Fire settlement; the final phase of acquisition of lands that will complete the largest transfer in FS history of lands from a private inholding into a National Monument in Alaska; and the continued implementation of a massive land exchange with the State of Alaska that Congress legislated in FY 2017. The Pacific Region Attorneys are also assisting the FS in navigating a legislatively-mandated land transfer involving the Mt. Hood National Forest that has been subject to ongoing environmental challenges.

Land Management Decisions and Litigation

The Pacific Region advises three FS Regions, including 39 National Forests, with respect to a wide range of public land management decisions. OGC provides the FS with legal advice on major policy issues and also helps the FS with legal compliance to prevent and prepare for litigation. For instance, the Pacific Region attorneys are advising the FS on its response to a proposal for the removal and replacement of dams in the Alpine Lakes Wilderness, a matter that has drawn scrutiny from environmental groups and FS permittees. 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, in the policy arena, several attorneys in the Pacific Region are actively engaged in the FS's national effort to streamline compliance with various environmental laws in order to increase the pace and scale of important forest management across the country. And, in the litigation arena, the Pacific Region has taken the lead in successfully defending projects using the new statutory authority to improve forest health using a categorical exclusion for the prevention and treatment of insect and disease tree mortality. The Pacific Region has also successfully defended several FS timber harvest and forest thinning projects designed to reduce the threat of catastrophic wildfires in the West; these successes are resulting in more treatment on the ground, reduced threats to the National Forests and nearby communities, and decreased litigation.

Law Enforcement Assistance

The Pacific Region plays an important role in advising the FS on law enforcement issues. During FY 2019, for example, OGC Pacific Region reviewed and advised the FS on hundreds of Forest Orders which prohibited specified conduct and provided for criminal citations for violations. In addition, the Region advised the FS on law enforcement issues relating to implementation of the new requirements in the John D. Dingell, Jr. Conservation, Management, and Recreation Act of 2019 and unauthorized occupancy of National Forest lands. OGC

involvement helped ensure that law enforcement activities and prosecutions were handled appropriately.

Legislative and Congressional Affairs

The Pacific Region provides advice to USDA client agencies concerning proposed legislation and with respect to inquiries from Members of Congress. For example, during FY 2019, we advised the FS in response to a Congressional request regarding adoption of a broader interpretation the Alaska National Interest Lands Conservation Act (ANILCA) to allow families to transfer ownership of private cabins in the Tongass to a subsequent generation. We also reviewed and advised the FS on its answers to Questions for the Record posed by the U.S. Congress related to an ongoing rulemaking an Alaska Roadless Rule.

Mining and Minerals

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

Energy

The Pacific Region helped the FS respond to many proposals for hydropower and other alternative energy projects. In Alaska, for example, there are ten newly proposed or recently amended hydroelectric projects on NFS lands. OGC also advised USDA agencies on wind, solar, and biomass renewable energy projects and provided legal advice to the FS on issues related to the proposed 231-mile Pacific Connector Gas Pipeline in southern Oregon.

RD

The Pacific Region provided legal advice and compliance reviews for RD agencies in hundreds of loan and grant transactions. OGC Pacific Region attorneys supported RD programs and 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, OGC Pacific Region attorneys drafted security documents for use by RD. In response to ongoing complaints from RD and its borrowers, OGC Pacific Region attorneys helped spearhead a national effort to develop and implement new Deposit Agreements for use by RD. OGC Pacific Region attorneys helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of maturing loans and represented RD in prepayment litigation including both owner and tenant claims. Significantly, OGC Pacific Region attorneys also provided strong litigation support to the Department of Justice in important prepayment litigation involving RD's appeal of a district court's award of "tax gross-up" damages. The appeal resulted in a favorable decision by the Federal Circuit Court of Appeals that vacated the lower court's award

tax gross-up damages and may help RD avoid more than \$1 billion in potential liability for similar claims. OGC Pacific Region attorneys also supported the Department of Justice in a coordinated series of lawsuits by tenant advocacy organizations challenging RD's prepayment policies and procedures, and have advised RD on improvements to its guidance and processes to avoid future lawsuits.

Special Use Permits

The 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 often are controversial and OGC provides ongoing representation to the FS when litigation is filed. Special Use Permit issues of note in FY19 included issues regarding renewal of the permit authorizing Nestle Waters to extract water from the San Bernardino National Forest.