

UNITED STATES DEPARTMENT OF JUSTICE

ENVIRONMENT AND NATURAL RESOURCES DIVISION

FISCAL YEAR 1999
SUMMARY OF LITIGATION
ACCOMPLISHMENTS



November 1999

CONTENTS

FOREWORD	i
PROTECTING THE NATION'S AIR AND WATER	1
ENSURING CLEANUP OF HAZARDOUS WASTE	2
PROSECUTING THOSE WHO EXPOSE US TO HAZARDOUS SUBSTANCES	4
CARRYING OUT CRIMINAL ENFORCEMENT INITIATIVES	6
PRESERVING OUR NATURAL RESOURCES AND PUBLIC LANDS	8
PROTECTING INDIAN RIGHTS AND RESOLVING INDIAN ISSUES	12
DEFENDING ENVIRONMENTAL PROGRAMS AND PROTECTIONS	14
DEFENDING OTHER VITAL FEDERAL PROGRAMS	17
SUPPORTING THE DIVISION'S LITIGATORS	19

FOREWORD

Ninety years ago, then Attorney General George Wickersham signed a two-page order creating "The Public Lands Division" of the Department of Justice. He assigned all cases concerning "enforcement of the Public Land Law," including Indian rights cases, to the new Division, and transferred a staff of nine -- six attorneys and three stenographers -- to carry out those responsibilities. The Division that Attorney General Wickersham created is now known as the Environment and Natural Resources Division and has almost 700 employees. I am pleased to present this summary of the Division's accomplishments for fiscal year 1999, a year in which the Division won a series of record-setting victories and established important precedents that will provide a strong foundation for environmental protection and preservation of our nation's natural resources and public lands for many years to come.

Over the years, the Division has grown and adapted in response to the changing needs of the American people. During the Depression, the Division's responsibilities were expanded to include the acquisition of land for projects such as dams and reservoirs constructed for purposes of reclamation, irrigation, hydroelectric power, and flood control. During World War II, the Division supported the war effort by, among other things, acquiring land for military purposes.

Twenty years after World War II, the American public began to demand that steps be taken to save and protect one of this country's greatest assets -- its natural resources and environment. Rachel Carson warned us of the

dangers of insecticides in Silent Spring, the Cuyahoga River caught fire in Ohio, and Love Canal made nationwide news. The first Earth Day in 1970 further raised public awareness of the need to protect our environment. Congress responded to the public's concern by passing important environmental statutes, including the Wilderness Act; the National Environmental Policy Act; the Federal Land Policy and Management Act; the Endangered Species Act; the Clean Water Act; the Clean Air Act; the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation and Liability Act. These new laws led to a further augmentation of the Division's responsibilities -- the preservation and protection of our environment and public health -- and this change was recognized in 1990 when the Division acquired the name that it bears today.

The Division has carried forward its mission of environmental protection in 1999. We obtained extensive injunctive relief and the largest civil penalties ever paid in the United States for violations of the environmental laws in a Clean Air Act enforcement action against seven heavy-duty diesel engine manufacturers. These manufacturers had installed software which allowed their engines to meet EPA emissions standards during testing but disabled the emission control system during normal highway driving. To resolve this action, the manufacturers agreed to reduce significantly emissions from new engines, to modify existing engines when rebuilding them to reduce emissions from trucks now on the road, and to undertake design of low-emitting engines using cleaner fuels. We expect that the settlement of

this action will prevent seventy-five million tons of nitrous oxide air pollution over the next twenty seven years and reduce such emissions from diesel engines by one-third by 2003. An appellate court also upheld a Clean Water Act (CWA) civil penalty for over \$12 million -- the largest civil penalty ever under the CWA -- for the discharge of a witches' brew of pollutants from a slaughterhouse into a river leading to the Chesapeake Bay. We are also actively involved in bringing cases as part of the Mississippi River Initiative, a comprehensive Federal effort to keep pollution out of the River and restore it and surrounding communities to their historical grandeur.

The Division obtained record recoveries for cleaning up contaminated properties around the country. In August 1999, a district court in Arkansas awarded the United States \$100.5 million in reimbursement of all past clean up costs, plus future costs, at one of the worst dioxin-contaminated sites in the country. This is the largest adjudicated Superfund judgment in history. At another site located within an Indian reservation in Idaho on which a corporation allowed phosphorus waste ponds to catch fire and to generate toxic gases such as hydrogen cyanide and phosphine, the polluter settled the charges against it by, among other things, agreeing to close the ponds and construct a \$40 million waste treatment plant, and by committing to over a dozen supplemental environmental projects to improve air quality in the Pocatello area. In addition, the Division obtained a record penalty under the Resource Conservation and Recovery Act of nearly \$12 million.

The Division has had many other success stories as well. We cleaned up

contaminated "brownfields" sites and entered into many Prospective Purchaser Agreements which foster redevelopment of depressed urban areas. We protected wetlands which serve as buffers to erosion and retain flood waters, and we defended and enforced clean air protection that help our children and elderly breathe a little easier. We also engaged in a nationwide enforcement effort involving the Department of Justice, the Department of Housing and Urban Development, EPA and state and local governments to prevent lead poisoning of children, which causes IQ deficiencies, reading and learning disabilities, impaired hearing, hyperactivity and behavior problems. Moreover, the Division monitors its cases for environmental justice concerns, and works to ensure that affected communities are consulted as appropriate during the settlement process.

When we could get better or quicker protection for the environment by employing alternative methods of dispute resolution (ADR) such as mediation, we did. We have found that when employed in appropriate cases, ADR provides a valuable tool for resolving disputes and achieving compliance with the law in an expeditious and cost-effective manner. The Division also uses ADR in cases involving natural resources, wildlife, and Indian issues.

Sometimes criminal enforcement is necessary against those who endanger the environment and even the lives of others through their intentional violations of the environmental laws. We obtained convictions substantial jail sentences and criminal fines against violators who intentionally exposed employees and customers to toxic gases, asbestos, and pesticides. We have been at the forefront of several major initiatives against

environmental crime. Vessels that dump waste oil and other chemicals into the ocean are a major problem in coastal areas, and we have obtained guilty pleas, an agreement to operate for the next five years under a court-supervised environmental compliance plan, and record fines from a major cruise line for its desecration of our oceans in this manner. We have also obtained over eighty convictions in connection with smuggling into the United States chlorofluorocarbons, which destroy the protective ozone layer in the atmosphere.

Our activities result in protection of the international environment as well. We have cracked down on international reptile smuggling rings, part of a huge international market in live animals and in animal parts. We have also assisted other Federal agencies by consulting on environmental enforcement and compliance issues in several international environmental contexts, including in the World Trade Organization, the North American Free Trade Agreement and the Free Trade Agreement of the Americas, which is now being negotiated. The Division participated in ongoing climate change negotiations, focusing on compliance questions, and worked with Canada and Mexico to promote better protection of our shared environment. We also worked on issues regarding international trade in hazardous chemicals and wastes, protection of oceans and coral reefs, accidental introduction of harmful exotic species, and liability for nuclear accidents. Our goal has been to ensure that trade and investment rules promote environmental protection and do not undermine our domestic regulatory authority.

Another important aspect of the Division's work is defending a range of vital

Federal programs. For example, the Division defended government programs for safely disposing of the nation's stockpile of chemical weapons and radioactive wastes. We overcame challenges to flood control projects in the lower Mississippi River valley and in the Los Angeles Basin, protecting those areas from catastrophic flooding. We saved wetlands and endangered species protections from ongoing attempts to erode them based on a variety of challenges.

Fiscal year 1999 also gave rise to important accomplishments within the Division's original mandate – the protection of public lands and Indian affairs. Together with the State of California, the United States was able to arrive at an agreement with Maxxam Corporation that will permanently protect the world's largest remaining privately held old growth redwood grove in the "Headwaters" area of Northern California, an accomplishment that the Secretary of the Interior likened to the addition of another Yosemite Park to public ownership. The Division also defended the purchase of 50,000 acres of an Everglades sugar plantation and is assisting in the acquisition of land to expand Everglades National Park and Big Cypress National Preserve, which will contribute substantially to the conservation and restoration of the Everglades' unique ecosystem.

A milestone in the Division's history was its successful defense of the President's Northwest Forest Plan, the first initiative for the management of the remaining old-growth forests of the lower 48 states to withstand legal challenge in over a decade. We continue to commit our resources to defend the implementation of this plan against numerous

challenges. In the area of water rights, we defeated challenges to the operation of federal reclamation projects and developed a model for resolving disputes over water rights on public lands in Colorado.

With regard to Indian affairs, we protected and defended Indian hunting and fishing rights in several cases, including a case in which the Supreme Court upheld the treaty rights of the Mille Lacs Band of Chippewa Indians to hunt, fish and gather wild rice free of State regulation on off-reservation lands in Minnesota. We collected over \$1 million dollars for the Confederated Salish and Kootenai Tribes for damage to their lands in Montana resulting from forest fires, and pursued land claims on behalf of tribes to resolve centuries-old disputes caused by the State of New York obtaining land from the tribes in violation of federal law. The United States has also resolved almost all of the many Indian Commission claims cases that have been pending for years.

The Environment and Natural Resources Division has come a long way since its creation in 1909. While public lands and Indian affairs cases remain among the Division's most challenging responsibilities, Division attorneys also represent the United States in a broad spectrum of nationally significant matters, from negotiating a massive consent decree to clean up a Superfund site to prosecuting international wildlife smugglers. From its beginnings with only a handful of staff, the Division is now the nation's largest environmental law firm. Our successful track record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands, along with acquiring

land as required, is due to the hard work and efforts of the Division's attorneys and staff. In partnership with our client agencies, the United States Attorney's Offices, and state and local officials around the country, we produce top quality work in our continuing efforts to protect the environment and the people of the United States. I am proud to serve with this outstanding staff.

The American people have shown that they cherish this nation's public lands and support strong environmental protections. The Division looks forward to preserving those lands and defending those protections for our children and grandchildren.



Lois J. Schiffer
Assistant Attorney General
Environment and Natural Resources Division
November 1999

PROTECTING THE NATION'S AIR AND WATER

Protecting the Nation's Air: Over the past several years, the Division has found that often the most effective way to address environmental non-compliance problems is on a sector basis. A recent example of this "whole sector approach" was our settlement with seven heavy duty diesel engine manufacturers which culminated in the largest Clean Air Act (CAA) penalty in history. The settlement resolved charges that the companies violated the CAA by installing software that allowed engines to meet EPA emission standards during testing but disabled the emission control system during normal highway driving. The settlement is expected to prevent seventy-five million tons of nitrous oxide air pollution over the next twenty seven years and reduce such emissions from diesel engines by one-third by 2003. The initiative also resulted in an \$83.4 million penalty payment, the largest civil environmental penalty ever imposed.

Another recent CAA settlement involved Mazda Motor of America, which manufactured defective MPV minivans during model years 1989 through 1994. The minivans, approximately 226,000 of which were sold in the United States, were equipped with a defective fuel liquid/vapor separator which can break or crack, venting gasoline fumes into the passenger compartment and the atmosphere. Under the settlement, Mazda will pay a \$900,000 civil penalty, change its defect investigation and reporting system, provide an extended warranty on the vapor separator, replace vapor separators on all affected vehicles if requested, and reimburse any vehicle owners who previously paid for repairing a

vapor separator. In addition, Mazda will send all owners of affected vehicles a notification letter and issue an advisory to all Mazda dealers in the United States regarding this program.

Protecting the Nation's Water: The Fourth Circuit Court of Appeals upheld imposition of a Clean Water Act (CWA) civil penalty in excess of \$12 million, the largest penalty ever awarded under the CWA. The appellate court affirmed a lower court ruling that Smithfield Foods and its subsidiaries violated the CWA by discharging illegal levels of phosphorous, ammonia, cyanide, and fecal coliform from their slaughterhouse into the Pagan River. The Court held that an agreement between the company and Virginia that allowed Smithfield to exceed its permit limits did not excuse Smithfield's violations because the agreement was not part of the permit approved by EPA and because Virginia's state law was not comparable to the federal law.

Fixing Aging Municipal Sewer and Water Systems: In July 1999, we entered into a second and final settlement with the City of Atlanta which, combined with a 1998 settlement, requires the City to pay a civil penalty of \$3.2 million, the highest cash penalty ever obtained from a municipality under the CWA. Under the 1998 settlement, the City will design, construct and maintain new facilities to ensure that combined sewer overflow discharges do not violate the law. Under the second settlement, the City also will undertake to bring its wastewater treatment plants and collection and transmission system into full compliance with the law.

We also recently lodged a consent decree resolving violations by the City of Baltimore of its CWA permits issued for its Ashburton Water Filtration Plant and Patapsco Wastewater Treatment Plant. Under the decree, Baltimore will pay a civil penalty of \$1 million, perform Supplemental Environmental Projects valued at \$2.5 million, and implement necessary injunctive relief at both plants. The State of Maryland, which participated fully in the litigation as a co-plaintiff, will split the City's penalty payment with the United States.

Protecting Wetlands: In fiscal year 1999, the Division continued its enforcement efforts against violators of federal wetland protections. A record number of acres of wetlands were restored, mitigated, or preserved as a result of our efforts. One of the more notable achievements was a wetlands enforcement action under section 404 of the CWA against real estate developers for the destruction of approximately twenty-four acres of wetlands in Fort Myers, Florida. After a week-long trial, the Court assessed a \$400,000 civil penalty, enjoined further violations of the CWA, and directed the defendants to create a mitigation plan for the loss of all wetlands at issue. The United States had previously reached settlements with other defendants, which required the payment of penalties in excess of \$200,000 and the restoration of 2.5 acres of wetlands on-site.

ENSURING CLEANUP OF HAZARDOUS WASTE

Cleaning Up a Dioxin-Contaminated Site in Arkansas: In August 1999, the District Court in Arkansas entered final judgment for the United States in the amount of \$100.5 million, plus future costs, concluding eighteen years of litigation at the Vertac Superfund Site. The Vertac Site, the location of a herbicide manufacturing plant that operated from the 1960s to the 1980s and manufactured, among other things, Agent Orange, was one of the worst dioxin-contaminated sites in the country. This was the largest adjudicated Superfund judgment in history.

Achieving a Record Settlement in Montana: In April 1999, the District Court in Montana entered the first settlement in this Superfund cost recovery action against the Atlantic Richfield Company (ARCO) for contamination of the Clark Fork River Basin in southwestern Montana. In conjunction with another consent decree settling a portion of the State of Montana's natural resource damages action, this settlement provided for the payment by ARCO of over \$80 million in past and future costs, over \$200 million in natural resource damages to the State, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, and the United States Fish and Wildlife Service, and a binding schedule for settling the remainder of one of the largest cost recovery actions ever brought.

Cleaning Up Contaminated Ponds in Idaho: In October 1998, we entered into a consent decree with the FMC Corporation resolving numerous violations of the Resource Conservation and Recovery Act (RCRA) at an

FMC facility on the Shoshone-Bannock Tribe's Fort Hall Indian Reservation in Pocatello, Idaho. The facility is the world's largest producer of elemental phosphorus, which is used in detergents, beverages, foods, synthetic lubricants, and pesticides. The most serious of the RCRA violations involved mismanagement of phosphorus wastes in ponds which burn vigorously when exposed to the air, and also generate toxic gases that can cause serious health and environmental problems. FMC has agreed to spend approximately \$158 million to settle this case and will pay another \$11.8 million as a civil penalty, the largest ever obtained under RCRA.

Cleaning Up the Avtex Superfund Site in Virginia: Under another settlement reached in July 1999, the FMC Corporation will clean up one of Virginia's largest Superfund Sites, the Avtex Fibers Site in Front Royal, Virginia. The Avtex facility manufactured synthetic fibers for forty-nine years, and FMC operated the plant from 1963 to 1976. The last owner, Avtex Fibers-Front Royal, closed the facility in 1989 after being cited for more than 2,000 violations of Virginia environmental laws, associated primarily with wastewater discharges into the Shenandoah River. Under the settlement, FMC will undertake a cleanup estimated to cost \$63 million, and will reimburse the EPA \$9.1 million for its past costs.

General Electric Agrees to Clean Up Housatonic River: General Electric (GE) will spend more than \$250 million in a settlement with the United States, Massachusetts, and Connecticut to resolve claims that it polluted the Housatonic River with polychlorinated biphenyls (PCBs). The Division alleged that the contamination resulted from GE's use of PCBs

and other hazardous substances at its plant in Pittsfield, Massachusetts. Under the settlement, GE will remove contaminated sediment from the half-mile stretch of the Housatonic River nearest the GE plant by May 2001, including the adjacent river banks. GE will also help fund the cleanup of the next mile and a half of river downstream, and will clean up other parts of the river farther downstream after EPA selects an appropriate cleanup plan. GE also will clean up contamination at the Pittsfield plant and other sites in Berkshire County, including a school and several commercial properties.

Preventing Interference with a Cleanup: In an action seeking judicial review of an EPA Region 5 administrative order for monitoring under RCRA at a steel manufacturing facility in Mansfield, Ohio, the court dismissed the case, holding that RCRA precludes pre-enforcement judicial review of such orders. The case is particularly important for setting the precedent that administrative cleanup actions taken under RCRA cannot be blocked prior to EPA's filing an enforcement action.

PROSECUTING THOSE WHO EXPOSE US TO HAZARDOUS SUBSTANCES

Convicting Those Who Endanger the Health of Workers: In May 1999, a jury found Allan Elias guilty of knowingly endangering the health and safety of his employees during illegal hazardous waste storage and disposal activities that left a twenty-year-old employee with severe and permanent brain damage from cyanide poisoning. Elias had ordered his employees to clean out a 25,000 gallon tank that contained cyanide waste and phosphoric acid without conducting any tests to determine whether the atmosphere inside the tank or the waste materials stored inside the tank were hazardous or providing any safety or rescue equipment to his employees, despite years of warnings from the Occupational Safety and Health Administration about the dangers involved. While cleaning out the tank with a fire hose and a broom, the victim was overcome by hydrogen cyanide gas.

In January 1999, Buddy Frazier and his associates, Chance Gaines and James Bragg, were sentenced to prison for thirty, thirty-three, and twenty-four months, respectively, for multiple asbestos work practice and worker identification violations in connection with the demolition of a manufacturing building in Marshfield, Wisconsin. The defendants had recruited untrained, homeless men from a community kitchen in Chattanooga, Tennessee, obtained fraudulent asbestos training identification cards for these workers, and directed them to strip asbestos pipe insulation without first wetting the material, thereby exposing them to the severe health risks

associated with asbestos inhalation. In connection with this prosecution, the Division launched a nationwide project with EPA and the National Coalition for the Homeless to halt the exploitation of homeless and itinerant workers for illegal asbestos work.

In October 1998, a jury found Robert E. Kelly, Jr., owner of Kelly Spraying Services, guilty on twenty counts of pesticide misuse and distribution in violation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Kelly applied the highly toxic organophosphate pesticide methyl parathion to hundreds of homes in the Memphis area. Blood and urine tests taken from dozens of Kelly's customers verified exposure to high levels of organophosphate toxins, and many customers reported severe headaches, nausea, diarrhea, and vomiting. Kelly was sentenced to twenty months in prison and ordered to pay \$250,000 in restitution to EPA.

Protecting Our Children Against the Hazards of Lead-Based Paint: In a nationwide enforcement effort involving the Justice Department, the Department of Housing and Urban Development (HUD), EPA, and state and local governments around the country, we obtained the first settlements under the Residential Lead-Based Paint Hazard Reduction Act. Despite substantial progress, there are still almost one million children under six years old who suffer from lead poisoning, which causes IQ deficiencies, reading and learning disabilities, impaired hearing, hyperactivity, and behavior problems. In July 1999, we entered into a series of judicial settlements which require multi-family apartment owners and management companies that rent approximately 4,000 units in thirty-

three buildings to conduct over \$1 million worth of lead paint abatement, pay \$259,000 in fines, and fund community projects. In a companion enforcement action, HUD initiated forty-five administrative actions in twenty separate cities.

Hazardous Well Injection in Alaska:

In September 1999, BP Exploration (Alaska) Inc. (BPXA) pled guilty to failing to report the release of hazardous substances as required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in connection with the injection of hazardous wastes such as paint thinner, paint, oil, and solvents down the outer rim of oil wells on Endicott Island near the North Slope of Alaska. BPXA agreed to pay a total of \$22 million, including the maximum criminal fine of \$500,000, for failing to report the release. BPXA will also pay \$6.5 million in civil penalties to resolve allegations that it violated several other environmental laws by unlawfully disposing of hazardous waste on Endicott Island. Finally, as a condition of criminal probation, the American subsidiaries of BP Amoco, BPXA's ultimate parent company, will establish a nationwide environmental management system at all BP Amoco facilities engaged in the exploration, drilling, or production of oil in the United States and Gulf of Mexico.

Massive Oil Pipeline Spill: In February 1999, Colonial Pipeline Co. (CPC), a consortium of ten oil companies including Mobil, Amoco, and Texaco and the operator of the largest-volume hazardous liquid pipeline in the world, pled guilty to violating the Clean Water Act (CWA) by negligently dumping nearly one million gallons of diesel fuel from its ruptured pipeline into the Reedy River near

Simpsonville, South Carolina. The spill killed more than 35,000 fish and damaged the aquatic invertebrate population over a twenty-three-mile segment of the river. Wildlife including beaver, muskrat, and turtles were also killed by direct contact with the spilled oil. The spill was the sixth largest in the country's history. CPC paid a \$7 million fine and will serve a five-year term of probation. As a condition of probation, the company will develop and implement an extensive environmental compliance program to prevent and detect any further violations of the CWA. During probation, the company is also required to make presentations to national pipeline associations regarding their obligations under the Act. On March 1, 1999, the company published a full page apology that appeared in The New York Times, The Atlanta Journal-Constitution, and The Greenville News.

Hazardous Drum Cleaning: In August 1999, Gary Benkovitz, owner of Bay Drum and Steel Inc. in Tampa, Florida, was sentenced to thirteen years in prison, the longest prison sentence to date in an environmental case. Bay Drum and Steel Inc. reconditioned and resold fifty-five-gallon drums for commercial use, discharging thousands of gallons of wastewater containing spent pesticides and methyl chloride, a highly toxic solvent, into a storm sewer emptying into Tampa's McKay Bay, all in violation of the CWA. Benkovitz also directed his employees to dump polluted wastewater on property adjacent to his facility from April until June 1998 in violation of RCRA, and continued to dispose of waste illegally even after he pled guilty.

CARRYING OUT CRIMINAL ENFORCEMENT INITIATIVES

Vessel Initiative: A major problem in many coastal cities is vessel pollution, including the intentional dumping of oil, plastics, and hazardous wastes. The Division has led the effort, both nationally and internationally, to confront this problem. This initiative made front page news around the country when Royal Caribbean Cruises Ltd. (RCCL) pled guilty to twenty-one felony counts for dumping waste oil and hazardous chemicals and lying to the United States Coast Guard and agreed to pay \$18 million in criminal fines. The plea agreement was filed in District Courts in Miami, New York, Los Angeles, Anchorage, the U.S. Virgin Islands, and San Juan, Puerto Rico. RCCL admitted that it routinely and intentionally dumped waste oil from its fleet of cruise ships into the seas. RCCL pled guilty to charges that it deliberately dumped many other types of pollutants (including chemicals from photo processing equipment, dry-cleaning shops, and printing presses), presented materially false statements about its discharges to the United States Coast Guard, and deliberately stored waste from its ships without the necessary RCRA permit. In addition to the record penalty, RCCL agreed to operate for the next five years under a court-supervised environmental compliance plan. The twenty-one new charges follow a guilty plea by RCCL in June 1998 for similar environmental crimes in Miami and San Juan that resulted in a \$9 million fine.

CFC Initiative: Following a ban on the importation of certain chlorofluorocarbons (CFCs) used principally in car air conditioners, a black market in illegally imported CFCs

developed in the United States. The Division, with the cooperation of United States Attorney's Offices, EPA, the United States Customs Service, the Federal Bureau of Investigation (FBI), and the Internal Revenue Service (IRS), launched a wholesale attack on the smuggling of CFCs in 1996. So far, the CFC Initiative has been extremely successful. As of September 1999, there have been over eighty convictions, with criminal sentences resulting in more than fifty-one years of incarceration, nearly \$34 million in fines, and \$30 million in restitution.

Mississippi River Initiative: In September 1998 in St. Louis, the Attorney General brought national attention to the need to stop pollution of the Mississippi River Basin. As part of this effort, known as the Mississippi River Basin Initiative, the Division prosecuted Mid-South Terminal Co. for discharging significant quantities of scrap metal into the Mississippi River while conducting barge-loading operations at its facility in Memphis. In February 1999, Mid-South pled guilty to the negligent discharge of pollutants without a permit in violation of the Clean Water Act and was ordered to pay a fine of \$200,000 and to perform community service, including enlisting neighboring businesses to conduct periodic cleanup activities in this heavily polluted area. Part of the fine was suspended based on remedial action involving the removal of the scrap from the river bed and cleaning up the banks of the river at all Mid-South facilities.

Update on Reptile Trafficking Prosecutions – Operation Chameleon and Beyond: Division prosecutors spearheaded the prosecution of several international live reptile smuggling rings. Reptiles, including

tortoises, turtles, snakes, and lizards from Africa, Asia, and South America, are in demand by herpetologists, and international smuggling rings track circuitous routes around the globe to supply world markets with such animals, part of a \$6 billion yearly black market in live animals and animal products.

In the fall of 1997, a federal grand jury returned an indictment charging six members of a smuggling ring, including Tommy Crutchfield, owner of Tom Crutchfield's Reptile Enterprises, Inc., and formerly one of the country's largest commercial reptile dealers, with smuggling endangered Madagascan tree boas, tortoises, and turtles into the United States. Crutchfield and his wife Penny fled to Belize, but he was forced to return here to face conspiracy, smuggling, money laundering, and Lacey Act wildlife charges. He pled guilty to seven felonies and was sentenced in April 1999 to thirty months imprisonment and 150 hours of community service. Penny Crutchfield later surrendered to federal authorities, pled guilty to a felony count, and was sentenced to five years probation, including six months of electronically monitored home detention and 150 hours of community service. She was barred from associating with those engaged in commercial animal trade while on probation. In a related case, Florida resident Matthew Lerer, who pled guilty to counts for conspiracy and a violation of the Endangered Species Act, was sentenced recently to four months of home detention, three years probation, and 100 hours of community service.

Another federal jury in Florida returned guilty verdicts against Dwayne Cunningham and Robert Lawracy for conspiring to traffic in West Indies reptiles. While employed on

cruise ships operating in the West Indies, Cunningham and Lawracy collected some of the world's rarest lizards, such as the Anageda (British Virgin Islands) Island Rock Iguana, and smuggled them aboard the cruise ship for sale in the United States. The two men await sentencing.

Earl Thomas Schultz, Curator of Reptiles and Amphibians at the San Diego Zoo, pled guilty to two felony charges for wire fraud and theft or bribery involving programs receiving federal funds. Schultz schemed to defraud the zoo and to convert up to \$120,000 of its property by selling zoo animals to commercial reptile dealers or private collectors, by inflating the cost of acquiring antivenom for the zoo, and by submitting fraudulent expense reports. Schultz is awaiting sentencing.

Coral Smuggler Convicted: The world's threatened coral reefs are the "tropical rain forests" of the oceans and trafficking in protected corals harms the other species dependent upon them. In the first conviction of its kind and appropriately occurring during "The Year of the Ocean," a federal jury convicted a smuggler and his company on three felony counts for smuggling exotic, protected corals from the Philippines into the United States. The defendants in United States v. Petros "Pete" Leventis and Greek Island Imports smuggled in enough coral to fill a forty-foot shipping container. The smuggler and his company await sentencing.

PRESERVING OUR NATURAL RESOURCES AND PUBLIC LANDS

Preserving and Restoring Ecosystems and the Public Lands

Landmark Settlement Protects Headwaters Ecosystem in California: In Pacific Lumber v. United States, the United States and the State of California achieved a landmark agreement with Maxxam Corporation that will result in the permanent protection (through public ownership) of the world's largest privately held old growth redwood grove in the "Headwaters" forest area of Northern California. Under this agreement, the habitat of the marbled murrelet and other species will be preserved by the direct federal-state purchase of about 7,500 acres of old-growth forest and by the institution of demanding environmental harvest protections on Pacific Lumber's remaining 210,000 acres of mixed age redwood forest for the next fifty years. This has been described as the most complex negotiated public land transaction this century. The agreement also resulted in the dismissal with prejudice of a landmark claim for a taking (claimed to amount to as much as \$1 billion) based on application of the Endangered Species Act. Secretary of the Interior Bruce Babbitt has likened the results of this \$380 million transaction to the addition of another Yosemite National Park to public ownership.

Continued Defense of the President's Northwest Forest Plan: In Oregon Natural Resources Council v. Forest Service, the Division established the principle that the federal land managers had the discretion to

determine the appropriate administrative level to address new information in implementation of the Plan. Plaintiffs sought to require the agencies to continually revise the entire Plan, a holding which would have fiscally crippled its implementation. We have continued with innovative approaches to compliance with the Court's finding that the agencies had erred in their implementation of the Plan's requirement to survey for old-growth dependent species, and have placed the matter in alternate dispute resolution engaging the environmental plaintiffs, the timber industry and the federal agencies, the first time this process has been utilized in the long history of Northwest Old-Growth litigation.

Everglades Restoration Program Upheld: We successfully defended a challenge to the public purchase of Everglades agricultural land for ecosystem restoration purposes. The 50,000 acre purchase of the Talisman sugar property has been described by Interior Secretary Babbitt as "a conservation legacy to future generations."

The Division further contributed to the protection of the Everglades' unique ecosystem by working to acquire numerous tracts of land to expand Everglades National Park and Big Cypress National Preserve. We are working closely with our client agencies, the United States Attorney's Offices, and with the courts to handle the extraordinary volume of cases that will be associated with these projects.

Colorado Wilderness Study Area Protected from Degradation: We negotiated a resolution to longstanding issues concerning mining claims within the Westwater Canyon Wilderness Study Area in Colorado. The

Westwater Canyon lies along a stretch of the Colorado River that is a candidate for federal wild and scenic river designation. The Canyon supports significant whitewater recreation as well as bighorn sheep, peregrine falcons and endangered fish. As part of the settlement, the defendant mining claimant removed all of his equipment from the site and, along with his co-claimants, quit-claimed his interest in the unpatented mining claims to the United States.

Compensation Obtained for Suppressing Fire in San Bernardino National Forest: The Division negotiated one of the largest settlements ever for fire suppression costs. In the settlement, the Southern California Edison Company agreed to pay \$950,000 for damages resulting from the "Cabazon" fire on the San Bernardino National Forest, which burned for twelve days, consuming over 20,861 acres of Forest Service property.

Interim Management Plan for Bison in Greater Yellowstone Area Upheld: In consolidated cases, the court upheld the implementation of the Interim Management Plan for Yellowstone Bison. The Plan is part of an ongoing, cooperative effort among the State of Montana and three federal agencies to manage bison in the Greater Yellowstone Area. The management of the bison is complicated by the dual goals of allowing the bison herd to be wild and free-ranging but also protecting Montana cattle from the potential transmission of brucellosis from the bison.

Forced Transfer of Mojave Desert Land for Radioactive Waste Facility Stopped: The State of California sought to compel the United States to convey federal

land in the Mojave Desert for use as a low-level radioactive waste facility. The proposed site is managed by the Bureau of Land Management (BLM) within the Department of the Interior. The district court held that the Department of the Interior acted properly in deciding that the proposed land transfer required additional environmental analysis.

Lake Tahoe Land Exchange Defended: We successfully defended a land exchange between a private developer and the BLM to protect environmentally sensitive lands in Nevada. Through this exchange, the United States acquired: 1) outstanding lands above and along the shoreline of Lake Tahoe to help preserve and enhance public enjoyment of the lake, 2) lands and water rights to protect critical wetlands east of Reno, and 3) lands comprising habitat for endangered species, all at minimal cost to taxpayers.

Protecting Wildlife and Its Habitat

Conserving Endangered and Protected Species in the Medicine Bow National Forest: The Endangered Species Act's requirement that federal agencies use their authorities to conserve listed species has increasingly been viewed as fertile ground for expansive lawsuits. The Coalition for Sustainable Resources, a group of ranchers and other water users, filed suit challenging the Forest Service's management of the Medicine Bow National Forest in Wyoming, roughly sixty-five percent of which drains into the Platte River Basin. The Platte River is subject to over-appropriation, and water shortages during critical times of the year have contributed to the endangerment of threatened and endangered species, including the whooping crane, the

pallid sturgeon, the interior population of the least tern, and the piping plover. In a ruling that set clear limits on this obligation, the District Court in Wyoming held that federal agencies may choose among available conservation options to protect those species.

Conservation Agreements and Listing Decisions: With increasing frequency, the Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) have made decisions not to list species because state or other entities have entered into agreements to conserve the species. Some of these agreements have been negotiated after the Service has commenced a listing review, and courts have been skeptical of decisions not to list in such circumstances. In one case, the FWS withdrew a proposed rule to list the flat-tailed horned lizard as a threatened species. Plaintiffs asserted that the FWS arbitrarily failed to use the best available data and improperly relied on a recently signed Conservation Agreement between federal and state agencies. The Court held that the decision to withdraw the proposed rule was proper because: 1) the best available data did not indicate that the species was in decline throughout all or part of its range; 2) many of the threats to the species identified in the proposed rule had been reduced or eliminated; and 3) the Conservation Agreement will help ensure that viable populations of the lizard continue to exist on public lands in California and Arizona.

Umpqua River Cutthroat Trout: In a challenge to the National Marine Fisheries Service's decision to list the Umpqua River cutthroat trout as an endangered species, the district court found that NMFS had properly sought the best available scientific data,

considered the relevant factors in making its determination, and articulated a rational connection between the facts found and the choice made.

Delhi Sands Flower-Loving Fly: We obtained a preliminary injunction in May 1999 against industrial development at a site in southern California because the developer had not submitted a Section 10 Habitat Conservation Plan or obtained an incidental take permit for the endangered Delhi Sands Flower-Loving Fly, in violation of the Endangered Species Act. The proposed digging and grading at the site would likely have killed Fly larvae that live just under the ground for most of their lives. The case was resolved by the developer's agreement to implement a Habitat Conservation Plan that permitted some development, along with the creation of a Fly conservation area.

Bald and Golden Eagle Protection Act and Religious Freedom: In a case involving the interplay between Native American Indian rights and protection of bald eagle feathers, the District Court upheld the Government's denial of a request for eagle feathers made by an individual who claimed to be of American Indian descent but who was not a member of a federally recognized Indian tribe. The plaintiff raised claims under the First Amendment, the Religious Freedom Restoration Act, and the Administrative Procedure Act. The Bald and Golden Eagle Protection Act authorizes the Secretary of the Interior to permit possession of bald and golden eagle feathers "for the religious purposes of Indian tribes," and the Department of the Interior's policy is to provide such feathers and permits only to members of federally recognized tribes.

The court held that the government had met its burden of demonstrating legitimate and compelling interests, including the preservation of Native American religions and the obligation of the United States to fulfill treaty commitments to federally recognized Indian tribes.

Protecting Eagles and Migratory Birds from Electrocution: An electrical distribution cooperative in Colorado and Utah did not install equipment to prevent the death by electrocution of golden eagles, hawks, and owls when those birds perched on power transmission poles. The cooperative pled guilty to charges of violating the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act, was ordered to pay a fine of \$50,000 and restitution of \$50,000, and was placed on probation for three years, during which time the company must implement a comprehensive "avian protection plan" aimed at preventing future electrocutions on its power lines in Utah and Colorado.

Safeguarding Water Resources

Important Principles Established for Water Rights on Public Lands: We avoided potential future litigation over alleged takings of private property as an outgrowth of water rights decreed on Forest Service and BLM lands in Colorado by negotiating a stipulation that allows a mining company to acquire a conditional water right. In return, the company explicitly acknowledged that the exercise of the agencies' permitting authorities -- including the imposition of terms and conditions or the outright denial of requests to use the public lands necessary to perfect these conditional water rights -- will not be construed to be a taking of the decreed water rights. The

stipulation is being used as a model for attempts to resolve other water rights litigation in Colorado involving applications for water rights on public lands.

Yakima Basin Reclamation Water Rights Confirmed: We secured 22,000 acre-feet of unused water in a federal reclamation project in Washington for potential future irrigation use. The court found that federal reclamation water that is not put to beneficial use by a district reverts to the federal project, not to the State, for use by the United States for all appropriate project uses.

Operation of Major Reclamation Project Upheld: We successfully defended a groundwater user's challenge to the San Luis Valley Project on the Rio Grande River in Colorado. The groundwater user, an entity promoting a large private water development, challenged the operation of the Bureau of Reclamation's Project, seeking injunctive relief that would have crippled the Project's ability to meet its purposes and caused significant impacts to numerous water users in the basin.

PROTECTING INDIAN RIGHTS AND RESOLVING INDIAN ISSUES

Protection of Tribal Resources: The Division collected over one million dollars for damages to Indian lands resulting from forest fires. The monies collected were paid to the Confederated Salish and Kootenai Tribes of the Flathead Reservation and their members in Montana.

Native Water Rights Victories: The Division successfully defended the Jicarilla Apache Tribe's water rights settlement from litigation challenges in the San Juan River adjudication in New Mexico. The settlement, which had been negotiated with the State, the Tribe, and the United States, and ratified by Congress, was attacked by a coalition of non-Indian water users. The successful defense of the settlement satisfies the last condition for full implementation of this settlement, which secures substantial water rights for the Tribe.

The Ninth Circuit Court of Appeals also affirmed the right of the Interior Department's Bureau of Reclamation to operate its dams and projects to insure that water is available at crucial times to meet the biological needs of resident and anadromous fish populations, to which the Klamath Basin Tribes have fishing rights.

Protecting Hunting and Fishing Rights: In litigation between the State of Minnesota and the Mille Lacs Band of Indians, the Supreme Court held that the Mille Lacs and other Chippewa bands retain treaty rights to

hunt, fish, and gather free of state regulation on off-reservation lands in Minnesota, based on an 1837 treaty. In that treaty, the bands ceded timberlands in Minnesota and Wisconsin to the United States but were guaranteed the right to continue hunting, fishing, and gathering wild rice on the ceded lands "during the pleasure of the President." The Court rejected arguments that subsequent Executive Orders and treaties terminated these hunting and fishing privileges. The Division had intervened to vindicate the federally protected rights of the tribe and was successful in the District Court, the Court of Appeals, and the Supreme Court.

Upholding Tribal Sovereignty: In a precedent-setting decision breaking from prior rulings, the Alaska Supreme Court reversed the decision of a lower court, which had refused to recognize a tribal court child custody order. For the first time, that Court recognized the sovereign status of an Alaska Native Village and held that tribal courts in Alaska have the power to exercise jurisdiction (concurrent with the state courts) over domestic relations cases (including child custody disputes) involving tribal members. It held, further, that state courts should enforce and extend deference to tribal court judgments under general principles of comity between sovereigns. We participated in briefing and argument as a "friend of the court."

Resolving Indian Claims against the United States: The Division and the Minnesota Chippewa Tribe settled a case filed more than 50 years ago by the Tribe under the Indian Claims Commission Act. In Minnesota Chippewa Tribe v. United States, the Tribe sought compensation for Government actions under the Nelson Act, a statute that directed

the United States to sell the Tribe's lands and other assets to establish a fund to be managed for tribal purposes. The United States' implementation of the Nelson Act caused the Tribe to lose ownership of its lands and natural resources. The Tribe's longstanding opposition to this action, together with the complexities of valuation, made this one of the most challenging of the Indian Claims cases to resolve. The compromise reached by the government and the Tribe -- a payment to the Tribe of \$20 million -- finally resolved this highly complex and emotionally charged lawsuit.

The United States and the Menominee Tribe also negotiated a settlement that fully resolves the Tribe's longstanding claim for compensation for damages incurred as a result of the Government's now widely repudiated termination policy of the 1950s. Under that policy, the Government had required the Tribe in short order to take over a broad range of governmental responsibilities without adequate preparation. The suit, first filed in the 1960s, was dismissed by the Court of Federal Claims as barred by the statute of limitations, but later was revived legislatively by Congress. The \$32 million dollar settlement, which resolved claims for more than a dozen discrete injuries, required implementing legislation that Congress enacted earlier this year.

Indian Gaming Enforcement

Initiatives Successful: Over the last year, the Division has worked closely with the Criminal Division and the United States Attorney's Offices to enforce Indian gaming laws in California and Washington. In California, working with the Criminal Division and the four California United States Attorney's offices, we pressed forward with more than thirty

enforcement actions aimed at illegal Indian gaming there. In the face of those actions, fifty-eight California Indian tribes have now entered into provisional gaming compacts with California, thereby paving the way for California to regulate these high-stakes gaming operations while at the same time affording those tribes the opportunity to proceed with gaming operations. The gaming compacts also provide for payment of \$1.1 million per year to fifty-five non-gaming Tribes, many of which are poor and unable to benefit from Indian gaming due to reservation location.

In the State of Washington, we worked with the Criminal Division and the two State of Washington United States Attorney's Offices and won enforcement actions in federal district court against three Washington State tribes which are running illegal gaming operations in that state without state compacts. The victories for the United States in district court have prompted thirteen other tribes to enter into compacts with the State of Washington, thereby enabling the State to regulate the gaming of those tribes, while at the same time opening the way for the tribes to maintain legally sanctioned gaming operations within the State.

DEFENDING ENVIRONMENTAL PROGRAMS AND PROTECTIONS

Defending the Public's "Right to Know": We continued our successful defense of the public's "right to know" by defeating a challenge to EPA's expansion of the universe of facilities required to report toxic releases to the environment. In a case brought by the electric utility industry, the district court upheld EPA's decision to require the industry to report toxic releases. Most significantly, the Court agreed that EPA has the authority to expand the list of facilities required to report toxic releases, based on the statute's intent to inform persons about releases of toxic chemicals to the environment.

In addition, the Third Circuit Court of Appeals ruled that EPA has broad discretion to list toxic chemicals on the Toxic Release Inventory (TRI), a public information mechanism established by the Emergency Planning and Community Right-to-Know Act (EPCRA). Listing requires companies using these chemicals to report annually the amounts they release into the environment. The Fertilizer Institute challenged EPA's decision to add nitrate compounds to the TRI. EPA based its decision on the finding that nitrates can reasonably be anticipated to cause serious or irreversible chronic health effects. The appellate court held that EPA was free to exercise its discretion and expert judgment to determine whether health effects are chronic.

TMDL Program Defense: Over the past several years, a number of lawsuits have

been filed alleging that the Clean Water Act requires EPA to issue "total maximum daily loads," or TMDLs, on behalf of states that have not done so. TMDLs provide a limit on the amount of pollutants that can be added to water bodies so that water quality standards for those waters are not exceeded. We achieved a settlement in which the State of Colorado agreed to a ten-year schedule for developing TMDLs for certain waters, and EPA agreed to establish TMDLs on behalf of the State if Colorado did not meet the schedule. In South Dakota, EPA agreed to use its best efforts to obtain funding for a water quality study by the Oglala Sioux Tribe, one of the plaintiffs, and to establish TMDLs in a particular set of waters if South Dakota was unable to do so. The two settlements upheld the principle that the states have the primary responsibility for assuring water quality, while recognizing that EPA will step in if necessary to fulfill its role under the Clean Water Act.

Clean Water Act Permit Program Defended: We successfully defended EPA's Clean Water Act permitting activity on a number of fronts. For example, in one case the D.C. Circuit held that EPA had reasonably interpreted the Act to preclude collateral challenges to state-issued CWA permits in federal enforcement actions. The Court ruled that state permits may only be challenged in the appropriate state forum, thus upholding Congress's expectation that federal enforcement proceedings under the CWA would be straightforward and speedy. In another case, the Fifth Circuit approved EPA's effluent limitation guidelines for coastal oil and gas production, affirming EPA's "zero discharge" limits for produced water and produced sand from coastal oil and gas wells.

the Gulf of Mexico. In a third case, the Ninth Circuit affirmed municipal storm water CWA permits that EPA had issued to cities in Arizona. The Court's opinion approved EPA's approach of addressing municipal stormwater discharges through imposition of best management practices, rather than by setting numerical limitations on the amounts of pollutants that could be discharged in storm run-off.

Takings Claims Based on Federal Protection of Wetlands and Endangered Species Rejected: In Forest Properties v. United States and Good v. United States, we obtained favorable decisions from the Federal Circuit holding that the Corps of Engineers did not take private property when it imposed conditions on development projects to protect the wetland habitat of endangered species. The decision in Forest Properties protected key wintering habitat for bald eagles in Big Bear Lake in California. The decision in Good established the legal precedent that a developer who purchases property knowing it will be subject to environmental regulation cannot reasonably expect to develop property without regard to impacts on the environment. These favorable opinions will support similar federal actions to protect wetlands and endangered species in other cases.

A district court in Michigan also rejected a claim that a "temporary taking" occurred when the Corps of Engineers denied applications for a permit to fill wetlands for residential development. In an opinion that will assist greatly in resolving and defending other wetlands taking cases, the Court noted that plaintiffs seeking to establish a temporary taking must show both "extraordinary delay" in the

permitting process and deprivation of all economically viable use of the property in the meantime.

Regulation of Polluting Mining Operations Not a Taking: The Court of Federal Claims held that the Department of the Interior's Office of Surface Mining did not "take" private property when it prohibited a proposed mining operation that would have polluted state waters. The Court found the agency's exercise of regulatory authority indistinguishable in purpose and result from that to which the plaintiff was always subject under Tennessee nuisance law. Because the plaintiff's mining operation would constitute an enjoined nuisance under state law, the Court concluded that no compensable taking occurred.

No Compensation Due for EPA Well Installation at Stringfellow Superfund Site: The Federal Circuit affirmed a Court of Federal Claims decision that no compensation was due to landowners for EPA's installation of twenty monitoring wells on the plaintiff's property adjacent to the Stringfellow Acid Pits Superfund site in California. The Federal Circuit held that the monitoring wells specially benefitted the property by permitting the landowners to avoid the cost of investigating the scope of the groundwater pollution, which would be a necessary step for development. This decision provides an important precedent for limiting the taxpayers' monetary exposure when EPA or other agencies must act to protect public health.

Defending Compliance with International Obligations: In a Clean Air Act case, we successfully defended EPA's decision to revise regulations establishing

baseline requirements for conventional gasoline produced by foreign refiners. EPA made the revisions to bring the regulations into compliance with an adverse decision by the World Trade Organization finding that the prior regulation discriminated against foreign refiners. The Court found EPA's interpretation of the statute reasonable, holding that nothing in the statute indicates that Congress intended to preclude EPA from considering the effects a rule might have upon the price and supply of gasoline and the treaty obligations of the United States.

Defending Tough New Clean Air Standards. Working closely with EPA, the Division mounted a vigorous defense of EPA's tough new clean air standards for ozone (smog) and particulate matter (soot). These standards are among the Administration's most important public health initiatives and will provide hundreds of millions of Americans (including millions of children and the elderly) with urgently needed additional health protection. Despite our best efforts, a divided panel from the Court of Appeals in the District of Columbia ruled against EPA, and the Court en banc allowed that decision to stand even though a majority of the en banc panel agreed with our view of the law and the legal and public health significance of the issues. We are considering what course of action to take in response to this decision.

Safeguarding Environmental Protection in the Face of Y2K Failures: In July 1999, the President signed into law the Y2K Act, which provides a national response to potential litigation that might arise from widespread computer failures as a result of the inability of some programs to process the year

2000. The law modifies both state tort and contract law as they apply to claims involving Y2K computer failures. Two potentially troubling provisions would have provided broad defenses to companies who violate environmental and other federal laws as a result of Y2K failures. The Division worked closely with the White House, EPA, and others to obtain changes to the proposed legislation that ensure that agencies can continue to enforce their regulatory programs against those who cause or threaten harm to the public or the environment.

DEFENDING OTHER VITAL FEDERAL PROGRAMS

Mississippi River Flood Control Project Successfully Defended: We successfully defended the United States Army Corps of Engineers' supplemental environmental impact statement for the Mississippi River Mainline Levee Enlargement and Berm Construction Project. This project is expected to take thirty-three years to complete and will enlarge over 260 miles of levees and berms to protect the lower Mississippi River valley from catastrophic flooding.

Forest Service Funding Practices Upheld: The use of "off budget" funds (i.e., not annually appropriated by Congress) to finance the activities of the Forest Service was litigated for the first time. The plaintiff claimed that the Forest Service was illegally using timber sale receipts to fund the general overhead expenses of the agency. We obtained a favorable decision determining that the Forest Service's practice did not constitute an illegal augmentation of appropriated funds. The decision protects significant National Forest reforestation and restoration efforts.

United States' Responsibility for International Nuclear Waste Shipments Clarified: The Division successfully resisted efforts to establish federal responsibility for an international shipment of nuclear material that the United States has no discretion to prevent. The District Court clarified that the Atomic Energy Act and the Nuclear Non-Proliferation Act do not apply to material that is "practically irrecoverable" and no longer usable for any nuclear activity. The Court also found that NEPA is not triggered by international

shipments over which the United States has no discretion, notwithstanding alleged risks such shipments may present when traversing our territorial sea or "exclusive economic zone."

Air Force's Efforts to Forestall Land Use Conflicts Held Constitutional: In Cox v. City of Wichita Falls, the District Court upheld the constitutionality of the Air Force's "Air Installation Compatible Use Zone program," under which the Air Force periodically studies flight patterns and noise levels near military air bases to assist local governments in establishing compatible land uses in areas near these bases. The Court upheld both the Compatible Use Zone for Shepherd Air Base in Wichita Falls, Texas, and the associated local zoning ordinance. This decision will provide strong support for the continued success of the Air Force's efforts to prevent land use conflicts and litigation from arising around military air bases.

FEMA Flood Control Oversight Upheld: We successfully defended a challenge by several cities in the Los Angeles Basin to municipal flood insurance requirements imposed by the Federal Emergency Management Agency as a part of the United States' efforts to rectify flood control deficiencies in the area. Among other findings, the Court rejected allegations that requiring certain cities to purchase flood insurance violated Executive Order 12898 on environmental justice.

Oklahoma Water Storage Facility Construction Upheld: We were also successful in persuading a court to dismiss a qui tam suit under Oklahoma law which alleged that the contract between the State of

Oklahoma and the Army Corps for the construction of a water storage facility, Sardis Lake, was illegal under the Oklahoma Constitution. In a related suit, we had first sued the state for money resulting from their failure to make payments under the contract. Taxpayers later sued and the contractual case was held in abeyance until the constitutional issues of the taxpayers' suit could be decided.

Safe Disposal of Chemical Weapons:

We continued our efforts to defend the federal government's program for destroying the nation's stockpile of chemical weapons. This destruction is mandated by both Congress and an international Chemical Weapons Convention. In 1999, our efforts focused upon the defense of destruction activities at the Army's Tooele, Utah, incineration facility, which houses approximately forty percent of the nation's stockpile of chemical weapons. We tried the case in Salt Lake City in June 1999. The Army, through its expert witnesses, demonstrated that the levels of dioxin that were being emitted did not pose unacceptable risks and that the facility was being operated safely.

Safe Disposal of Radioactive Waste:

We successfully defeated efforts by New Mexico and citizen groups to enjoin waste shipments to the Department of Energy's Waste Isolation Pilot Plant ("WIPP"), a radioactive waste disposal facility near Carlsbad, New Mexico. We also successfully defended EPA's rule certifying that the WIPP facility complies with the Agency's radioactive waste disposal regulations. Together, those victories paved the way for long-delayed cleanups of other DOE facilities nationwide to move forward.

Court of Federal Claims Rejects Takings Challenges Arising from Drug Seizure and Forfeiture Cases: In consolidated cases, we obtained a favorable ruling from the Court of Federal Claims dismissing takings claims arising out of FBI seizures of real estate under the Controlled Substances Act. This precedent will help deter future filings of such cases and help resolve quickly those that are filed.

Favorable Decision in Takings Litigation over Rails to Trails Program: Answering state law questions certified by the Federal Circuit, the Maryland Court of Appeals decided that an unused railroad line that had been converted to recreational trail use near Chevy Chase, Maryland, did not cause a reversion of the railroad easement back to the original property owners under Maryland law. This significant decision should help to ensure that the federal government is not required to pay unjustifiably for claims that rails-to-trails conversions have taken private property without just compensation.

New Federal Courthouse in Tucson: In this suit for the condemnation of land for the new Federal Courthouse in Tucson, Arizona, the Ninth Circuit reversed the district court's order granting the landowner a new trial and reinstated the original jury verdict, thereby saving the government \$5.9 million in acquisition costs. The original jury returned an award of \$2.5 million, an amount less than our own expert's valuation of the landowner's loss. The trial court granted a new trial, concluding that the government's rebuttal witness, a federal judge overseeing the new courthouse project who negotiated with the landowner, should not have been permitted to testify, and that the

verdict was outside the range of evidence because it was less than the value placed on the property by both parties' experts and because the jury did not award "severance damages." After a second trial in which the judge was not permitted to testify, a new jury awarded \$8.4 million. The Ninth Circuit vacated the grant of the new trial and remanded with instructions that the first verdict be reinstated, reaffirming many important condemnation legal principles.

SUPPORTING THE DIVISION'S LITIGATORS

As the largest environmental law firm in the United States, the Division supports its litigators by ensuring, in the face of serious budget constraints, that they have the information, tools and resources they need to enforce and defend the laws that protect our nation's environment and resources. This requires focusing on using new technologies, strengthening employees' professional and support skills, enhancing services and resources, and improving the Division's work environment.

In the last year, the Division upgraded its computer system to improve the utility of the system's software applications, certified that the system was Y2K compliant, and enhanced the Division's Case Management System (CMS) to improve user access and system reporting. CMS tracks the status of approximately 12,000 Division cases and is available to all employees at their desktops. The Division also developed litigation support databases of discovery documents, provided digital imaging of discovery materials, used Optical Character Recognition to render images full-text searchable, and provided document center and trial support facilities when needed. By using advanced information technology systems, we were able to significantly reduce the traditional need for contractor support personnel and document center space.

The Division also worked to strengthen employees' professional and support skills by implementing its "Support 2001" Program, which improves attorneys' and support staff's access to new technology; outsourcing copying,

faxing and case file management; and enhancing the role of support staff through training. Staff participate in 60 hours of Division-sponsored training, including classes in document and file management, document preparation and court filings, basic legal research, and case resolution and closing preparation.

In addition to training for new Legal Support Assistants, we offered paralegals various training classes to upgrade their skills; presented a management training seminar for Assistant Section Chiefs; and offered a special orientation for attorneys new to the Division. We also held the first Division-wide budget seminar this year. This training was performed at minimal cost by using in-house expertise, a growing network of reasonably priced, high-quality instructors, and no-cost government training facilities and materials. The Division also supports Department-wide training at the National Advocacy Center in Columbia, South Carolina. In the last year, it hosted six courses, two of which focused on training Assistant United States Attorneys on environmental issues.

The Division also has worked to improve the work environment by planning the relocation of all but one of the Division's nine litigating sections to the renovated Patrick Henry Building. We opened contractor-run support centers to provide filing, copying, faxing, supplies, and mail delivery services. The newly created Administrative Officer for Field Offices, stationed in Denver, coordinates administrative support for all of the Division's field locations.