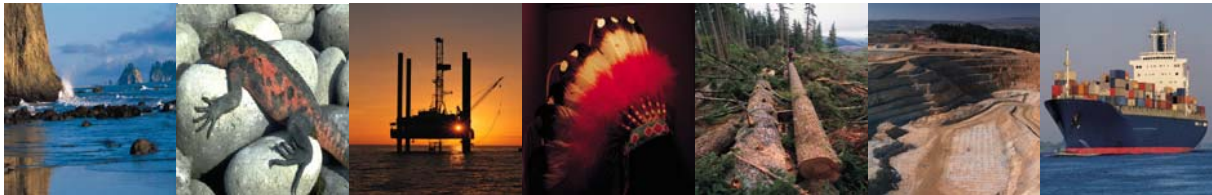


**U.S. Department of Justice**

**Environment & Natural Resources Division  
(ENRD)**



**FY 2008**

**PERFORMANCE BUDGET**

**CONGRESSIONAL SUBMISSION**

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## **I. Overview of the Environment & Natural Resources Division**

### **A. Introduction:**

*Environment and Natural Resources Division (ENRD) Mission:* ENRD's mandate is to enforce civil and criminal environmental laws and programs protecting the health and environment of the United States and to defend suits challenging those laws and programs. To accomplish this mission in FY 2008 the Division is requesting a total of \$101,396,000, including 453 General Legal Activities (GLA) funded positions, and 499 Full-Time Equivalents (FTE). ENRD seeks a total enhancement of \$3,951,000, which includes funding for 17 positions, (10 attorneys), and 9 FTE, and \$2,580,000 for automated litigation support.

The additional resources requested in ENRD's FY 2008 Budget are needed to defend the United States effectively in the "Tribal Trust" cases, a series of multi-billion-dollar lawsuits alleging the United States has breached its trust responsibilities to Indian Tribes by failing to provide "full and complete" historical accountings of tribal trust funds and non-monetary trust resources, failing to properly administer tribal accounts that receive revenues from economic activity on Tribal lands, and failing to manage properly tribal non-monetary trust resources, such as timber, gas, oil, and other minerals. The United States has been sued in approximately 104 cases filed by more than 80 Tribes in various United States District Courts and in the United States Court of Federal Claims. Two of the cases feature requests to certify classes of over 250 Tribal plaintiffs. If such requests are granted, the United States will have been sued by more than 300 Tribes. In the 104 presently filed cases, the Tribes claim that they are owed damages exceeding \$220 billion. Many of the currently filed cases are moving into the more demanding stages of litigation (formal discovery, depositions, trial) or alternative dispute resolution (ADR) processes, presenting new challenges which require additional resources that ENRD does not currently have.

More details appear on page 6, Summary of Program Changes Section, and page 29, Program Increases by Item Section, contained in this submission.

Beginning in FY 2007, electronic copies of the Department of Justice's congressional budget justifications and Capital Asset Plan and Business Case exhibits can be viewed or downloaded from the Internet using the Internet address: <http://www.usdoj.gov/jmd/2008justification/>.

#### **ENRDetails -- Did You Know ...**

The Environment and Natural Resources Division was created on November 16, 1909, when Attorney General George Wickersham signed a two-page order creating "The Public Lands Division" of the U.S. 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. As the nation grew and developed, so did the responsibilities of the Division, which was subsequently renamed three times. In 1933, the Division was called the "Lands Division;" in 1965 the Division's name was changed to the "Land and Natural Resources Division;" and in 1990 the Division acquired its current name, the "Environment and Natural Resources Division."

## **B. Issues, Outcomes, and Strategies:**

As the Nation's chief environmental litigator, ENRD supports the Justice Department's Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People, and Strategic Objective 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.

The Division initiates and pursues legal action to enforce federal pollution abatement laws and obtain compliance with environmental protection and conservation statutes. ENRD also represents the United States in all matters concerning protection, use, and development of the nation's natural resources and public lands. The Division defends suits challenging all of the foregoing laws, and fulfills the federal government's responsibility to litigate on behalf of Indian tribes and individual Indians. ENRD's legal successes protect the federal fisc, reduce harmful discharges into the air, water, and land, enable clean-up of contaminated waste sites, and ensure proper disposal of solid and hazardous waste.

In affirmative litigation, ENRD obtains redress for past violations harming the environment, ensures that violators of criminal statutes are appropriately punished, establishes credible deterrents against future violations of these laws, recoups federal funds spent to abate environmental contamination, and obtains money to restore or replace natural resources damaged by oil spills or the release of other hazardous substances into the environment. ENRD also ensures that the federal government receives appropriate royalties and income from activities on public lands and waters.



ENRD supports the Justice Department's Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People.

By vigorously prosecuting environmental criminals, ENRD spurs improvements in industry practice and greater environmental compliance. Additionally, the Division obtains civil penalties and fines against violators, thereby removing the economic benefits of non-compliance and leveling the playing field so that companies complying with environmental laws do not suffer competitive disadvantages.

In defensive litigation, ENRD represents the United States in challenges to federal environmental and conservation programs and all matters concerning the protection, use, and development of the Nation's public lands and natural resources. ENRD faces a growing workload in a wide variety of natural resource areas, including litigation over water quality and watersheds, the management of public lands and natural resources, endangered species and sensitive habitats, and land acquisition and exchanges. The Division is increasingly called upon to defend Department of Defense training and operations necessary to military readiness and national defense.

Additionally, as referenced throughout our FY 2008 Budget, ENRD continues to defend the federal government in lawsuits alleging the United States has breached its trust responsibilities to Indian Tribes by failing to provide "full and complete" historical accountings of tribal trust funds and non-monetary trust resources, failing to administer properly tribal accounts that receive revenues from economic activity on Tribal lands, and failing to manage properly tribal non-

monetary trust resources. As a result of a statute of limitations which expired December 31, 2006, ENRD has recently received a number of new case filings. Approximately 86 of the 104 current cases were filed after November 2005 (some 72 cases were filed in the last week of December 2006 alone). Two of the cases feature requests to certify classes of over 250 Tribal plaintiffs. If such requests are granted, the United States will have been sued by more than 300 Tribes. To date, we have settled two Tribal Trust cases. ENRD is engaged in formal alternative dispute resolution (ADR) processes or informal settlement discussions with the Tribes in 13 other cases. ENRD is actively litigating approximately twenty of the Tribal Trust cases; and we are only beginning to review the claims and understand the issues involved in the 72 additional cases which were filed the last week in December 2006 (before the expiration of the statute of limitation requiring the filing of such cases). For these Tribal Trust cases, regardless of litigation posture, the Division is obligated to identify, locate, review, scan, manage, and produce approximately 150 million pages of documents relevant to Tribal Trust fund accounts, resources, and assets. Consequently, we expect the Tribal Trust litigation to continue indefinitely.

### **C. Full Program Costs:**

The Division is one single Decision Unit. Its operations include both criminal and civil litigating activities directly related to the strategic goals and objectives of the Department of Justice. The methodology used to allocate expenses is based on the percentage of hours worked on criminal and civil cases. These percentages are then used to allocate the expenses of the Division into the two areas of criminal and civil litigating activities. These two areas of execution correlate directly to Strategic Objective 2.5 under the Departmental Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People.

#### **ENRDetails -- *Did You Know ...***

The Environment and Natural Resources Division litigated the case involving the largest fine ever obtained by the federal government, environmental or otherwise. That case was the suit brought against Exxon following the Exxon Valdez oil spill off the coast of Alaska in 1989, and the fine was \$1.1 billion. On March 24, 1989, the Exxon Valdez tanker hit Prince William Sound's Bligh Reef and spilled an estimated 11 to 30 million U.S. gallons of crude oil into the sea. As a result of the spill, thousands of animals perished immediately, including an estimated 250,000 sea birds, 2,800 sea otters, 300 harbor seals, 250 bald eagles, 22 orcas, and millions of salmon and herring eggs. The disaster prompted the U.S. Congress to pass the Oil Pollution Act in 1990 to address issues associated with preventing, responding to, and paying for oil pollution.

### **D. Performance Challenges:**

#### **External Challenges**

The Division has limited control over the filing of defensive cases, which make up the majority of our workload. Court schedules and deadlines drive the pace of work and attorney time devoted to these cases. ENRD's defensive caseload is expected to increase in FY 2008 as a result of numerous factors.

- ENRD expects a number of challenges to the simplified energy development and permitting provisions of the 2005 Energy Policy Act. Based on ENRD's past experience – in the 1970s and 1980s, the Interior Department conducted offshore oil and gas lease sales in nearly all coastal regions of the continental U.S. and in Alaska – we realize that sizeable, energized leasing programs result in sizeable increases in case-work.
- The Division's defensive caseload involving the Tribal Trust litigation is also expected to increase substantially, with the filing of 72 new cases during the last week of December 2006. Currently, ENRD has 104 filed Tribal Trust cases on its docket.
- Additionally, beginning in FY 2007, Indian and other federal water rights adjudications currently stayed for settlement negotiations are expected to resume.

The Division also will be responsible for handling cases that arise from the Administration's focus in other environment arenas, such as white collar environmental crimes. Prosecution of white collar crimes and corporate fraud is one of the Attorney General's six stated priorities; and casework involving the prosecution of corporations and corporate executives may impose a greater-than-expected workload demand on the Environment Division in FY 2008 and beyond. ENRD has realized a number of legal victories in the area of white collar environmental crimes in FY 2005 and 2006 (described in the Accomplishments section of this Performance Budget), and we do not foresee any retreat in investigative and litigative activity in the immediate future. Although we expect to be faced with an increased workload in the area of white collar criminal litigation, we are not seeking a program enhancement in this area for FY 2008 because we believe offsetting resource demands will allow us to accommodate prospective needs from our base.

Absent the additional resources requested in this submission, the Division will be required to reassign resources from other critical activities to accommodate the increased defensive caseload. The Environment Division has already implemented creative strategies to accomplish more work within existing resources, including a program to cross-train attorneys across specialty areas to enable managers to shift workloads. Although these strategies have helped to address immediate needs, the solution is best viewed as a temporary fix. Another option - shifting resources from enforcement to defensive work - can lead to disregard for the law in general, putting public health and safety, as well as the nation's infrastructure and natural resources, at risk, creating a false perception that the Administration is not interested in enforcing environmental laws.



New cases challenging the Energy Policy Act of 2005 are included among the external challenges ENRD will encounter in FY 2008.

### **Internal Challenges**

ENRD's overwhelming internal challenge is to ensure sufficient attorney FTEs and dollars to carry out the increasing demands of our defensive workload. The \$3,951,000 requested in FY 2008 for the Tribal Trust program area addresses this challenge. However, ENRD will continue to address these challenges by balancing available personnel and resources against workload demands.

Another challenge involves maintaining adequate information technology resources for our workforce. Like other litigating components, ENRD must provide computer resources for our attorneys which meet the changing, increasingly technological, demands of the legal industry. With the introduction of new technologies and new requirements – such as e-filing, on-line document repositories, electronic trials, extranet docketing systems, and the newly imposed (December 2006) “electronic discovery” amendments to the Federal Rules of Civil Procedure – we need to continually provide our workforce with the necessary computer hardware and systems to accommodate these business process challenges.

We have identified a number of software and system challenges which will confront ENRD in FY 2008. For example, implementation of the Department’s Litigation Case Management System (LCMS) will be an expensive and time-consuming effort in the upcoming fiscal years. ENRD predicts that it may spend up to \$450,000 in base resources in FY 2008 to implement this required system. The Division will complete its business process assessment and common data model planning by FY 2007. In FY 2008, we will begin mapping data, prioritizing reports, building conversion tools, migrating data, and cleaning up conversion/migration discrepancies. This sizeable endeavor will require the effort and attention of existing government employees as well as the specialized expertise and supplemental labor of industry consultants and/or contractor resources.

With the requested resources for Tribal Trust in FY 2008, ENRD believes it can accommodate its foreseeable internal and external challenges. Without additional resources, the Division will be poorly positioned to defend federal financial interests in the Tribal Trust litigation as well as in other important program areas.

**ENRDetails -- *Did You Know ...***

The Environment and Natural Resources Division, which is organized into nine sections, has offices and/or personnel located in Washington, D.C., Anchorage, Denver, Sacramento, San Francisco, Seattle, Boston, Albuquerque, Boise, Missoula, MT, Concord, NH, Newton, MA, and Sequim, WA. With a staff of nearly 700 federal employees, ENRD has more than 5,700 active cases, and has represented virtually every federal agency in courts all over the United States and its territories and possessions.

**E. Program Assessment Rating Tool:**

During FY 2005, the Division was assessed through the Office of Management and Budget’s (OMB) Program Assessment Rating Tool (PART) along with five other litigating components (Antitrust, Civil Division, Criminal Division, Civil Rights Division, and Tax Division), collectively named the General Legal Activities (GLA) Program. At the end of the assessment, the GLA Program received the highest rating of “Effective.” In FY 2006, the Program initiated follow-up actions focusing on continual improvement of business practices. More details appear on page 38, Performance, Resources, and Strategies Section, contained in this submission.

## II. Summary of Program Changes

### Tribal Trust

The Division requests additional resources to defend the United States adequately against claims that the Government has failed to provide a “full and complete” historical accounting of trust funds that it collected, managed, and disbursed, and of the trust resources that it administered, on behalf of the Tribes, and that the Government has mismanaged the Tribes’ trust funds and non-monetary trust resources, such as timber, gas, oil, and other minerals. Litigation efforts for this initiative are directly linked with the Department’s Strategic Goal Two, Objective 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction. Therefore, the Division requests an increase of \$3,951,000 as indicated below:

Strategic Goal	Item	Pos.	Attorney	FTE	Personnel	Litigation Support	Total Request
2.5	Tribal Trust	17	10	9	\$1,370,584	\$2,580,416	\$3,951,000

The Tribal Trust cases are factually and legally complicated cases and, accordingly, have required substantial resources over the past several years. We expect case-relevant events in FY 2008 to be highly demanding, especially as these cases will be more mature and active. As a result of a statute of limitations which expired December 31, 2006, ENRD has recently received a number of new case filings. Approximately 86 of the 104 current cases were filed after November 2005 (some 72 cases were filed in the last week of December 2006 alone). Two of the cases feature requests to certify classes of over 250 Tribal plaintiffs. If such requests are granted, the United States will have been sued by more than 300 Tribes. To date, we have settled two Tribal Trust cases. ENRD is engaged in formal alternative dispute resolution (ADR) processes or informal settlement discussions with the Tribes in 13 other cases. ENRD is actively litigating approximately twenty of the Tribal Trust cases; and we are only beginning to review the claims and understand the issues involved in the 72 additional cases which were filed the last week in December 2006. It is not unreasonable to expect virtually all of the filed Tribal Trust cases to be in full-blown litigation by FY 2008. Among other things, the Division is obligated to identify, locate, review, scan, manage, and produce potentially hundreds of million pages of documents relevant to Tribal Trust fund accounts, resources, and assets in the Tribal trust litigation, regardless of the litigation posture or context.

ENRD expects that its Tribal Trust-related workload will, at a minimum, double between now and FY 2008. To accommodate this increased caseload, ENRD requests 10 attorneys, five paralegals, and two support staff. We believe this mix of staffing will most efficiently address both the volume and the nature of the pending workload.

Additional facts and information regarding the Tribal Trust Initiative are included on page 29 in the Program Increases by Item Section contained in this submission.



## IV. Decision Unit Justification

### A. Environment and Natural Resources Division

<i>FY 2008 Request Summary</i>	<b>Perm. Pos.</b>	<b>FTE</b>	<b>Amount (\$000)</b>
2006 Enacted with Rescissions and Supplementals	439	493	92,774
2007 Estimate	436	490	91,408
Adjustments to Base and Technical Adjustments	-	-	6,037
2008 Current Services	436	490	97,445
2008 Program Increases	17	9	3,951
2008 Request	453	499	101,396
<b>Total Change 2007-2008</b>	<b>17</b>	<b>9</b>	<b>\$ 9,988</b>

#### 1. Program Description

As stated in the Department of Justice Strategic Plan, ENRD works to:

- Investigate and prosecute environmental and wildlife crimes;
- Pursue cases against those who violate laws that protect public health, the environment, and natural resources;
- Defend U.S. interests against suits challenging statutes and agency actions;
- Develop constructive partnerships with other federal agencies, state and local governments, and interested parties to maximize environmental compliance and stewardship of natural resources;
- Act in accordance with United States trust responsibilities to Indian tribes and individual Indians in litigation involving the interests of Indians.

The Division focuses on both civil and criminal litigation regarding the defense and enforcement of environmental laws and regulations. The Division serves as the nation's environmental litigator and represents many federal agencies in environmental litigation (e.g., the Environmental Protection Agency, Department of Agriculture, Department of the Interior, Department of Defense, and Department of Homeland Security.)

As the nation's chief environmental litigator, ENRD strives to obtain compliance with environmental and conservation statutes. To this end, we seek to obtain redress of past violations that harmed the environment, establish credible deterrence against future violations of these laws, recoup federal funds spent to abate environmental contamination, and obtain money to restore or replace natural resources damaged through oil spills or the release of other hazardous substances. The Division ensures illegal emissions are eliminated, leaks and hazardous wastes are cleaned up, and drinking water is safe. Our actions, in conjunction with the

work of our client agencies, enhance the quality of the environment in the United States and the health and safety of its citizens.

Civil litigating activities include cases where ENRD defends the United States in a broad range of environmental litigation and enforces the nation's environmental laws. The majority of the Division's cases are defensive or non-discretionary in nature. They include claims alleging noncompliance with federal, state and local pollution control and natural resource laws. Civil litigating activities also involve the defense and enforcement of environmental statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Clean Air Act (CAA), the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA).

The Division defends Fifth Amendment taking claims brought against the United States alleging that federal actions have resulted in the taking of private property without payment of just compensation, thereby requiring the United States to strike a balance between the interests of property owners, the needs of society, and the public fisc. ENRD also prosecutes eminent domain cases to acquire land for congressionally authorized purposes ranging from national defense to conservation and preservation. Furthermore, the Division assists in fulfillment of United States trust responsibilities to Indian Tribes. ENRD is heavily involved in defending lawsuits alleging the United States has breached trust responsibilities to Tribes by mismanaging Tribal natural resources and failing to properly administer accounts that receive revenues from economic activity on Tribal lands. The effectiveness of our defensive litigation is measured by percent of cases successfully resolved and savings to the federal fisc. These results can be seen in the Performance and Resources Table contained in this submission.

Criminal litigating activities focus on identifying and prosecuting violators of laws protecting wildlife, the environment, and public health. These cases involve issues such as fraud in the environmental testing industry, smuggling of protected species, exploitation and abuse of marine resources through illegal commercial fishing, and related criminal activity. ENRD enforces criminal statutes designed to punish those who pollute the nation's air and water; illegally store, transport and dispose of hazardous wastes; illegally transport hazardous materials; unlawfully deal in ozone-depleting substances; and lie to officials to cover up illegal conduct. The effectiveness of criminal litigation is measured by the percentage of cases successfully resolved. These results can also be seen in the Performance and Resources Table contained in this submission.

#### **ENRDetails -- *Did You Know ...***

One of the Division's largest and most resource-intensive matters involves enforcement of the Clean Air Act's (CAA) New Source Review (NSR) provisions against the nation's coal-fired Power Plants. As of December 2006, ENRD has entered into eleven settlements to address NSR violations at coal-fired power plants. The combined effect of the settlements achieved will reduce emissions of harmful pollutants by more than 975,000 tons each year through the installation and operation of over \$5.6 billion worth of pollution controls. As a result of ENRD's enforcement efforts since FY 2005, polluters of all types will spend nearly \$15 billion in corrective measures to protect the Nation's environment and the American people's health and welfare.

## ACCOMPLISHMENTS

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In FY 2006, the Division successfully litigated to judgment 691 cases while working on a total of 5,745 cases and matters. The estimated value of federal injunctive relief (i.e., clean-up work and pollution prevention actions by private parties) as a result of cases litigated by ENRD was \$4.15 billion. In addition, as a result of ENRD's affirmative civil and criminal enforcement efforts, the Division has imposed \$368 million in civil penalties, cost recoveries, criminal fines and restitutions in FY 2006. ENRD achieved a favorable outcome in 95 percent of cases resolved.

### Civil Cases

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- ***Tribal Trust Cases***

The extraordinarily complex and multifaceted *Tribal Trust Cases* continue to command a large portion of ENRD's time and resources. In the past year, the Division has undertaken a number of significant activities, including discovery, trial, and settlement, to defend the Government's interests against the 104 cases filed thus far, as well as the hundreds of prospective tribal demands for historical accountings and claims of trust mismanagement. For example, the Division recently went to trial in the *Osage* case to resolve a test group of oil and gas leases over a specified time period. Specifically, the trial encompassed four of the Tribe's 1,800 leases and examined five selected months of transactions for each. The trial, which was conducted in the Court of Federal Claims, lasted eight days. We anticipate a decision from the Court sometime this year. In *Crow Tribe of Indians v. Norton*, ENRD settled the Crow Tribe's breach of trust claims for \$10 million. The Tribe had estimated its potential damages at over \$500 million. As a result of the settlement, the Tribe dismissed with prejudice and waived all of its trust accounting and trust mismanagement claims that spanned decades. Additionally, under the settlement terms, the Tribe agreed to a number of precedent-setting conditions, including the acceptance of the current balances of the Tribe's trust fund account as accurate and the acceptance of the Interior Department's periodic statements of performance as constituting the accountings required by law.



- ***Healthy Forest Initiative***

The Division continued its string of victories in defending the federal government against challenges to projects designed to restore public forest lands, improve wildlife habitat, and recover the value of damaged timber on federal forest lands – projects which implement President Bush's Healthy Forest Initiative. Included in these victories are cases challenging the *Biscuit Fire Recovery Project* at the Siskiyou National Forest in southwestern Oregon, the largest such recovery project in the nation. In the massive Biscuit fire, the Forest Service responded to a 2002 wildfire that burned millions of trees on nearly 50,000 acres of ecologically-rich land. The Biscuit Project involved the salvage harvesting of large trees in the area of the Northwest Forest Plan, including within the Late Successional Reserves established by the Plan to protect the remnant old growth ecosystem, the sole remaining such system in the lower 48 states. The Project engendered six separate lawsuits brought by environmental groups and industry groups

dissatisfied with the alternative chosen by the Forest Service. The Division successfully defeated preliminary injunctions seeking to halt the salvage harvesting, and later received separate judgments on the merits upholding the Project in all respects. Similarly, in the *Snake River Basin Water Rights Adjudication*, which covers over 87% of the State of Idaho, ENRD won a decree of water rights on behalf of the Forest Service preserving water supplies for firefighting and other vital activities on the National Forests. These successes have enabled the government to restore damaged forest areas, provide millions of board feet of salvaged timber to the public, create jobs to the dependent economic communities, and collectively represent a signal achievement in accomplishing the goals of the President's Healthy Forest Initiative.

- ***United States v. ExxonMobil Corp.***

As part of its Petroleum Refinery Initiative, ENRD reached a landmark Clean Air Act settlement with ExxonMobil Corporation and ExxonMobil Oil Corporation. This comprehensive enforcement action addressed all seven domestic petroleum refineries owned by ExxonMobil, located in five separate states. The seven refineries represent approximately 11 percent of the total refining capacity in the United States. Under the agreement, ExxonMobil will reduce harmful air emissions of nitrogen oxide and sulfur dioxide by more than 53,000 tons, at a cost of approximately \$537 million, as well as upgrade its leak detection and repair practices. Additionally, the company will pay a \$7.7 million civil penalty, and spend \$6.7 million on supplemental environmental projects (SEPs) in communities around the refineries. The ExxonMobil settlement is the 17<sup>th</sup> in a joint DOJ-EPA initiative to reduce pollution in domestic petroleum refineries nationwide. With the entry of the settlement decree, more than 75% of the nation's domestic refining capacity is now under federally enforceable orders to come into compliance with the Clean Air Act.

- ***United States, et al. v. Washington Suburban Sanitation Commission (WSSC)***

The United States won a major Clean Water Act victory against the Washington Suburban Sanitation Commission (WSSC), in an enforcement action brought to reduce or eliminate sanitary sewer overflows (SSOs) that have been occurring in the WSSC sewage collection system. WSSC is the sewerage authority for Montgomery County and Prince George's County, Maryland. Under the terms of the consent decree, which is anticipated to lead to more than \$200 million in sewer system improvements over 14 years, WSSC will undertake injunctive measures to address the alleged violations. Such measures include comprehensive inspection, rehabilitation, and repair requirements and changes in the operation and maintenance of its collection system. The settlement also requires WSSC to perform supplemental environmental projects, valued at \$4.4 million, that will prevent or reduce chronic sewage overflows to regional waterways, including the Chesapeake Bay, and the Anacostia, Patapsco, Patuxent, and Potomac Rivers. Additionally, under the terms of the consent decree, WSSC is required to pay a \$1.1 million civil penalty, divided equally between the United States and Maryland. Five citizens groups intervened in this action and joined the consent decree.

- ***United States v. General Electric Co.***

The Division continues to vigorously enforce Superfund laws under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). For example, the U.S. recently lodged a consent decree with General Electric (GE), requiring the company to perform a \$100 million dollar dredging project to remove PCB-contaminated sediments from the Upper Hudson River, as well as pay up to \$78 million in EPA's past and future response costs related to the project. For approximately 30 years, ending in the 1970's, GE discharged large quantities of PCBs into the river from two major manufacturing facilities in Hudson Falls and Fort Edwards, New York. The contaminants posed environmental and health threats to river wildlife and people who eat fish from the river. The GE settlement decree involves two phases of remedial action – the initial dredging, which will culminate in a comprehensive evaluation in order to assure the process was completed safely and effectively, followed by an optional (pending results of Phase 1 dredging) \$400 million subsequent clean-up.

- ***Kerr-McGee Corporation v. United States***

Through the use of alternative dispute resolution (ADR), and with the assistance of a court-approved mediator, the United States was able to favorably resolve a CERCLA claim by Kerr-McGee Corporation (now Tronox, LLC) seeking to force the United States to pay approximately 70 percent of the cost of cleaning up contamination in groundwater at Kerr-McGee's former perchlorate manufacturing facility in Henderson, Nevada. The U.S. Navy owned the ammonium perchlorate plant for 10 years before Kerr-McGee Chemical purchased the site in 1962. The company discontinued commercial production of ammonium perchlorate and began initial remediation efforts after perchlorate was detected in a spring that discharges to the Las Vegas Wash. Kerr-McGee spent over \$120 million between 1998 and 2005 to clean up the perchlorate contamination. The case was settled by entry of a consent decree requiring the United States to pay a share of approximately 20–24% of Kerr-McGee's cleanup costs.

- ***U.S. v. W.R. Grace & Co.***

In an appellate matter, the Ninth Circuit affirmed a judgment of \$54.5M in cleanup costs for a Superfund removal action conducted by EPA to address widespread asbestos contamination in Libby, Montana. Grace contended that EPA had improperly classified the cleanup as a "removal action", rather than classifying the work as a "remedial action", which is subject to stricter regulatory requirements. Grace also asserted that there was no basis for exceeding the generally applicable cap of 12 months and \$2 million for removal actions. The Ninth Circuit unanimously affirmed the district court judgment awarding all past costs, and a declaratory judgment for future costs. The Court also held that EPA had properly determined to exceed the general statutory limits of 12 months and \$2 million for removal actions, stating that "considering the widespread and pervasive asbestos contamination and the potential for further migration of asbestos fibers . . . the EPA's decision to exceed the statutory cap was not arbitrary and capricious." The Court determined that the substantial expenditures and time required above the general limits was required "given the urgency, magnitude, and long-standing nature of the problem. In a separate but related matter, ENRD is prosecuting W.R. Grace for multiple

criminal environmental violations in the Montana District Court. The criminal case against Grace is scheduled to go to trial in September 2007.

- ***Indian Water Rights Cases***

ENRD has settled a number of major water rights adjudications over the past several months. Perhaps the most comprehensive Indian water rights settlement involved the *Gila River Adjudication*, which was largely resolved, in substance, in December 2004 when Congress enacted the Arizona Water Settlements Act (“AWSA”). The AWSA “authorized, ratified, and confirmed” the framework for the settlement of the water rights claims of the Gila River Indian Community to the Gila River. After enactment of the AWSA, the Interior and Justice Departments spent almost a year negotiating amendments to the Settlement Agreement, to ensure that the Agreement did not conflict with the AWSA. In another matter, *Lummi Nation v. State of Washington*, the Division forged an agreement among the State of Washington, the Lummi Nation and numerous private water users, to resolve a lengthy and contentious lawsuit involving the right to groundwater underlying the Lummi Peninsula in the State of Washington. The agreement allocates to the Lummi Nation the vast majority of the groundwater, while protecting the ability of non-Indians to draw from existing wells. The settlement in another water rights case, *Arizona v. California*, concluded a 35-year-long original Supreme Court jurisdiction case involving rights to water from the Colorado River. The settlement resolved the water rights claims of the Quechan Indian Tribe and resolved any disagreement about the location of the Tribe’s Reservation boundaries in Arizona.

- ***TOMAC v. Norton***

In a D.C. Circuit Court of Appeals case handled by ENRD, the circuit court affirmed the district court’s grant of summary judgment upholding the Secretary of the Interior’s decision to take land into trust for the Pokagon Band of Potawatami Indians. TOMAC, an anti-casino group, had asserted that the Secretary violated NEPA by failing to prepare an environmental impact statement (“EIS”) for the acquisition, that the Band does not qualify as a “restored” tribe within the meaning of the Indian Gaming and Regulatory Act (“IGRA”), and that the Congressional Act which restored recognition to the Pokagon Band violates the non-delegation doctrine. The D.C. Circuit found that Interior had taken the required “hard look” at the potential impacts of the Tribe’s planned casino and recreation complex in its Environmental Assessment (“EA”) and supplement to the EA to satisfy NEPA requirements. The court also rejected TOMAC’s assertion that the Band was not a restored Tribe within the meaning of IGRA. Finally, the Court rejected TOMAC’s assertion that the Pokagon Act was an unconstitutional delegation of legislative authority.

- ***Wildlife and Endangered Species Act (ESA) Cases***

In several cases, ENRD successfully defended the ESA through interagency consultation regarding activities permitted by federal agencies. In *City of Santa Clarita v. Department of Interior* the City of Santa Clarita challenged a Fish & Wildlife Service (FWS) biological opinion

associated with a proposed sand and gravel mining project for the CEMEX Company to be permitted by BLM on federal lands near Santa Clarita, California. The Court agreed with ENRD that FWS correctly concluded that the mining operations, with mitigation, were not likely to jeopardize the existence of the unarmored three-spine stickleback, a threatened fish, and otherwise rejected plaintiff's contention that FWS' "no jeopardy opinion" and "incidental take" statement were arbitrary. In *EPIC v. USFWS & NOAA Fisheries*, ENRD prevailed on a motion to dismiss, and on plaintiffs' motion for preliminary injunction, where plaintiffs sought to compel FWS and NOAA to revoke an "incidental take" permit for Pacific Lumber's timber program, or to compel reinitiation of consultation. The Court agreed with us that plaintiff's suit was in part barred by *Heckler v. Cheney* (S.Ct. 1985) because, in essence, it sought to circumscribe agency enforcement. The Court also agreed that recent oil spills added no new information which was not already adequately considered in a recent biological opinion, that FWS had reasonably assessed the species current status, and that the Court should defer to the expert federal agencies in such matters.

#### **ENRDetails -- Did You Know ...**

It is not unusual for some ENRD litigation to span several decades. For many complex cases involving Indian territorial rights or federal water rights, cases are expected to last for a decade or more. One example of a long-standing open case in the Environment Division is *U.S. v. Truckee River General Electric Company*. The Truckee River case was filed in March 1913, and remains open today. This case, filed during the Woodrow Wilson administration, concerns the Orr Ditch and water from the Truckee River and Lake Tahoe. The suit was brought by the U.S. Reclamation Service (predecessor to the Bureau of Reclamation) to quantify and clarify (adjudicate) water rights of upstream users in Nevada. Although there have been partial resolutions in the *Truckee River* adjudication, it remains an open and active case on ENRD's docket.

## **Criminal Cases**

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- ***Vessel Pollution Cases***

ENRD's Vessel Pollution Initiative is an ongoing, concentrated effort to prevent ships from illegally discharging pollutants into the oceans, coastal waters, and inland waterways. Over the past year, the Division has won a number of successes resulting in criminal fines, mandated community service projects, and probationary sanctions. In *U.S. v. MSC Ship Management Ltd.*, the defendant – a Hong Kong-based container ship company – pled guilty to charges that it engaged in conspiracy, obstruction of justice, destruction of evidence, false statements and violations of the Act to Prevent Pollution from Ships (APPS). As a result, MSC Ship Management paid \$10.5 million in penalties, the largest fine in which a single vessel has been charged with deliberate pollution. An MSC ship engineer was sentenced to serve a one-year term of probation. In *U.S. v. Wallenium Ship Management Ltd.*, a Singapore shipping company pled guilty to conspiracy to violate APPS for failure to maintain an oil record book, making false statements and writings, and obstructing a government proceeding. Under the plea agreement, the company has agreed to pay a \$5 million fine with an additional \$1.5 million payment devoted to community service projects. Wallenium will also serve a three-year term of probation and implement an environmental compliance plan.

- **McWane Cases**

The Division has successfully prosecuted several companies owned by McWane, Inc., a Birmingham-based company that has been cited by the U.S. Occupational Health and Safety Administration (OSHA) hundreds of times since the mid-1990s. In *U.S. v. McWane, Inc.*, the company was sentenced to pay a \$5 million fine, serve a five-year term of probation, and perform community service projects valued at \$2.7 million, for substantive Clean Water Act (CWA) violations, making false statements and obstruction of justice. Several McWane corporate executives were additionally sentenced to various lengths of home confinement and probation, over \$125,000 in cumulative individual fines, and hundreds of hours of community service. In *U.S. v. Pacific States Cast Iron Pipe Company*, a Utah division of McWane, Inc., the company pled guilty to making false statements and was sentenced to pay a \$3 million fine plus serve a three three-year term of probation. In *U.S. v. Atlantic States Cast Iron Pipe Company*, a Trenton-based McWane subsidiary, the company itself, along with four corporate officials, were found guilty of committing flagrant abuses of environmental and worker safety laws. The charges in the *Atlantic States* case included, among others, the regular discharge of oil into the Delaware River, concealing serious worker injuries from health and safety inspectors, and maintaining a dangerous workplace that contributed to multiple severe injuries and the death of one employee at the company's plant. The *Atlantic States* trial, which lasted nearly 7 months, was the longest environmental criminal trial litigated by the federal Government in U.S. history. Atlantic States and the convicted individuals each face a maximum penalty of five years in prison, and a fine of \$500,000.



Under ENRD's White Collar Environmental Crimes and Corporate Corruption Initiative, the Division won \$8 million in criminal fines, plus numerous corporate and individual probationary sentences and over \$2.5 million in court-mandated community service projects, against McWane, Inc.

- **United States v. Robert Lucas, et al.**

ENRD reported a number of successes over the past year involving protection of citizens from criminal Clean Water Act violations. In *U.S. v. Lucas*, several individual defendants and two companies were found guilty on 40 counts arising from their development of a large tract of wetlands known as Big Hill Acres in southern Mississippi. They were further convicted of conspiracy and mail fraud for selling home sites on this property to hundreds of families despite numerous warnings from public health officials that the illegal septic systems they were installing in saturated soil were likely to fail, and could cause contamination of the property and the drinking water aquifer. The named defendant Lucas was sentenced to serve nine years in prison, followed by three years supervised release, and to pay a \$15,000 fine. Co-defendants Robbie Wrigley and M.E. Thompson, Jr., were each sentenced to serve 87 months in prison, followed by three years supervised release, and to pay a \$15,000 fine. Big Hill Acres, Inc., was ordered to pay a \$4.8 million fine and sentenced to serve five years' probation. Consolidated Investments, Inc. was sentenced to serve five years' probation and is required to pay a \$500,000 criminal fine.



- ***United States v. Dov Shellef dba Poly Systems, Inc., et al.***

The Environment Division recorded a major victory in the prosecution of illegal sales of ozone-depleting chemicals in the *Dov Shellef/Poly Systems* case. Dov Shellef, an individual doing business as Poly System, Inc. and Polytuff USA, Inc., along with corporate executive William Rubenstein, were sentenced after being convicted at trial of 87 counts for conspiring to defeat the excise taxes on ozone-depleting chemicals, money laundering, wire fraud, and a variety of tax violations. The defendants represented to manufacturers that they were purchasing CFC-113 for export, inducing the manufacturers to sell it to them tax-free. The defendants then sold the product tax-free in the domestic market without notifying the manufacturers or paying the excise tax. Shellef was ordered to serve 70 months' incarceration and Rubenstein was sentenced to 18 months' imprisonment. Both individuals will be held jointly and severally liable for just under \$1.9 million in restitution for the taxes due on domestic sales of trichlorotrifluoroethane, the ozone-depleting chemical commonly referred to as CFC-113, or Freon. This was the first criminal case involving CFC-113.

- ***United States v. Beau Lee Lewis***

ENRD continues to enforce laws protecting wildlife, and the Division has realized several important successes in this area over the past year. In *U.S. v. Beau Lee Lewis*, the individual defendant was convicted of six felony violations of conspiracy and smuggling statutes in a retrial of charges connected with his importation of more than 300 protected reptiles and amphibians into the U.S. in FedEx containers. In 1998, Lewis was indicted for trafficking in some of the most rare and endangered reptiles in the world. The endangered species traded by Lewis and his co-conspirators include the Komodo Monitor (also called the Komodo Dragon), the world's largest lizard, the Plowshare Tortoise, believed to be the rarest tortoise species, the Chinese Alligator, the False Gaviol, and the Radiated Tortoise. These animals can bring upwards of \$30,000 a piece on the black market. Lewis was convicted and sentenced to serve 23 months' imprisonment, followed by three year's supervised release, with special conditions related to wildlife possession.

**ENRDetails -- Did You Know ...**

President William Howard Taft appointed the Division's first AAG, Ernest Knaebel, in 1911. Mr. Knaebel began his service to the Department of Justice as a U.S. Attorney in Colorado. Immediately prior to assuming his AAG duties, Knaebel was a Special Assistant to the Attorney General. After his tenure as AAG ended in 1916, Ernest Knaebel became the 11<sup>th</sup> Reporter of Decisions for the U.S. Supreme Court. Mr. Knaebel was the longest-serving Reporter of Decisions, with his work spanning four decades, from 1916 to 1944. The Reporter of Decisions of the United States Supreme Court is the official charged with editing and publishing the Court's decisions both when announced and in the bound volumes of the United States Reports.

## 2. Performance and Resources Table

Performance and Resources Table (\$000's)											
Decision Unit/Program: <i>Environment &amp; Natural Resources Division - Consolidated Summary</i>											
DOJ Strategic Goal/Objective: Strategic Goal II - Enforce Federal Laws and Represent the Rights and Interests of the American People. Objectives 2.5											
WORKLOAD/RESOURCES 1/		Final Target		Actual		Estimate		Changes		Requested (Total)	
		FY 2006		FY 2006		FY 2007		Current Services Adjustments and FY 2008 Program Change		FY 2008 Request	
DIVISION TOTAL WORKLOAD	# of Cases & Matters (Active & Closed)	5,878		5,745		5,707		43		5,750	
	# of Cases Successfully Resolved/Success Rate	82%		658	95%	83%				83%	
CIVIL	1. Number of cases (active & closed)	4,970		4,887		4,854		41		4,895	
	2. Number of matters (active & closed)	514		543		486		-1		485	
CRIMINAL	3. Number of cases (active & closed)	365		291		341		3		344	
	4. Number of matters (active & closed)	28		24		26		0		26	
DIVISION RESOURCES - Total Year Costs & FTE's (Reimbursable FTE are included, but reimbursable costs are bracketed and not included in the total.)		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
		493	\$ 92,774	518	\$ 92,440	490	\$ 91,408	9	\$ 9,988	499	\$ 101,396
		[184]	[26,253]	[125]	[26,253]	[184]	[26,056]			[184]	[24,556]

Program Activity	PERFORMANCE/RESOURCES	FY 2006		FY 2006		FY 2007		Current Services Adjustments and FY 2008 Program Change		FY 2008 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CIVIL	TOTAL COSTS & FTE	442	\$ 82,463	467	\$ 82,166	440	\$ 81,841	9	\$ 9,358	449	\$ 91,200
	OUTPUT 1/	Active	Closed	Active	Closed	Active	Closed	Active	Closed	Active	Closed
	1. Number of cases active/closed	2972	1998	3,079	1,808	3,079	1,775	41		3,120	1,775
	2. Number of matters active/closed	306	208	259	284	259	227	-1		258	227
	EFFICIENCY MEASURES										
	1. Total Dollar Value Awarded per \$1 of Expenditures (Affirmative)		\$ 75		\$ 75		\$ 76				\$ 77
	2. Total Dollars Saved the Government per \$1 of Expenditures (Defensive)		\$ 16		\$ 14		\$ 17				\$ 18
	OUTCOME*	# Resolved	Success Rate	# Resolved	Success Rate	# Resolved	Success Rate			# Resolved	Success Rate
	1. Affirmative cases successfully resolved	no estimate	85%	298	97%	no estimate	85%	no estimate	no estimate	no estimate	85%
	2. Defensive cases successfully resolved	no estimate	75%	295	93%	no estimate	75%	no estimate	no estimate	no estimate	75%
	3. Penalties Awarded 2/ *	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund	Superfund 3/	Non-Superfund			Superfund 3/	Non-Superfund
	- Federal	no estimate	no estimate	\$ 1,736,200	\$ 119,638,484	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State	no estimate	no estimate	3,112,998	20,256,938	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	4. Clean-up Costs Awarded 4/										
	- CERCLA Federal Cost Recovery 5/	no estimate	no estimate	144,257,514	4,370,603	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Federal Injunctive Relief	no estimate	no estimate	227,680,180	3,850,522,312	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- CERCLA State Cost Recovery	no estimate	no estimate	3,646,386	100,089	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- State Injunctive Relief	no estimate	no estimate	6,000,000		no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	5. Supplemental Environmental Projects (SEP's) 6/										
	- Value of Federal SEP's	no estimate	no estimate	2,401,750	54,451,803	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Value of State SEP's	no estimate	no estimate	-	7,089,585	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	6. Costs Avoided (Saved the U.S. in Defense Cases) 7/	no estimate	no estimate	\$ -	\$ 802,559,189	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

## Performance and Resources Table (Cont.)

Program Activity	PERFORMANCE/RESOURCES	FY 2006		FY 2006		FY 2007		Current Services Adjustments and FY 2008 Program Change		FY 2008 Request	
		FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000	FTE	\$000
CRIMINAL	<b>TOTAL COSTS &amp; FTE</b>	51	\$ 10,311	51	\$ 10,274	50	\$ 9,567	-	\$ 630	50	\$ 10,196
	<b>OUTPUT 1/</b>	<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>	<b>Active</b>	<b>Closed</b>
	1. Number of cases active/closed	178	187	216	75	216	125	3		219	125
	2. Number of matters active/closed	24	4	23	1	23	3			23	3
	<b>OUTCOME*</b>	<b># Resolved</b>	<b>Success Rate</b>	<b># Resolved</b>	<b>Success Rate</b>	<b># Resolved</b>	<b>Success Rate</b>			<b># Resolved</b>	<b>Success Rate</b>
	1. Number of criminal cases successfully resolved	no estimate	85%	65	94%	no estimate	90%	no estimate	no estimate	no estimate	90%
	2. Dollars Awarded	<b>Superfund 3/</b>	<b>Non-Superfund</b>	<b>Superfund 3/</b>	<b>Non-Superfund</b>	<b>Superfund 3/</b>	<b>Non-Superfund</b>			<b>Superfund 3/</b>	<b>Non-Superfund</b>
	- Fines 8/	no estimate	no estimate	\$ -	\$ 56,354,348	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Restitution	no estimate	no estimate	-	4,949,489	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate
	- Supplemental Sentence 9/	no estimate	no estimate	\$ -	\$ 9,102,000	no estimate	no estimate	no estimate	no estimate	no estimate	no estimate

### Data Definition, Validation, Verification, and Limitations:

1/ A matter is defined as "an issue requiring attorney time (i.e. congressional & legislative inquiries, Freedom of Information Act (FOIA) inquiries, notice of intent to sue, or policy issues)."

Active cases/matters are those currently being worked on as of the reporting date for the current fiscal year. Closed cases/matters are fiscal year-to-date for the reporting date.

2/ Penalties Awarded includes: Civil & Stipulated Penalties, Natural Resource and other damages, Court Costs, Interest on dollars awarded, Attorneys' Fees, and Royalties paid in cases involving the use of U.S. mineral lands.

3/ CERCLA is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Funds from the Environmental Protection Agency (EPA) used to enforce this statute are called "Superfund". Monies in the "Superfund" category replenish this fund.

4/ Cost recovery is awarded to federal & state governments for reimbursement of the clean-up of sites contaminated with hazardous substances. Injunctive relief is estimated clean-up costs for contaminated sites which are court ordered to be completed by the defendant.

5/ Monies paid by the Federal Government for its share of clean-up costs of Superfund sites have been excluded.

6/ Supplemental Environmental Projects (SEP) are environmentally beneficial projects that defendants are ordered to perform by the court (i.e. a factory installing a device to reduce the release of pollutants into the environment)

7/ Costs Avoided is the difference between the amount for which the government is sued, and the amount actually paid to plaintiffs.

8/ Includes Special Assessments, Reimbursement of Court Costs and Attorneys' Fees, and Asset Forfeitures.

9/ Criminal Supplemental Sentences are actions which benefit the environment and local community that defendants are ordered to complete in addition to any other sentence.

Data Collection & Storage: The majority of the performance data submitted by ENRD are generated from the Division's Case Management System (CMS).

Data Validation and Verification: The division has instituted a formal data quality assurance program to ensure a quarterly review of the Division's docket. The case systems data are monitored by the division to maintain accuracy.

Data Limitations: Timeliness of notification by the courts.

Data does not include United States Attorney (USA) exclusive cases

### Additional Explanation for Targets, Program Changes, and Program Requests

\* In accordance with Department guidance, estimates of performance are not projected for the noted categories.

**Performance Measure Table**

PERFORMANCE MEASURE TABLE												
Decision Unit: Environment and Natural Resources Division												
FY 1999 through FY 2002 includes EOUSA statistics; FY 2003 through FY 2008 are ENRD only.												
Performance Report and Performance Plan Targets		FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006		FY 2007	FY 2008
		Actual	Actual	Actual	Actual	Actual	Actual	Actual	Actual	Target	Actual	Target
<b>EFFICIENCY Measure</b>	Total dollar value awarded per \$1 of expenditures (Affirmative)					\$58*	\$87	\$171	\$75	\$75	\$76	\$77
<b>EFFICIENCY Measure</b>	Total dollars saved the government per \$1 of expenditures (Defensive)						\$16*	\$15	\$16	\$14	\$17	\$18
<b>OUTCOME Measure</b>	Civil affirmative cases successfully resolved	97%	93%	93%	94%	97%	96%	95%	85%	97%	85%	85%
<b>OUTCOME Measure</b>	Civil defensive cases successfully resolved	94%	84%	92%	89%	91%	95%	92%	75%	93%	75%	75%
<b>OUTCOME Measure</b>	Criminal cases successfully resolved	86%	87%	85%	91%	96%	95%	90%	85%	94%	90%	90%

\* Represents baseline amounts for the respective efficiency measure.

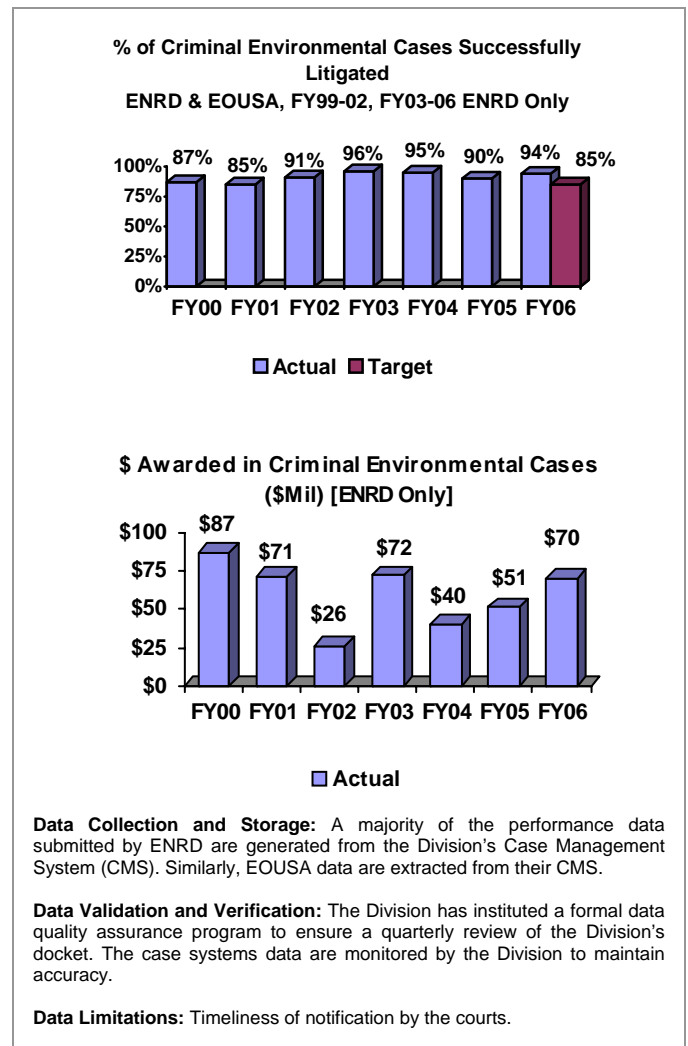
### 3. Performance, Resources, and Strategies

The Environment and Natural Resources Division contributes to the Department’s Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People. The decision unit’s resources specifically address the Department’s Strategic Objective 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction. The Division focuses on both civil and criminal litigation within this strategic objective. An explanation by litigating activity follows.

#### Criminal Litigating Activities

##### *A. Performance Plan and Report for Outcomes*

Vigorous prosecution remains the cornerstone of the Department’s integrated approach to ensuring broad-based environmental compliance. It is the goal of investigators and prosecutors to discover and prosecute criminals before they have done substantial damage to the environment (including protected species), seriously affected public health, or inflicted economic damage on consumers or law-abiding competitors. The Department’s environmental protection efforts depend on a strong and credible criminal program to prosecute and deter future wrongdoing. Highly publicized prosecutions and tougher sentencing for environmental criminals are spurring improvements in industry practice and greater environmental compliance. Working together with federal, state and local law enforcement, the Department is meeting the challenges of increased referrals and more complex criminal cases through training of agents, officers and prosecutors, outreach programs, and domestic and international cooperation.



## Performance Results

### I. Performance Measure - Percent of Criminal Environmental Cases Successfully Resolved [ENRD Only]

❖ *FY 2006 Target: 85%*

❖ *FY 2006 Actual: 94%*

❖ *FY 2006 ENRD Resources Expended: \$10.3 million*

Discussion: FY 2006 proved to be a particularly strong year for criminal enforcement in ENRD's Environmental Crimes Section (ECS). Through the end of the fiscal year, the Environmental Crimes Section successfully litigated several guilty verdicts through jury trials and pleas. Successes include two major international shipping companies which agreed to pay fines of \$10.5 million and \$5 million, respectively, and also perform community service and serve various terms of probation. The \$10.5 million plea is the largest fine ever imposed on a single vessel which has been charged with deliberate pollution. In another case, involving McWane Inc.'s Atlantic States Cast Iron Pipe Company, ENRD secured guilty verdicts against the company and several officers of the company. The company was sentenced to pay a \$5 million fine, serve a five-year term of probation, and perform community service projects valued at \$2.7 million for substantive Clean Water Act (CWA) violations, making false statements and obstruction of justice. Several McWane corporate executives were additionally sentenced to various lengths of home confinement and probation, over \$125,000 in cumulative individual fines, and hundreds of hours of community service. The *Atlantic States* trial, which lasted seven months, was the longest environmental criminal jury trial ever litigated by the federal Government.

To date, FY 2007 has proven to be equally fruitful from a criminal perspective. Under ECS's Vessel Pollution Initiative, the Division secured an agreement to pay over \$37 million from Overseas Shipholding Group (OSG) after pleading guilty to 33 felony counts related to deliberate vessel pollution from nine ships and false pollution log entries from three additional ships. OSG is a U.S. corporation headquartered in New York and is one of the largest publicly traded tanker companies in the world. ECS has also logged a plea agreement with Sinclair Tulsa Refining Company, which plead guilty to two felony Clean Water Act violations for deliberately manipulating wastewater discharges at its Tulsa refinery. In conjunction with its plea, Sinclair will make a community service payment of \$500,000 which will be paid into an environmental fund.

FY 2006 Performance Plan Evaluation: Based on the end-of-the-fiscal-year performance data, we exceeded our original goal by 9 percent for FY 2006.

FY 2007/2008 Performance Plan: Considering our past performance, we have increased our targets to 90 percent of cases successfully litigated in FY 2007 and FY 2008, respectively. ENRD targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against insignificant targets for "easy" wins solely to meet higher targets. Such an approach would do a disservice to the public by steering litigation away

from more complicated problems facing the country's environment and natural resources. The past 7 years of data demonstrates that our targets, set at achievable levels, have not deterred high performance as shown in the actual successes.

**Public Benefit:** The Division continues to produce successful criminal prosecutions relating to environmental statutes. These successes ensure compliance with the law and lead to specific improvements in the quality of the environment of the United States, and the health and safety of its citizens. Additionally, ENRD has had numerous successes in prosecuting vessels for illegally disposing of hazardous materials into United States waterways. These successes have improved the quality of our waterways and promoted compliance with proper disposition of hazardous materials. Also, the Division has successfully prosecuted numerous companies for violations of environmental laws which endangered their workers. Our successes lead to safer workplaces and fewer lives lost to hazardous conditions.

## **II. Performance Measure - \$ Awarded in Criminal Environmental Cases [ENRD Only]**

❖ ***FY 2006 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.***

❖ ***FY 2006 Actual: \$70.4 million***

**Discussion:** Additional criminal successes in FY 2006 include a guilty verdict in a Clean Water Act enforcement action against a Mississippi home builder. In *United States v. Robert Lucas*, the developer was sentenced to serve nine years in prison for violating the CWA by illegally filling in wetlands, and for conspiracy and mail fraud for selling homes to hundreds of families despite warnings from public health officials that the illegal septic systems installed in saturated soil were likely to fail.

**FY 2007/2008 Performance Plan:** Not Applicable. In accordance with Department guidance, levels of performance for FY 2007 and FY 2008 are not projected for this indicator. Many factors affect our overall performance, such as proposed legislation, judicial calendars, etc. The performance of the Division also tends to realize spikes and valleys when large cases are decided. Therefore, we do not project annually, but our goal is to improve overall performance over a 5-year span.

**Public Benefit:** The Division continues to obtain criminal fines from violators, thereby removing economic benefits of non-compliance and leveling the playing field for companies that comply with environmental laws. Additionally, our prosecution efforts deter others from committing crimes and promote adherence to environmental and natural resource laws and regulations. These efforts result in the reduction of hazardous materials and wildlife violations thereby improving the quality of the United States' waterways, airways, land, and wildlife resulting in improved public health and safety.

## B. Strategies to Accomplish Outcomes

The Division will continue efforts to obtain convictions and to deter environmental crimes through initiatives focused on laboratory fraud, chlorofluorocarbon (CFC) smuggling, vessel pollution, transportation of hazardous materials and worker safety. ENRD will also continue to prosecute international trafficking of protected species of fish, wildlife, and plants with a host of international treaty partners.

International trade in wildlife is second in size only to the illegal drug trade, and our criminal prosecutors work directly on these cases, as well as assist United States Attorneys Offices and share ENRD expertise nationwide with state and federal prosecutors and investigators. We will focus on both interstate trafficking and poaching cases on federal lands, and seek to ensure that wildlife conservation laws are applied uniformly and enforced across the country, seeking consistency in the United States' position in these criminal prosecutions and a vigorous enforcement program that serves as an international role model.

ENRD has partnered with other federal agencies, such as EPA, to pursue litigation against criminal violators of our nation's environmental policies. Egregious offenders are being brought to justice daily. The Division has worked collaboratively to identify violators who pose a significant threat to public health. By prosecuting criminal violations of regulations, ENRD is forcing compliance and discouraging continued disregard for public health.

### **ENRDetails -- *Did You Know ...***

The longest trial in U.S. history involving environmental crimes was litigated by the Environment and Natural Resources Division from September 2005 through April 2006. The nearly seven-month long jury trial involved New Jersey cast iron pipe manufacturer, Atlantic States Cast Iron Pipe Co. (a subsidiary of McWane, Inc.), and five company officials who were charged with violating environmental and worker safety laws. Five of the six defendants were found guilty of the charges, which included the regular discharge of oil into the Delaware River, concealing serious worker injuries from health and safety inspectors, and maintaining a dangerous workplace that contributed to multiple severe injuries and the death of one employee at the plant.



## Civil Litigating Activities

### A. Performance Plan and Report for Outcomes

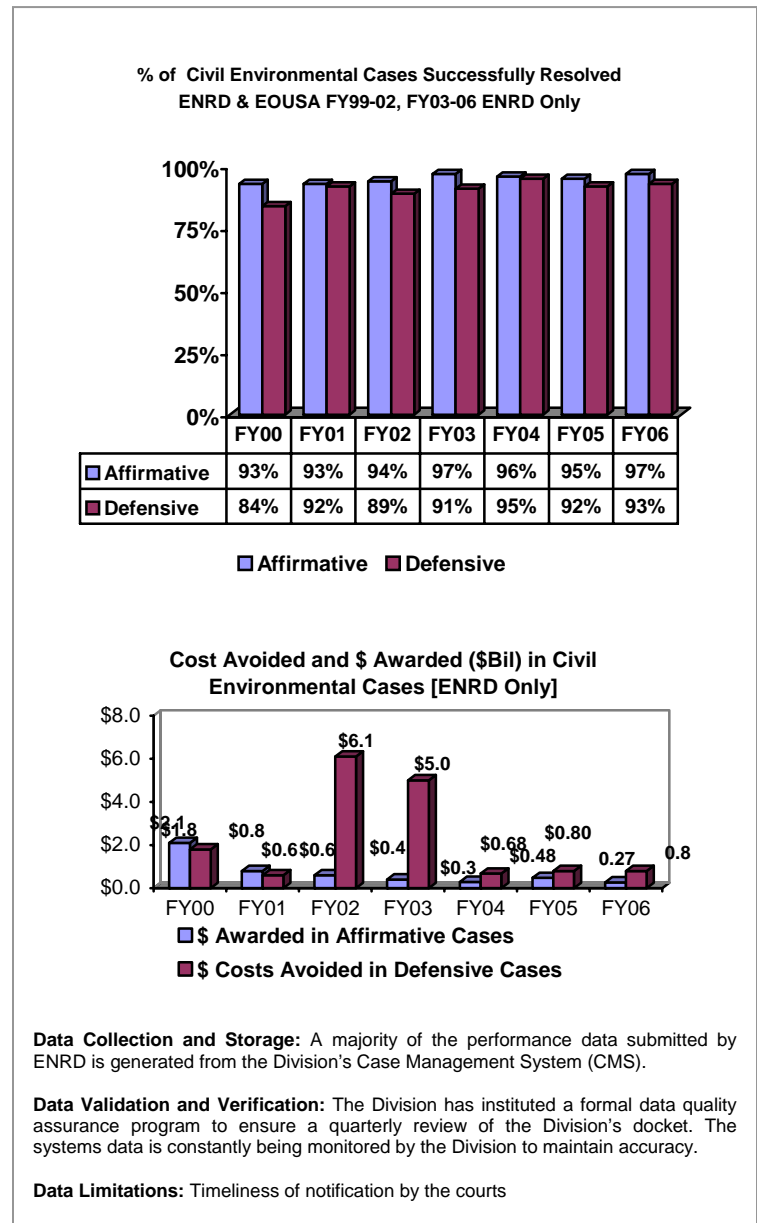
The Department enforces environmental laws to protect the health and environment of the United States and its citizens, defends environmental challenges to government programs and activities, and represents the United States in all matters concerning the protection, use, and development of the nation's natural resources and public lands, wildlife protection, Indian rights and claims, and the acquisition of federal property.

#### Performance Results

#### I. Performance Measure - Percent of Civil Environmental Cases Successfully Resolved [ENRD Only]

- ❖ **FY 2006 Target:**  
*85% Affirmative; 75% Defensive*
- ❖ **FY 2006 Actual:**  
*97% Affirmative; 93% Defensive*
- ❖ **FY 2006 ENRD Resources Expended:**  
*\$82.1 million*

Discussion: The Division enjoyed numerous successes during FY 2006. ENRD's continuing Clean Air Act enforcement efforts resulted in five consent decrees under ENRD's Petroleum Refinery Initiative. The five enforcement actions concerned ExxonMobil Corp., ConocoPhillips Co., Valero Energy Corp., Sunoco Refinery, Inc., and Chalmette Refining LLC. These five settlements require the installation of controls that will reduce air pollutant emissions by over 150,000 tons per year at a cost of over \$2 billion dollars to the companies. The companies will also pay over \$20 million in civil penalties and perform environmental service projects valued at over nearly \$30 million. With these additional



settlements, the Division will have addressed more than 80 refineries comprising approximately 76% of the nation's total refining capacity.

ENRD's Environmental Defense Section (EDS) has continued its vigorous defense of various provisions in the Clean Water Act (CWA), and in FY 2006 obtained a number of favorable resolutions in its assigned cases. For example, in *Citizens Coal Council v. EPA*, petitioners challenged effluent limitations guidelines and new source performance standards for subcategories within the coal mining industry. The Division successfully sought *en banc* reversal from the Sixth Circuit Court of Appeals of a prior adverse panel decision in which the court had held that EPA incorrectly applied statutory factors in settling effluent limitations. The Sixth Circuit further upheld EPA's use of *best management practices* in lieu of numerical effluent limitations in its treatment of discharges from coal mines.

Moreover, the Division's successes are highlighted by litigation related to administration of the Northwest Forest Plan. ENRD helped secure a favorable decision in *ONRC v. Allen*, a challenge to a biological opinion authorizing two years' worth of timber sales in an area of Oregon. Plaintiffs raised a number of arguments about effects on the northern spotted owl and its habitat. The Ninth Circuit remanded for further proceedings on several narrow questions, but did not rule for plaintiffs on any issue. This is one of two Ninth Circuit cases the Division has handled that involve challenges to the administration of the Northwest Forest Plan. Had they succeeded, certain plaintiffs' arguments could have had nationwide implications.

The first quarter of FY 2007 has been marked by notable civil litigation successes as well. In December 2006, the United States District Court for the Southern District of Indiana entered a consent decree resolving violations of the Clean Water Act by the City of Indianapolis. The Consent Decree requires the City to undertake extensive work to reduce or eliminate illegal discharges from its sanitary sewers and overflows from the portions of its sewer system where storm water and sanitary sewage are combined. Under the consent decree, the City will implement a Long Term Control Plan on a twenty-year schedule at an estimated cost of \$1.86 billion. In addition, the City will perform a pollution reduction supplemental environmental project (SEP) valued at \$2 million and pay a civil penalty of \$1,177,800, of which \$588,900 will go to the United States and the other \$588,000 will go to Indiana. The injunctive relief provided under the settlement will ultimately reduce the volume of Indianapolis' combined discharges by over 90 percent, or an average of 7.2 billion gallons per year out of its current average of 7.9 billion gallons per year.

FY 2006 Performance Plan Evaluation: Based on end-of-the-fiscal-year performance data, we exceeded our Affirmative and Defensive goals by 12 percent and 18 percent, respectively for FY 2006.

FY 2007/2008 Performance Plan: Considering our past performance, we aim to reach 85 percent Affirmative and 75 percent Defensive (average of 80%) as our rates of cases successfully litigated for FY 2007 and FY 2008. ENRD's targets are set lower than the actual performance so that there is no incentive to ramp up prosecutions or lawsuits against easy targets solely to meet an "ambitious" goal. This sort of easy approach would do a disservice to the public by steering litigation away from more difficult problems facing the

country's environment and natural resources. The past 7 years of data demonstrates that our targets, set at achievable levels, have not deterred the high performance as shown in the actual successes.

The successes delineated in the "Accomplishments" section of this document demonstrate the Division's effectiveness at defending the nation's environmental laws. By receiving full base funding in FY 2008, ENRD hopes to maintain our success rates while effectively defending the United States. If ENRD cannot offer a strong defense, the Executive Branch's ability to enforce regulatory compliance or defend policy challenges may be seriously impaired. For example, the Division's efforts on behalf of Indian Tribes have been successful to date. However, if ENRD is forced to fully litigate the growing number of cases with limited resources, the resulting impact would be delays in resolution and unnecessary expenditures against the federal coffers.

Public Benefit: The success of the Department ensures the correction of pollution control deficiencies, reduction of harmful discharges into the air, water, and land, clean-up of chemical releases, abandoned waste, and proper disposal of solid and hazardous waste. In addition, the Department's enforcement efforts help ensure military preparedness, safeguard the quality of the environment in the United States, and protect the health and safety of its citizens.

## **II. Performance Measure - Costs Avoided and \$ Awarded in Civil Environmental Cases [ENRD Only]**

❖ *FY 2006 Target: In accordance with Department guidance, targeted levels of performance are not projected for this indicator.*

❖ *FY 2006 Actual: \$803 million avoided; \$270 million awarded*

Discussion: In FY 2006, ENRD litigated to judgment several other large sewage cases in various locations across the U.S. In January 2006, the District Court for the District of Hawaii entered a consent decree resolving Clean Water Act violations resulting from discharges along major roadways, at construction sites, and at three airports. The consent decree requires the State of Hawaii to undertake comprehensive corrective measures – at an estimated cost of \$60 million – over the next five years, as well as pay a \$1 million civil penalty and perform \$1 million in environmental community service projects. In June 2006, the District Court of Idaho entered two consent decrees resolving stormwater violations related to road building projects. Under the terms of the Idaho decrees, defendants will pay nearly \$900,000 in civil penalties and undertake various actions to better train their employees. In August 2006, the District Court for the Northern District of Texas entered a consent decree in *U.S. v. City of Dallas*, settling the City's violations of the CWA by failing to adequately staff and implement its storm water management program. The decree requires the City to undertake comprehensive injunctive relief, pay a civil penalty of \$800,000 and spend \$1.2 million on environmental projects.

Through the first quarter of FY 2007, ENRD has already realized a number of civil environmental enforcement successes. In December 2006, the U.S. District Court for the Western District of Michigan entered a consent decree resolving Clean Air Act claims against CEMEX Corporation, St. Mary's Cement, Inc., and St. Barbara Cement, Inc. relating to particulate matter emissions at one of Michigan's largest cement manufacturing facilities. Under the proposed consent decree, current plant operators – St. Mary's and St. Barbara – will install a new baghouse costing approximately \$11 million in order to eliminate the violations and perform a major emissions reduction supplemental environmental project valued at \$1.45 million. Former operator CEMEX will pay a civil penalty of \$1.4 million under the consent decree.

FY 2007/2008 Performance Plan: Not Applicable. In accordance with Department guidance, levels of performance for FY's 2007 through 2008 are not projected for this indicator. There are many factors that affect our overall performance, including proposed legislation, judicial calendars, etc. The performance of the Division tends to realize spikes and valleys when large cases are decided. Therefore, we do not project annually, but our goal is to improve overall performance in a 5-year span.

### **III. Efficiency Measures**

#### **1) Total Dollar Value Awarded per \$1 Expenditures [Affirmative / ENRD Only]**

#### **2) Total Dollars Saved the Government per \$1 Expenditures [Defensive / ENRD Only]**

❖ *FY 2006 Target: \$75 awarded; \$16 saved*

❖ *FY 2006 Actual: \$75 awarded; \$14 saved*

Discussion: The Division had an outstanding FY 2006 in its efforts to secure commitments by polluters to take action to remedy their violations of the nation's environmental laws. Actions taken by the Division in Federal courts resulted in over \$4.1 billion in settlements and court ordered injunctive relief. Additionally, the Division saved the government more than \$800 million in defensive litigation. These successes, and the Division's enforcement work generally, have produced significant gains for the public fisc, public health, and the environment. The Division routinely saves the American taxpayer hundreds of millions of dollars – many times the Division's annual budget.

FY 2007/2008 Performance Plan: Considering the exemplary record in protecting the environment, Indian rights, and the nation's natural resources, wildlife, and public lands, the Division established ambitious targets through FY 2008. The out-year performance goals were set at approximate target levels. Thus, the Division will monitor future year performance levels and make the necessary adjustments to reflect actual performance levels. The Division anticipates continued successes through vigorous enforcement which generally will produce settlements and significant gains for the public and the public fisc.

Public Benefit: The Division's efforts to defend federal programs, ensure compliance with environmental and natural resource statutes, win civil penalties, recoup federal funds spent to abate environmental contamination, ensure military preparedness, and ensure the safety and security of our water supply, demonstrate that the United States' environmental laws and regulations are being vigorously enforced. Polluters who violate these laws are not allowed to gain an unfair economic advantage over law-abiding companies. The deterrent effect of the Division's work encourages voluntary compliance with the environmental and natural resource laws, thereby improving the environment, the quality of our natural resources, and the safety and health of United States citizens.

## **B. Strategies to Accomplish Outcomes**

As our environment changes, so do the actions we take to preserve the health and life of those residing within the borders of the United States. Environmental groups and other interested parties challenge Administration policies every year. ENRD is responsible for defending federal agencies carrying out Administration policies every day. The Division has realized some remarkable successes to date. In an effort to continue our successful record of litigation, the Division has sought new and creative ways to utilize our limited resources. ENRD has adopted a policy of "porosity" whereby specialized attorneys are provided an opportunity to work on cases outside of their expertise to gain perspective and depth. This policy has resulted in more flexibility to shift workloads between attorneys when they become overburdened. Although cross-training staff grows our workforce's skills and abilities, it does not address long-term caseload issues.

The Division works collaboratively with client agencies towards adjudications and settlements. These alternative methods of resolution are less contentious and save the government expenses associated with full-blown litigation. Water rights adjudications, reclamations, and inverse takings cases are typically handled in settlement mode versus litigation mode. Settlements have the best outcome, and reach the largest number of people. In order to continue achieving successful settlements, ENRD must remain committed to collaborative negotiations with all interested parties. If a policy shift occurs, ENRD will be forced to take a more aggressive litigation stance, which would be costly without demonstrating added value for the Federal Government.

The Division's Environmental Enforcement Section is turning its attention to air toxic pollutants, mineral processing plant violations of RCRA, and industry practices that result in toxic emissions in violation of the Clean Air Act. EPA has been performing inspections of industries previously protected under the Bevel Amendments, but no longer exempt from the statutory requirements. To date, EPA has found 100 percent non-compliance in these inspections. Numerous resulting case referrals are expected, with ENRD prosecuting as many as our resources will allow.

**ENRDetails -- *Did You Know ...***

The Environment and Natural Resources obtained its largest-ever civil penalty in 2003 -- \$34 million -- through a settlement with Colonial Pipeline Company. The Clean Water Act charges against Colonial alleged multiple violations totaling 1.45 million gallons of spilled oil from the company's 5,500 mile pipeline in five states. Atlanta-based Colonial Pipeline is the largest-volume pipeline transporter of refined petroleum products in the world, moving an average of 83 million gallons of petroleum products each day through an underground pipeline that stretches from Port Arthur, Texas, to Linden, N.J., passing through Louisiana, Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina, Virginia, the District of Columbia, Maryland, and Pennsylvania. The government maintained that pipeline corrosion, mechanical damage, and operator error in seven spills resulted in the release of approximately 1.45 million gallons of oil and other petroleum products into the environment, including numerous rivers, streams, and wetlands. Oil spills from the pipeline damaged a variety of aquatic systems. In one spill alone, more than 950,000 gallons of diesel fuel spilled into the Reedy River in South Carolina, killing 35,000 fish and other species of wildlife, and dispersing more than 34 miles downstream.

Further Strategies to Accomplish Outcomes

The Department will continue to focus on tribal land and water claims, as well as issues pertaining to jurisdiction on Indian trust lands. Increased resources are necessary to execute a solid defense in Tribal Trust cases where the Federal Government's liability is in the hundreds of billions of dollars. In addition, we will continue to resolve cases that establish jurisdiction for law enforcement authorities over member and nonmember Indians, as well as non-Indians inside reservation boundaries, which is essential for effective law enforcement. Furthermore, the Department will litigate to address other issues regarding jurisdiction; to establish and protect treaty-based hunting and fishing rights; and to deter and remediate pollution problems on Indian lands. A detailed description of the Tribal Trust FY 2008 budget request is provided below.

## Description of Program Increase

<b>Item Name:</b>	<b>Tribal Trust</b>
Budget Decision Unit(s):	Environment and Natural Resources Division
Strategic Goal(s) & Objective(s):	<u>Strategic Goal Two, Objective 2.5</u> - Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction.
Organizational Program:	<i>Natural Resources Section (NRS)</i>
Component Ranking of Item:	<u>1</u> of <u>1</u>
Program Increase:	Positions <u>17</u> , FTE <u>9</u> , Litigation Support <u>\$2.6 million</u> , <b>Total Dollars <u>\$3,951,000</u></b>

### JUSTIFICATION

#### Description of Item

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ENRD is requesting 17 positions (10 attorneys), 9 FTEs, and \$3,951,000 to defend the United States in the high-profile, high-stakes Indian Tribal Trust litigation.

The United States has been sued in approximately 104 cases filed by about 80 Tribes in various United States District Courts and in the United States Court of Federal Claims. Two of the cases feature requests to certify classes of over 250 Tribal plaintiffs. If such requests are granted, the United States will have been sued by more than 300 Tribes.

The Government holds and manages approximately 56 million acres of land and resources in trust for the benefit of individual Indians and Tribes. Of these 56 million acres, nearly 46 million acres are held in trust specifically for Indian Tribes. On these lands, the Government manages over 100,000 leases for individual Indians and Tribes. About \$500 million per year in leasing, use permits, land sale revenues, and interest income are collected in 1,450 tribal accounts for some 300 Tribes. In total, the Government manages annually about \$3 billion in Tribal funds. Congress has delegated most of the trust functions to the Interior Department (principally, the Bureau of Indian Affairs and the Office of the Special Trustee for American Indians) and several custodial duties to the Treasury Department.

In the Tribal Trust cases, the Tribes allege that the Government should be ordered to prepare a “full and complete historical accounting” of the Tribes’ trust fund accounts and non-monetary trust resources and to pay damages for allegedly mismanaging the Tribes’ trust funds and non-monetary trust resources. Specifically, the Tribes claim that the Government has failed to

provide an accounting of the monies that it has collected, managed, and disbursed, as well as the non-monetary trust resources that it has administered, on the Tribes' behalf. Additionally, the Tribes claim that the Government has mismanaged the Tribes' trust funds and non-monetary trust resources, such as timber, oil, gas, and other minerals. In the 104 presently filed cases, the Tribes claim that they are owed damages exceeding \$220 billion.

The Tribal Trust cases are extraordinarily complex, both legally and factually. They involve records of economic activity conducted on Tribal lands for over 100 years. Tribal lands have been and continue to be used for a wide variety of revenue-producing activities, including grazing, farming, oil and gas development, timber harvesting, hydroelectric power generation, and minerals extraction. Similarly, Tribal funds have been and continue to be collected, deposited, transferred, disbursed, and invested. These activities generate transactional documentation, which must be identified, collected, imaged, coded, managed, reviewed, and analyzed, in order to provide competent representation of the Government in litigation, formal alternative dispute resolution (ADR) processes, or informal settlement discussions.

While about 86 of the 104 current cases were filed after November 2005 (some 72 cases were filed in the last week of December 2006 alone), 25 cases were filed in or shortly after January, 2002, with several being filed in the 1979-2000 timeframe. Consequently, many of the Tribal Trust cases have reached a level of procedural maturity so that they are in active formal discovery or informal document and informational exchanges with the Tribes. In the Spring of 2006, the *Osage* case proceeded to trial, and several others are currently proceeding on a trial track. Notwithstanding its best efforts at conservative resource management, ENRD struggles to maintain adequate staff to take the Tribal Trust cases to trial or completion of the ADR or informal settlement process. Also, ENRD lacks adequate funds to support the litigation, manage the discovery process, or handle over 150 million pages of relevant documentation that are associated with the currently filed Tribal Trust cases and that are located at disparate locations across the country. As such, we have relied upon litigation support contractors to perform these and other necessary tasks.

The Tribal Trust cases are counterparts to *Cobell v. Kempthorne*, which is a class-action lawsuit brought on behalf of 300,000-500,000 individual Indians demanding "full and complete historical accountings" of their individual Indian money (IIM) accounts. Of the 46 Tribal Trust cases that have been brought in the United States District Courts, 36 of them have been assigned to the same judge who is presiding over *Cobell*, because they were deemed factually and legally similar. In *Cobell*, the previous presiding judge (Judge Lamberth) held the Secretaries of the Interior and Treasury, as well as other Presidential appointees, in civil contempt in 1999, in part because of agency failures to comply with court orders regarding discovery. That civil contempt citation is precedent-setting and remains undisturbed to this day. Further, the *Cobell* plaintiffs have alleged civil and criminal contempt charges against over 50 other government attorneys and agency program staffers. Many of those charges arise from claims of document mismanagement. Adequate and competent document management will be one of the primary responsibilities addressed by this requested budget enhancement.

In July 2006, the United States Court of Appeals for the D.C. Circuit granted the Government's motion to reassign *Cobell* to a different judge because of Judge Lamberth's demonstrated bias



against the Government. The Tribal Trust cases were reassigned as well because of their relation to *Cobell*.

This reassignment of *Cobell* and the Tribal Trust cases from Judge Lamberth may decrease the risk of contempt citations or sanctions for government attorneys and agency program staffers working on those cases. It may also provide the Government with a more objective, impartial court in which to try these matters.

At the same time, however, the Government will still face the same vulnerabilities and exposures on substantive factual and legal issues, and the same document management burdens, as it did before. Therefore, the reassignment does not change the litigation support needs – or their nature and magnitude -- of the Tribal Trust cases.

Indeed, the litigation support needs in the Tribal Trust cases could increase. Until his reassignment, Judge Lamberth had devoted most of his time and attention to *Cobell* and thus had allowed the parties in the Tribal Trust cases to continue in informal settlement discussions without significant oversight or requirements by the Court. The newly assigned Judge may be less patient or tolerant with this process, and he may require the parties to conduct or complete their informal settlement discussions on an expedited schedule or to proceed to litigation. This concern is especially warranted in the 58 cases that are pending in the Court of Federal Claims and the 10 cases that are pending in the District Courts in Oklahoma. Many of the judges on the Court of Federal Claims have been and continue to be very aggressive in moving the cases on their dockets and, therefore, not patient or tolerant about the parties' or the Government's bid for more time to comply with court orders or to resolve matters informally or administratively.

Further, there is a chance that the *Cobell* litigation may be resolved through a legislative solution. If that were to occur, the focus of the Judge newly assigned to *Cobell* would most likely turn to the Tribal Trust cases. In other words, certain circumstances may lead to a more expedited track for resolution of the Tribal Trust cases, which would bring the attendant need for sufficient staff and resources to manage and enable adequate representation of the Government in these document-intensive and complicated cases.

It is important that ENRD devote sufficient resources to the Tribal Trust cases to avoid significant financial exposure and risk for the Government. Other consequences may include huge and unnecessary monetary awards at taxpayer expense, significant negative publicity, and a public loss of confidence in the Government in general, and, in particular, the Interior and Treasury Departments.

### **Summary Discussion of Staffing Increase**

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The Tribal Trust cases will require many years of attorney time before disposition, regardless of the manner (i.e., active litigation, ADR, or informal settlement), in part because of the volume of documentation required to be examined in the course of performing an accounting and the enormous amount of work required to defend resource mismanagement claims. For example, the last case handled by ENRD under the 1946 Indian Claims Commission Act (ICCA)—which permitted similar claims by Tribes to be brought and adjudicated administratively—has just

recently been concluded. So far, the Government has paid to various Tribes approximately \$3.5 billion in judgments or settlements of the ICCA cases. This figure represents a fraction of the amounts actually claimed by the Tribes. It was only through intensive litigation efforts that ENRD was able to so limit the awards. At the height of the litigation, ENRD dedicated an entire Section of attorneys and support staffers to defending the cases. ENRD's litigation efforts (which included document acquisition, management, and performance of accountings) were supported by the Indian Trust Accounting Division (ITAD) (formerly a component of the General Services Administration (GSA)), which, at one point, had over 100 employees, including staff accountants. Because of the conclusion of the ICCA litigation, GSA disbanded ITAD and shuttered its operations for good on September 30, 2006.

ENRD is currently staffing the 104 Tribal Trust cases with about 13 attorneys (full-time equivalents) and no full-time paralegals or support staff (other than contractors). The Interior Department does not have the ability, funding, or resources to prepare accountings to the Tribes that have demanded one. Nor does it have the ability, funding, or resources to provide adequate staff or litigation support to ENRD. In fact, Interior relies heavily on ENRD's attorney and litigation support contractor staff to perform many of the tasks and obligations that would ordinarily be discharged by the agency. The Division receives minimal reimbursement funding for this effort. The same applies to Treasury's efforts. ITAD is no longer a relevant support factor because it has been disbanded permanently.

ENRD's FY 2008 Tribal Trust staffing request is reflective of the litigation challenges that we expect to encounter as the cases become more mature and more active. The 72 new cases that were filed before the expiration of a statute of limitations for filing certain Tribal trust claims comprise one of the primary factors driving our need for additional staff. Currently, ENRD is handling a docket of 104 active Tribal trust cases. Therefore, approximately 10 additional attorneys will be required to accommodate the expanded docket and to compose memoranda, correspondence, and motions, and to coordinate information and document exchanges between the Tribes and the Government (particularly the Interior and Treasury Departments). Presuming that a number of the currently filed cases engage in depositions, hearings, and trial, we believe that additional attorney resources will be required to represent the Government's interests effectively in those venues. Our experience has taught us that the establishment of an active, cooperative, and attentive working relationship with the Tribes and their counsel will allow us to litigate these cases under preferential timetables and conditions. We need additional attorney resources in order to cultivate and maintain these favorable terms.

With the increase in the expected number of case filings – combined with the increase in maturity, complexity and general activity of the existing and prospective cases – ENRD anticipates particularly stringent litigative demands in the area of document management. We have already acquired and processed (scanned and coded) over 17 million pages of relevant documents for the Tribal Trust cases. The current and future cases are likely to generate over 150 million pages of documents that must be identified, processed, and managed.

The original impetus for many of the Indian trust lawsuits – and the root cause of many of the adverse rulings and orders in the Tribal Trust cases and *Cobell* (not to mention the civil contempt citation and various court-imposed sanctions in *Cobell*) – was related in one way or another to poor document management practices. We do not want to relive any of these clearly avoidable

mistakes. The requested number of paralegals (5) and support staff (2) will help assure that our document production and retention responsibilities are met. This staff will not only manage document inflows and outflows during the discovery phase of litigation, but they will also be instrumental in gathering and organizing documents for depositions (i.e., witness binders) and in preparation for trial (i.e., trial exhibits). In the *Osage* case, in which ENRD conducted a limited trial in the Spring of 2006, the Division produced a total of 399 trial exhibit binders (seven sets of 54 binders), which contained over 268,000 pages of exhibits. We had to detail paralegals and support staff from other important division matters in order to assemble and prepare the trial exhibits for *Osage*.

### **Summary Discussion of Litigation Support Increase**

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ENRD's litigation support needs for the Tribal Trust Cases can be generally classified into four categories: (1) contractor labor, (2) document management, (3) trial support, and (4) "Support Center" costs.

**Contractor Labor.** Current personnel resources within ENRD are not sufficient to adequately staff the 104 Tribal Trust cases that have been filed so far. Even with the additional Government staff requested, we will minimally be able to accommodate the increased future activity in the existing cases, as well as the demands of the prospective cases. We will still require the specialized supplemental litigation support services of our existing contractor staff, as described below. For the past three years, the efforts of our attorneys have been augmented by an indispensable, contractor-provided litigation support operation; and this contingent has been a key contributing factor in our successes to date.

ENRD cannot rely on the Interior or Treasury Departments to provide any significant or additional litigation support. Over the past four years, Interior has reimbursed ENRD for about \$1.6 million for document processing and production tasks that ENRD has undertaken for the agency. Interior has refused to pay in full ENRD's last request for supplemental reimbursement, however, and it probably will deny future requests. Also, Interior is largely consumed with the *Cobell* litigation and the continuing management of its Indian trust duties and responsibilities. Additionally, it is overwhelmed by the number and scope of accountings that it is or will be obligated to provide. Moreover, Interior is hampered by a lack of funding and resources itself, including an insufficient number of staff attorneys assigned to the Tribal Trust cases and the loss of Internet communication capability occasioned by *Cobell*. As a result, Interior is and has been unable to focus significant attention or resources on the Tribal Trust cases. The reassignment of *Cobell* to a new judge does not alter considerably the burdens confronting Interior from that litigation. Further, the filing of 72 new Tribal Trust cases in December 2006, many of which are in the Court of Federal Claims, exacerbates Interior's situation. Similarly, Treasury has assigned a single attorney to all 104 Tribal Trust cases. Also, Treasury relies upon ENRD for document processing and production tasks, as well as creation and maintenance of litigation databases, for which the agency reimburses the Division.

To compensate for these agency shortcomings, ENRD has retained an experienced litigation support contractor to provide a team of competent legal and technical staffers who have been and continue to be providing invaluable support to the ENRD attorneys working on the Tribal Trust

litigation. Based on its current projections (which include massive document acquisition, imaging, coding, management, database administration, trial preparation, and staff support), ENRD estimates that it will cost approximately \$2.58 million in additional funds to maintain the litigation support contract, at an adequate level of activity, for the duration of FY 2008.

**Document Management.** ENRD is the document manager for records relating to all of the Tribal Trust cases. It has identified, located, scanned, coded, managed, and produced documents to Interior, Treasury, and, in many instances, to the Tribes. As stated previously, ENRD has acquired and processed over 17 million pages to date. This figure represents about ten percent (or less) of the total volume of potentially relevant documents that has been identified to date in the currently filed cases (over 150 million pages). ENRD foresees the possible need to process up to or over (depending, in part, on the ultimate number of case filings and activity thereof) 10 million pages (approximately 2.85 million documents) before the end of FY 2008. It estimates that these documents will cost at least \$750,000 to acquire (i.e., image at remote locations, such as Reservations, and electronically process) and load (in searchable network databases).

**Trial Support.** Based on the current case schedules, ENRD expects to take at least two Tribal Trust cases to trial in FY 2008. Preparing and taking Tribal trust cases to trial imposes additional litigation support work requirements and financial burdens above and beyond the costs of providing and maintaining litigation support for all of the Tribal trust cases.

ENRD tried one Tribal Trust case in FY 2006. In *Osage* (one of three cases brought by this Tribe and one of two in the Court of Federal Claims), the Tribe alleged that it suffered over \$2.5 billion in damages from the Government's mismanagement of its trust fund accounts from 1853 to present and from improper pricing of its oil and gas resources. The trial (the first of several expected in the same case) involved the claims that the Government failed to collect the proper royalty payments under four selected oil and gas leases for five specific periods of time and that the Government failed to manage and invest the collected funds properly. The trial lasted two weeks during the Spring of 2006. Among other things, ENRD had to establish and staff a full-service, network-enabled, contractor-run trial support facility in close proximity to the courthouse in Washington, D.C. The litigation support activities specifically geared toward supporting the *Osage* trial cost \$250,000 over and above on-going costs for other cases. The cost to support two trials in FY 2008 would cost ENRD a minimum of \$500,000.

**Support Center.** ENRD established an on-site Tribal Trust Support Center in June 2003 to provide immediate and daily access for its attorneys, as well as Interior and Treasury components, to contractor support personnel, storage space, database administrators, and technical support resources. The Support Center additionally maintains and updates network-based computer databases; provides pre-trial, evidentiary hearing and trial support for cases; assists Treasury and Interior in responding to and managing voluminous requests for production; assists in coordinating and responding to the voluminous document and data requests of the Government's numerous expert consultants; and covers the setup and maintenance of a projected Website to provide secure access by experts and agency program personnel (wherever possible) to ENRD's imaged document collections and databases. The total costs to maintain the high-speed copiers and copier supplies, computer equipment, phones, office supplies, postage,

utilities, miscellaneous equipment, labor and other overhead is expected to total \$1,330,000 for FY 2008.

## **Conclusion**

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In order to defend effectively and represent adequately the interests of the United States and the public fisc, among other things, in the current docket of 104 Tribal trust cases, ENRD requests 10 attorneys, five paralegals, and two support staff, as well as \$2.58 million in litigation support funding, over our FY 2007 base. The Tribal Trust staffing and litigation support needs are urgent. Without major Divisional adjustments, we cannot continue to provide exemplary counsel to these important, high-profile, and high financial exposure cases.

ENRD must devote sufficient resources to the handling and management of these legally and factually complex Tribal Trust cases in order to protect the public fisc and in order to protect the federal Government from unnecessary embarrassment and discomfiture. The resources requested and explained above are the minimum required to allow ENRD to provide acceptable representation in these cases.

## **Impact on Performance (Relationship of Increase to Strategic Goals)**

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Successful execution of ENRD's Tribal Trust litigation responsibilities is a critical step in achieving the Justice Department's Strategic Goal Two: Enforce Federal Laws and Represent the Rights and Interests of the American People, and, more specifically, Strategic Objective 2.5: Enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction. The interests of the United States in the Tribal Trust cases can be described in both quantitative and qualitative terms. The financial interest of the United States in these matters is currently alleged to exceed \$220 billion, the total damages claimed by the Tribes in the 104 currently filed cases. The non-financial – both immediate and indirect – interests of the United States and the American people concern the huge and unnecessary potential monetary awards at taxpayer expense, extensive negative publicity, and a general public loss of confidence in the Government and the many Executive Branch agencies involved in the Tribal Trust litigation (Interior, Treasury, Justice). As such, the requested budget enhancement will benefit not only ENRD and the Justice Department, but also numerous agencies outside of the Department.

ENRD must devote the majority of its appropriated resources to defensive work on behalf of federal agencies. When making decisions as to which cases merit funding, the Division must proceed, first and foremost, with such non-delegable, non-discretionary defensive litigation. Additional resources for this initiative will assist the Division in responding to this increasingly onerous defensive caseload. It will also, as a result, liberate other resources to work on matters responsive to different aspects of Strategic Goal 2.5. For example, if ENRD is awarded enhancements for Tribal Trust in this FY 2008 budget request, we are less likely to divert resources from other program areas within our Division. As such, sufficient staff will be available to affirmatively respond to Objective 2.5 of the Attorney General's Strategic Plan, to "enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States in all matters for which the Department has jurisdiction."

For ENRD to meet the Department’s goal of defending all “challenges to federal environmental and conservation programs and activities by representing the United States in all matters concerning the protection, use, and development of the nation’s public lands and natural resources” – while at the same time continuing to “enforce federal statutes, uphold the rule of law, and vigorously represent the interests of the United States” – the Division needs additional staff and funding. The personnel and litigation support requested under this Tribal Trust initiative will provide ENRD with the resources needed to effectively address all aspects of DOJ Strategic Objective 2.5.

## Funding

### Base Funding

FY 2006 Availability			FY 2007 Estimate			FY 2008 Request		
Pos	FTE	Dollars (\$000)	Pos	FTE	Dollars (\$000)	Pos	FTE	Dollars (\$000)
13	13	1,199	13	13	\$1,258	30	22	\$2,629

### Personnel Increase Cost Summary

Type of Position	Modular Cost per Position	Number of Positions Requested	FY 2008 Request	FY 2009 Net Annualization
Attorney	\$103,528	10	\$1,035,280	\$800,290
Paralegal	\$51,426	5	\$257,130	\$317,974
Legal Assistant	\$39,087	2	\$78,174	\$76,024
Total Personnel		17	\$1,370,584	\$1,194,288

### Non-Personnel Increase Cost Summary

Item	Unit	Quantity	FY 2008 Request	FY 2009 Net Annualization
Litigation Support	N/A	N/A	\$2,580,416	\$0
Total Non-Personnel	N/A	N/A	\$2,580,416	\$0

### Grand Total

Item	Pos	FTE	Personnel	Non-Personnel	Total
Expense Increase	17	9	\$1,370,584	\$2,580,416	\$3,951,000
Grand Total	17	9	\$1,370,584	\$2,580,416	\$3,951,000

### **C. Results of Program Assessment Rating Tool (PART)**

During FY 2005, the Division was assessed through the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART) along with five other litigating components (Antitrust, Civil Division, Criminal Division, Civil Rights Division, and Tax Division), collectively named the General Legal Activities (GLA) Program. At the end of the assessment, the GLA Program received the highest rating of "Effective." Other findings showed that:

- The Program effectively achieves its goal of resolving cases in favor of the government. Favorable resolutions, in turn, punish and deter violations of the law; ensure the integrity of federal laws and programs; and prevent the government from losing money through unfavorable settlements or judgments.
- The Program collaborates effectively with its partners, notably the U.S. Attorneys Offices. The two programs work closely to share expertise, make referrals, and designate cases for prosecution, while minimizing any overlap of responsibilities.
- The Program exhibits good management practices. This includes strong financial management, collecting and using performance information to make decisions, and holding managers accountable for program performance.

Additionally, to exhibit continual improvement of business practices, the Program will perform these follow-up actions:

- Seek regular, independent evaluations of the Program's effectiveness at resolving cases in favor of the government;
- Establish a leadership training and mentoring program to continue improving the quality of the program's management; and
- Work with the Department's Chief Information Officer to evaluate and purchase litigation software that will improve productivity and efficiency.

The recent actions initiated in FY 2006, but not completed by year-end are as follows:

- In FY 2006, the Department's Justice Management Division (JMD) offered a proposal to the Management and Planning Staff (MPS) and the Office of the Inspector General (OIG) to perform an independent evaluation of the GLA components (GLAs). The proposal recommended that MPS perform initial background interviews in a manner consistent with OIG yellow book regulations. MPS would later hand off their preliminary research to OIG to review and offer their findings and recommendations. However, OIG was unable to include the GLA evaluation in their FY 2007 docket, and as a result, JMD and



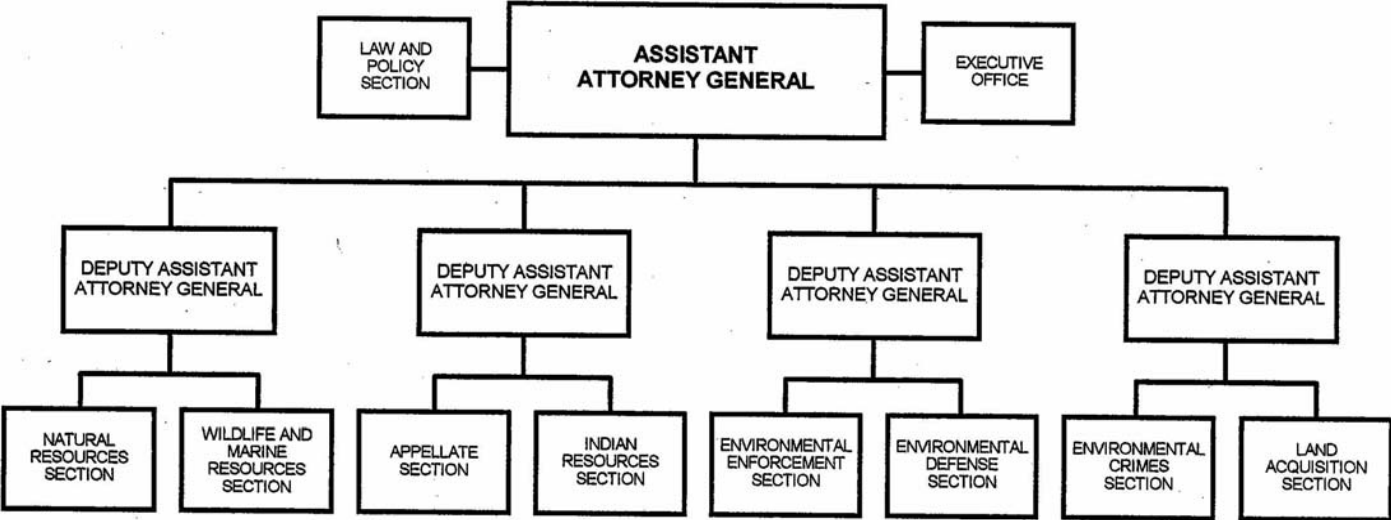
the GLAs are currently exploring other options to meet the PART follow-up action of "Performing an independent evaluation of the GLAs."

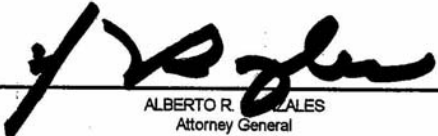
- Each of the litigating components has developed a leadership training and/or mentoring program, or is in the process of developing one. Over the course of FY 2006, the litigating components trained 318 attorneys and 219 non-attorneys after conducting 9 training sessions. Additionally, 22 new employees are enrolled in a mentoring program.
- The litigating components are working jointly on a project led by the Justice Management Division (JMD) to develop a case management system with the objective of providing an efficient and effective means to track litigations handled by the Department. Each component participated in the Source Selection Evaluation Board for the system. Vendor demos were conducted and revised proposals were evaluated for vendors still in the procurement process. The Board has completed its evaluation and recommendations were sent to the selecting officials.

## **V. Exhibits**

A. Organizational Chart

**ENVIRONMENT AND NATURAL RESOURCES DIVISION**



Approved by:  Date: 2-14-06  
ALBERTO R. MORALES  
Attorney General

## B. Summary of Requirements

**Summary of Requirements**  
 Environment & Natural Resources Division  
 Salaries and Expenses  
 (Dollars in Thousands)

	FY 2008 Pres. Budget		
	Perm. Pos.	FTE	Amount
<b>2006 Enacted (with Rescissions, direct only)</b>	439	493	\$ 92,774
2006 Supplementals			
<b>Total 2006 Enacted (with Rescissions and Supplementals)</b>	439	493	\$ 92,774
2007 President's Budget (Information Only)	436	490	\$ 95,051
2007 Continuing Resolution Level (as reflected in the 2008 President's Budget; Information Only)	436	490	92,774
<b>2007 Estimate (direct only)*</b>	436	490	\$ 91,408
2007 Rescission Against Balances			
<b>2007 Estimate (with Rescissions)</b>	436	490	\$ 91,408
Technical Adjustments:			
Restoration of 2007 Rescission Against Balances			2,505
Total Technical Adjustments			2,505
Adjustments to Base			
Increases:			
2008 pay raise (3.0%)			\$ 1,467
2007 pay raise annualization (2.2%)			414
Changes in Compensable Days			492
Retirement			146
Health Insurance Premiums			210
Employees Compensation Fund			5
General Services Administration (GSA) Rent			752
DHS Security Charges			1
Security Investigations			45
Subtotal Increases			\$ 3,532
Total Adjustments to Base			3,532
Total Adjustments to Base and Technical Adjustments			\$ 6,037
<b>2008 Current Services</b>	436	490	\$ 97,445
Program Change			
Increase:			
Tribal Trust Initiative	17	9	\$ 3,951
Total Program Change	17	9	\$ 3,951
<b>2008 Total Request</b>	453	499	\$ 101,396
2007 - 2008 Total Change	17	9	\$ 9,988

\* The Department of Justice 2008 budget request was built on a starting point that recognized progress in enacting the FY 2007 appropriation. The starting point used (referred to throughout this document as the "Estimate") is the average of the Senate Committee and House passed marks, less one percent, unless noted otherwise.

## B. Summary of Requirements (Cont.)

**Summary of Requirements**  
 Environment & Natural Resources Division  
 Salaries and Expenses  
 (Dollars in Thousands)

Estimates by budget activity	2006 Enacted w/Rescissions and Supplementals*			2007 Estimate			2008 Adjustments to Base and Technical Adjustments			2008 Current Services			2008 Increases			2008 Offsets			2008 Request		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	402	442	\$82,463	400	440	\$81,841			\$5,407	400	440	\$87,249	17	9	\$3,951	....	....	\$0	417	449	\$91,200
Criminal Litigation	37	51	10,311	36	50	9,567			630	36	50	10,196	....	....	....				36	50	10,196
<b>Total</b>	<b>439</b>	<b>493</b>	<b>\$ 92,774</b>	<b>436</b>	<b>490</b>	<b>\$ 91,408</b>	....	....	<b>\$ 6,037</b>	<b>436</b>	<b>490</b>	<b>\$ 97,445</b>	<b>17</b>	<b>9</b>	<b>\$ 3,951</b>	....	....	....	<b>453</b>	<b>499</b>	<b>\$ 101,396</b>
Reimbursable FTE		184			184						184									184	
Total FTE		677			674		....				674			9		....				683	
LEAP							....							....		....					
Overtime							....							....		....					
Total Comp. FTE		677			674		....				674			9		....				683	

\*See Exhibit F for crosswalk for Enacted without rescission to Enacted with rescissions for FY 2006.

**C. Program Increases by Decision Unit**

**FY 2008 Program Increase by Decision Unit**  
 Environment & Natural Resources Division  
 (Dollars in Thousands)

<b>Program Increase</b>	<b>Location of Description By Decision Unit</b>	<b>Pos.</b>	<b>Agt./Atty.</b>	<b>FTE</b>	<b>Total Increase \$000's</b>
<b>Initiative</b>					
Tribal Trust	Civil Litigation	17	10	9	\$ 3,951
<b>Total Program Increase</b>		<b>17</b>	<b>10</b>	<b>9</b>	<b>\$ 3,951</b>

## D. Resources by Department of Justice Strategic Goal and Objective

### Resources by Department of Justice Strategic Goal/Objective Environment & Natural Resources Division (Dollars in Thousands)

Strategic Goal and Strategic Objective	2006 Appropriation Enacted w/Rescissions and Supplementals		2007 Estimate		2008 Current Services		2008				2008 Request	
	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s	Direct, Reimb. Other FTE	Direct Amount \$000s
<b>Goal 1: Prevent Terrorism and Promote the Nation's Security</b> 1.1: Prevent, disrupt, and defeat terrorist operations before they occur 1.2: Investigate and prosecute those who have committed, or intend to commit, terrorist acts in the United States												
<b>Subtotal, Goal 1</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Goal 2: Enforce Federal Laws and Represent the Rights and Interests of the American People</b> 2.5: Federal Statutes	493	92,774	490	91,408	490	97,445	9	3,951			499	101,396
<b>Subtotal, Goal 2</b>	<b>493</b>	<b>92,774</b>	<b>490</b>	<b>91,408</b>	<b>490</b>	<b>97,445</b>	<b>9</b>	<b>3,951</b>	-	-	<b>499</b>	<b>101,396</b>
<b>Goal 3: Assist State, Local, and Tribal Efforts to Prevent or Reduce Crime and Violence</b> 3.1:												
<b>Subtotal, Goal 3</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>Goal 4: Ensure the Fair and Efficient Operation of the Federal Justice System</b> 4.1:												
<b>Subtotal, Goal 4</b>	-	-	-	-	-	-	-	-	-	-	-	-
<b>GRAND TOTAL</b>	<b>493</b>	<b>\$ 92,774</b>	<b>490</b>	<b>\$ 91,408</b>	<b>490</b>	<b>\$ 97,445</b>	<b>9</b>	<b>\$ 3,951</b>	-	\$ -	<b>499</b>	<b>\$ 101,396</b>

## E. Justification for Base Adjustments

### Justification for Base Adjustments\* Environment & Natural Resources Division

#### Increases

2008 pay raise: This request provides for a proposed 3.0 percent pay raise to be effective in January of 2008. This increase includes locality pay adjustments as well as the general pay raise. The amount requested, \$1,467,000 represents the pay amounts for 3/4 of the fiscal year plus appropriate benefits (\$1,033,648 for pay and \$433,352 for benefits).

Annualization of 2007 pay raise: This pay annualization represents first quarter amounts (October through December) of the 2007 pay increase of 2.2 percent included in the 2007 House passed bill for Treasury. The amount requested \$414,000 represents the pay amounts for 1/4 of the fiscal year plus appropriate benefits (\$293,940 for pay and \$120,060 for benefits).

Changes in Compensable Days: The increased costs of two more compensable days in FY 2008 compared to FY 2007 is calculated by dividing the FY 2007 estimated personnel compensation \$53,603,000 and applicable benefits \$10,271,000 by 260 compensable days. The cost increase of two compensable days is \$492,000.

Retirement: Agency retirement contributions increase as employees under CSRS retire and are replaced by FERS employees. Based on OPM government-wide estimates, we project that the DOJ workforce will convert from CSRS to FERS at a rate of 3 percent per year. The requested increase of \$146,000 is necessary to meet our increased retirement obligations as a result of this conversion.

Health Insurance Premiums: Effective January 2006, this component's contribution to Federal employees' health insurance premiums increased by 6.1 percent. Applied against the 2007 estimate of \$3,422,000 the additional amount required is \$210,000.

Employees Compensation Fund: This \$5,341 increase reflects payments to the Department of Labor for injury benefits paid on our behalf in the past year under the Federal Employee Compensation Act. This estimate is based on the first quarter of prior year billing and current year estimates.

General Services Administration (GSA) Rent: GSA will continue to charge rental rates that approximate those charged to commercial tenants for equivalent space and related services. The requested increase of \$752,000 is required to meet our commitment to GSA.

DHS Security Charges: The Department of Homeland Security (DHS) will continue to charge Basic Security and Building Specific Security. The requested increase of \$1,000 is required to meet our commitment to DHS, and cost estimates were developed by DHS.

Security Investigations: The \$45,000 increase reflects payments to the Office of Personnel Management for security reinvestigations of employees requiring security clearances.

\* ATBs must be recalculated following final FY 2007 action.

**Exhibit E**



## F. Crosswalk of 2006 Availability

**Crosswalk of 2006 Availability**  
 Environment & Natural Resources Division  
 (Dollars in Thousands)

Decision Unit	FY 2006 Enacted Without Rescission			Rescissions*			Supplementals			Reprogrammings / Transfers**			Carryover / Recoveries			2006 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	402	442	\$83,124			(1,099)						(304)				402	442	\$81,721
Criminal Litigation	37	51	10,850			(101)						(28)				37	51	10,721
<b>TOTAL</b>	<b>439</b>	<b>493</b>	<b>\$93,974</b>	<b>....</b>	<b>....</b>	<b>(\$1,200)</b>	<b>....</b>	<b>....</b>	<b>\$0</b>	<b>....</b>	<b>....</b>	<b>(\$332)</b>	<b>....</b>	<b>....</b>	<b>\$0</b>	<b>439</b>	<b>493</b>	<b>\$92,442</b>
Reimbursable FTE		184																184
Total FTE		677			....			....			....			....				677
Other FTE																		
LEAP																		....
Overtime																		....
Total Compensable FTE		677			....			....			....			....				677

\* Enacted Rescissions. Funds rescinded as required by the Department of Justice Appropriations Act, 2006 (P.L. 109-108) and the Department of Defense Appropriations Act, 2006 (P.L. 109-148).

\*\* Reprogrammings and Transfers

Reprogramming - Represents the second half of the implementation of the FY 2005 reprogramming of three Honors Program attorney positions and \$332,000 to the US Attorneys' Offices. The goal of the reprogramming is to shift litigation functions and resources to the "front lines" to augment efforts to address national priorities, primarily the war on terrorism. The transfer is pursuant to P.L. 107-273, the 21st Century DOJ Appropriations Authorization Act 116 STAT. 1766 (Section 103).

## G. Crosswalk of 2006 Availability

**Crosswalk of 2007 Availability**  
 Environment & Natural Resources Division  
 (Dollars in Thousands)

Decision Unit	2007 Estimate			Rescissions			Supplementals			Reprogrammings / Transfers			Unobligated Balances Carried Forward /Recoveries			2007 Availability		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Civil Litigation	400	440	\$81,841													400	440	\$81,841
Criminal Litigation	36	50	9,567													36	50	9,567
<b>TOTAL</b>	<b>436</b>	<b>490</b>	<b>\$91,408</b>	....	....	\$0	....	....	\$0	....	....	\$0	....	....	\$0	<b>436</b>	<b>490</b>	<b>\$91,408</b>
Reimbursable FTE		184																184
Total FTE		674			....			....			....			....				674
Other FTE																		
LEAP																		....
Overtime																		....
Total Compensable FTE		674			....			....			....			....				674

## H. Summary of Reimbursable Resources

**Summary of Reimbursable Resources**  
 Environment & Natural Resources Division  
 Salaries and Expenses  
 (Dollars in Thousands)

Collections by Source	2006 Enacted			2007 Planned			2008 Request			Increase/(Decrease)		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Department of Agriculture			\$1,741			\$1,500			\$1,300	....	....	(200)
Department of Commerce			6			14			14	....	....	....
Department of Defense			493			700			600	....	....	(100)
Department of Energy			6			15			14	....	....	(1)
Department of Homeland Security			4,000			6,000			5,700	....	....	(300)
Department of Interior			4,200			4,000			3,700	....	....	(300)
Department of Justice			7,145			5,500			5,200	....	....	(300)
Department of State			7			4			4	....	....	....
Department of Treasury			50			5			5	....	....	....
Environmental Protection Agency		184	29,900		184	27,044		184	25,500	....	....	(1,544)
Equal Employment Opportunity Commission			-			-			-	....	....	....
Federal Trade Commission			325			200			183	....	....	(17)
Office of the Independent Counsel			-			-			-	....	....	....
Securities and Exchange Commission			2,950			4,938			4,700	....	....	(238)
All Others			177			80			80	....	....	....
										....	....	....
Budgetary Resources:	....	184	\$51,000	....	184	\$50,000	....	184	\$47,000	....	....	(3,000)

Obligations by Program	2006 Enacted			2007 Planned			2008 Request			Increase/(Decrease)		
	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount	Pos.	FTE	Amount
Total Obligations:	....	184	\$51,000	....	184	\$50,000	....	184	\$47,000	....	....	(3,000)

## I. Detail of Permanent Positions by Category

### Detail of Permanent Positions by Category Environment & Natural Resources Division Salaries and Expenses

Category	2006 Enacted w/Rescissions and Supplementals*		2007 Estimate		2008 Request					
	Total Authorized	Total Reimbursable	Total Authorized	Total Reimbursable	ATBs	Program Increases	Program Decreases	Total Pr. Changes	Total Authorized	Total Reimbursable
Attorneys (905)	311	110	308	110		10		10	318	110
Paralegals / Other Law (900-998)	40	38	40	38		5		5	45	38
Personnel Management (200-299)	8	1	8	1				....	8	1
Clerical and Office Services (300-399)	54	35	54	35		2		2	56	35
Accounting and Budget (500-599)	5		5					....	5	
Information & Arts (1000-1099)								....	....	
Business & Industry (1100-1199)	3		3					....	3	
Library (1400-1499)								....	....	
Equipment/Facilities Services (1600-1699)								....	....	
Supply Services (2000-2099)								....	....	
Security Specialists (080)								....	....	
Motor Vehicle Operations (5703)								....	....	
Information Technology Mgmt (2210)	18		18					....	18	
Miscellaneous Operations (010-099)								....	....	
<b>Total</b>	<b>439</b>	<b>184</b>	<b>436</b>	<b>184</b>	<b>....</b>	<b>17</b>	<b>....</b>	<b>17</b>	<b>453</b>	<b>184</b>
Headquarters (Washington, D.C.)	390	167	387	167	....	17		17	404	167
U.S. Field	49	17	49	17				....	49	17
Foreign Field								....	....	
<b>Total</b>	<b>439</b>	<b>184</b>	<b>436</b>	<b>184</b>	<b>....</b>	<b>17</b>	<b>....</b>	<b>17</b>	<b>453</b>	<b>184</b>

\* Distribution of positions among categories will vary from previously submitted schedules. The distribution has been adjusted to reflect current operations, however total appropriated and reimbursable positions have not changed.

**Exhibit I**

**J. Financial Analysis of Program Increases**

**Financial Analysis of Program Changes**  
 Environment & Natural Resources Division  
 (Dollars in Thousands)

<b>Grades:</b>	<b>Pos.</b>	<b>Amount</b>
GS-14	10	1035
GS-9	5	257
GS-7	2	78
Total positions & annual amount	17	1371
Lapse (-)	(9)	(685)
Total FTE & personnel compensation	9	685
Personnel benefits		202
Travel and transportation of persons		33
Communication, rents, and utilities		14
Other services		2,962
Purchases of goods & services from Government accounts		8
Supplies and materials		8
Equipment		39
<b>Total, 2008 program changes requested</b>	<b>9</b>	<b>3,951</b>

## K. Summary of Requirements by Grade

### Summary of Requirements by Grade Environment & Natural Resources Division Salaries and Expenses

	Grades and Salary Ranges	2006 Actual		2007 Estimate		2008 Request		Increase/Decrease	
		Pos.	Amount	Pos.	Amount	Pos.	Amount	Pos.	Amount
1	SES, \$109,808 - \$152,000	18		18		18		....	
2	GS-15, \$107,521 - 139,774	258		258		258		....	
3	GS-14, \$91,407 - 118,828	27		24		34		10	
4	GS-13, \$77,353 - 100,554	24		24		24		....	
5	GS-12, \$65,048 - 84,559	19		19		19		....	
6	GS-11, \$54,272 - 70,558	26		26		26		....	
7	GS-10, 49,397 - 64,213	2		2		2		....	
8	GS-9, \$44,856 - 58,318	20		20		25		5	
9	GS-8, \$40,612 - 52,794	19		19		19		....	
10	GS-7, \$36,671 - 47,669	17		17		19		2	
11	GS-6, \$33,000 - 42,898	1		1		1		....	
12	GS-5, \$29,604 - 38,487	1		1		1		....	
13	GS-4, \$26,460 - 34,402	4		4		4		....	
14	GS-3, \$23,571 - 30,645	3		3		3		....	
15	GS-2, \$21,602 - 27,182	....		....		....		....	
16	GS-1, \$19,214 - 24,029	....		....		....		....	
	<b>Total, appropriated positions</b>	<b>439</b>		<b>436</b>		<b>453</b>		<b>17</b>	
	<b>Average SES Salary</b>		<b>\$152,000</b>		<b>\$156,104</b>		<b>\$159,539</b>		
	<b>Average GS Salary</b>		<b>\$88,698</b>		<b>\$91,073</b>		<b>\$92,363</b>		
	<b>Average GS Grade</b>		<b>GS-13/3</b>		<b>GS-13/3</b>		<b>GS-13/2</b>		

## L. Summary of Requirements by Object Class

### Summary of Requirements by Object Class

Environment & Natural Resources Division

Salaries and Expenses

(Dollars in Thousands)

Object Classes	2006 Actual		2007 Estimate		2008 Request		Increase/Decrease	
	FTE	Amount	FTE	Amount	FTE	Amount	FTE	Amount
11.1 Total FTE & personnel compensation	430	45,548	427	46,734	436	50,483	9	\$ 3,749
11.3 Other than full-time permanent	63	6,918	63	7,885	63	7,885	....	....
11.5 Total, Other personnel compensation	....	574	....	921	....	921	....	....
<i>Overtime</i>	....	....	....	....	....	....	....	....
<i>Other Compensation</i>	....	....	....	....	....	....	....	....
11.8 Special personal services payments	....	356	....	551	....	551	....	....
Total	493	53,396	490	56,091	499	59,840	9	3,749
Reimbursable FTE:								
Full-time permanent	151		184		184		[ ]	
Other Object Classes:								
12.0 Personnel benefits		13,637		14,619		14,975		356
12.0 Benefits to former personnel		....		....		....		....
13.0 Unemployment		11		11		11		....
21.0 Travel and transportation of persons		2,283		2,248		2,248		....
22.0 Transportation of things		362		344		344		....
23.1 GSA rent		10,952		11,292		12,044		752
23.2 Rental payments to others		....		....		....		....
23.3 Comm., util., & other misc. charges		1,316		1,377		1,377		....
24.0 Printing and reproduction		71		63		63		....
25.1 Advisory and assistance services		404		427		427		....
25.2 Other services		4,137		932		4,697		3,765
25.3 Purchases of goods & services from Government acct		4,456		2,836		4,202		1,366
25.4 Operations and Maintenance of Facilities		....		....		....		....
25.5 Research and Development Contracts		....		....		....		....
25.5 Health Units and Medical Care		....		....		....		....
25.7 Operation and Maintenance of Equipment		....		....		....		....
26.0 Supplies and materials		620		699		699		....
31.0 Equipment		770		469		469		....
32.0 Land and Structures		....		....		....		....
<b>Total obligations</b>		<b>92,415</b>		<b>91,408</b>		<b>101,396</b>		<b>\$ 9,988</b>

Exhibit L