

**2025 USDA EXPLANATORY NOTES – OFFICE OF THE GENERAL COUNSEL**

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**PREFACE**

This publication summarizes the fiscal year (FY) 2025 Budget for the U.S. Department of Agriculture (USDA). Throughout this publication any reference to the “Budget” is in regard to the 2025 Budget, unless otherwise noted. All references to years refer to fiscal year, except where specifically noted. The budgetary tables throughout this document show actual amounts for 2022 and 2023, annualized Continuing Resolution levels for 2024, and the President’s Budget request for 2025. Amounts for 2024 estimated levels include: non-enacted amounts such as Full-Time Equivalent levels, fleet levels, information technology investment levels, recovery levels, transfers in and out, balances available end of year, and obligation levels.

Throughout this publication, the “2018 Farm Bill” is used to refer to the Agriculture Improvement Act of 2018. Most programs funded by the 2018 Farm Bill are funded through 2023. Amounts shown in 2024 and 2025 for most Farm Bill programs reflect those confirmed in the baseline.

Pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, sequestration is included in the numbers for mandatory programs in 2022, 2023, 2024 and 2025.

In tables throughout this document, amounts equal to zero (0) are displayed as dashes (-). Amounts less than 0.5 and greater than zero are rounded and shown as a zero (0). This display treatment is used to prevent the masking of non-zero amounts that do not round up to one (1).

**AGENCY-WIDE****PURPOSE STATEMENT**

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

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

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

**Legal Advice**

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

**Legislation and Document Preparation**

OGC prepares draft legislation, patent applications arising out of inventions by USDA employees, contracts, agreements, mortgages, leases, deeds, and any other legal documents required by USDA agencies. OGC also provides technical assistance to Congress on legislative drafting.

**Administrative Proceedings**

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

**Federal and State Court Litigation**

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

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

**Law Library**

OGC maintains the USDA Law Library, which, prior to 1982, was housed at the National Agricultural Library and includes print and electronic legal research resources and tools.

**Geographic Location**

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

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

As of September 30, 2023, there were 247 permanent full-time employees, of which 126 were located in the headquarters office and 121 in the field offices.

**OIG AND GAO REPORTS**

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

**AVAILABLE FUNDS AND FTEs**

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

Item	2022		2023		2024		2025	
	Actual	FTEs	Actual	FTEs	Estimated	FTEs	Estimated	FTEs
Salaries and Expenses:								
Discretionary Appropriations.....	\$55,868	211	\$60,137	220	\$60,537	238	\$66,581	260
Total Available .....	55,868	211	60,137	220	60,537	238	66,581	260
Lapsing Balances .....	-188	-	-301	-	-	-	-	-
Total Obligations, OGC.....	55,680	211	59,836	220	60,537	238	65,581	260
Other USDA:								
CCC.....	-	-	-	-	458	2	458	2
Civil Rights EEO Reimbursables ..	2,799	16	3,082	17	3,550	20	3,785	20
Detail Support .....	150	-	215	1	229	1	-	-
OCFO Electronic Record System..	-	-	5,383	-	-	-	-	-
OCFO Nonrecurring Expense.....	-	-	500	-	-	-	-	-
OCIO/FOIA Support.....	426	2	-	-	-	-	-	-
FOIAXpress and DOJ Portal .....	275	-	266	-	266	-	266	-
FS Non-Litigation Travel.....	2	-	15	-	15	-	15	-
Hazardous Materials Management	837	4	758	3	769	3	782	3
Records Management.....	-	-	-	-	413	2	-	-
AMS User Fees .....	505	2	448	2	471	2	482	2
APHIS User Fees .....	15	-	27	-	28	-	29	-
Total, Other USDA .....	5,009	24	10,694	23	6,199	30	5,817	27
Total, Agriculture Available .....	60,689	235	70,530	243	66,736	268	72,398	287
Other Federal Funds:								
National Archives .....	-	-	1	-	-	-	-	-
Total, Other Federal .....	-	-	1	-	-	-	-	-
Total Available, OGC .....	60,689	235	70,531	243	66,736	268	72,398	287

**PERMANENT POSITIONS BY GRADE AND FTES**

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

Item	2022 Actual			2023 Actual			2024 Estimated			2025 Estimated		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
EX.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	12	4	16	14	4	18	16	4	20	17	4	21
GS-15.....	28	20	48	34	35	69	35	34	69	36	35	71
GS-14.....	61	39	100	45	40	85	52	50	102	62	51	113
GS-13.....	11	9	20	9	8	17	9	1	10	17	19	36
GS-12.....	5	8	13	5	4	9	12	16	28	6	2	8
GS-11.....	9	6	15	14	17	31	11	10	21	10	11	21
GS-9.....	3	4	7	1	11	12	3	11	14	2	11	13
GS-8.....	3	7	10	1	-	1	1	-	1	1	-	1
GS-7.....	1	2	3	1	2	3	-	1	1	-	1	1
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
Total Permanent....	135	99	234	126	121	247	141	127	268	153	134	287
Total Perm. FT EOY..	135	99	234	126	121	247	141	127	268	153	134	287
FTE.....	115	108	223	124	119	243	141	127	268	153	134	287

**SHARED FUNDING PROJECTS**

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

Item	2022 Actual	2023 Actual	2024 Estimated	2025 Estimated
<b>Working Capital Fund:</b>				
Administrative Services:				
AskUSDA.....	-	\$9	\$16	\$16
Mail and Reproduction Services.....	\$166	150	152	150
Integrated Procurement Systems.....	22	15	18	-
Procurement Operations Services.....	75	103	129	145
Human Resources Enterprise Management Systems.....	5	4	3	3
Subtotal.....	310	321	360	354
Communications:				
Creative Media & Broadcast Center.....	3	4	17	8
Finance and Management:				
National Finance Center.....	72	74	76	71
Financial Shared Services.....	199	220	232	218
Internal Control Support Services.....	-	-	13	11
Personnel and Document Security Program.....	-	12	14	14
Subtotal.....	271	306	335	314
Information Technology:				
Client Experience Center.....	1,703	1,676	1,679	1,667
Department Administration Information Technology Office.....	416	392	507	505
Digital Infrastructure Services Center.....	59	486	49	47
Enterprise Cybersecurity Center.....	-	105	162	179
Enterprise Data and Analytics Services.....	-	6	6	6
Enterprise Network Services.....	107	129	163	179
Subtotal.....	2,285	2,794	2,566	2,583
Correspondence				
Office of the Executive Secretariat.....	60	2	2	13
Total, Working Capital Fund.....	2,929	3,427	3,280	3,272
<b>Department-Wide Shared Cost Programs:</b>				
Agency Partnership Outreach.....	17	18	23	23
Diversity, Equity, Inclusion and Accessibility.....	-	5	8	8
Employee Experience.....	-	9	11	11
Medical Services.....	36	40	52	52
National Capital Region Interpreting Services.....	8	22	21	21
Office of Customer Experience.....	23	8	10	10
Personnel and Document Security Program.....	6	-	-	-
Physical Security.....	11	11	14	14
Security Detail.....	12	13	16	16
Security Operations Program.....	17	17	23	23

Item	2022 Actual	2023 Actual	2024 Estimated	2025 Estimated
Talent Group .....	-	9	10	10
TARGET Center .....	3	4	5	5
USDA Enterprise Data Analytics Services .....	12	-	-	-
Total, Department-Wide Reimbursable Programs .....	145	156	193	193
<b>E-Gov:</b>				
Human Resources Line of Business .....	1	1	1	1
Hiring Assessment Tool .....	1	-	-	-
Total, E-Gov .....	2	1	1	1
Agency Total .....	3,076	3,584	3,474	3,466

**ACCOUNT 1: SALARIES AND EXPENSES**

**APPROPRIATIONS LANGUAGE**

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

*Salaries and Expenses*

For expenses necessary to the Office of the General Counsel, [~~\$65,646,000~~]\$66,581,000.

**LEAD-OFF TABULAR STATEMENT**

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

<b>Item</b>	<b>Amount</b>
Estimate, 2024	\$60,537,000
Change in Appropriation	+ 6,044,000
Budget Estimate, 2025	<u>66,581,000</u>

**PROJECT STATEMENTS**

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

Item	2022 Actual	FTEs	2023 Actual	FTEs	2024 Estimated	FTEs	2025 Estimated	FTEs	Inc. or Dec.	FTE Inc. or Dec.	Chg Key
Discretionary											
Appropriations:											
Legal Services .....	\$55,868	211	\$60,137	220	\$60,537	238	\$66,581	260	+\$6,044	+22	(1)
Transfer In and Out .....	1,400	-	400	-	-	-	-	-	-	-	-
Total Appropriation.....	<u>57,268</u>	<u>211</u>	<u>60,537</u>	<u>220</u>	<u>60,537</u>	<u>238</u>	<u>66,581</u>	<u>260</u>	<u>+6,044</u>	<u>+22</u>	
Transfers Out:											
Working Capital Funds .....	-1,400	-	-400	-	-	-	-	-	-	-	-
Total Available.....	<u>55,868</u>	<u>211</u>	<u>60,137</u>	<u>220</u>	<u>60,537</u>	<u>238</u>	<u>66,581</u>	<u>260</u>	<u>+6,044</u>	<u>+22</u>	
Lapsing Balances .....	-188	-	-301	-	-	-	-	-	-	-	-
Total Obligations.....	<u>55,680</u>	<u>211</u>	<u>59,836</u>	<u>220</u>	<u>60,537</u>	<u>238</u>	<u>66,581</u>	<u>260</u>	<u>+6,044</u>	<u>+22</u>	

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

Item	2022 Actual	FTEs	2023 Actual	FTEs	2024 Estimated	FTEs	2025 Estimated	FTEs	Inc. or Dec.	FTE Inc. or Dec.
Discretionary Obligations:										
Legal Services .....	\$55,680	211	\$59,836	220	\$60,537	238	\$66,581	260	+\$6,044	+22
Lapsing Balances .....	188	-	301	-	-	-	-	-	-	-
Total Available.....	<u>55,868</u>	<u>211</u>	<u>60,137</u>	<u>220</u>	<u>60,537</u>	<u>238</u>	<u>66,581</u>	<u>260</u>	<u>+6,044</u>	<u>+22</u>
Less:										
Total Transfers Out .....	1,400	-	400	-	-	-	-	-	-	-
Total Appropriation.....	<u>57,268</u>	<u>211</u>	<u>60,537</u>	<u>220</u>	<u>60,537</u>	<u>238</u>	<u>66,581</u>	<u>260</u>	<u>+6,044</u>	<u>+22</u>

**JUSTIFICATION OF CHANGES****Office of the General Counsel**

Base funds will allow the Office of the General Counsel to continue to provide legal oversight, maintain the Office of Information Affairs, responsively serve legal needs and support all activities of the Department.

- (1) An increase of \$6,044,000 and 22 FTEs (\$60,537,000 and 238 FTEs available in 2024).

The funding change is requested for the following items:

- A) An increase of \$1,291,000 for pay costs (\$595,000 available in 2024).

This increase will support an annualization of the 2024 5.2 percent Cost of Living pay increase and the 2025 2.0 percent Cost of Living pay increase. The funding will support and maintain current staffing levels to meet the program demands and statutory requirements imposed on OGC. This increase will allow OGC to continue providing legal policy and direct the performance of all legal work conducted for USDA and provide the legal services required to support agencies' programs.

- B) An increase of \$2,888,000 and 15 FTEs for Legal Services.

Historically, OGC has been woefully underfunded to address the breadth of legal services the Department needs, which span across a very wide variety of subject matter from farm programs to nutrition programs, to rural development programs, to forest service programs, general law issues, and more. Despite helpful small boosts in FYs 2021 and 2022, OGC has an insufficient number of attorneys and professional staff to provide effective legal services in support of all programs and activities of USDA.

This increase will allow OGC to make a small expansion of its resources to allow it to better provide timely and responsive legal services to support the Department in achieving its core mission. With this increase in funding, OGC will be better able to provide legal services such as timely issuing legal opinions, providing legal sufficiency review of draft regulations, drafting of and review of legislative language and providing considerable technical assistance to Congress. OGC will also need to provide significant legal support to client agencies for the implementation of the Farm Bill once it is enacted as the current farm bill expires on September 30, 2024. It will be critically important to efficiently and effectively implement a new Farm Bill, a big task that always pulls heavily on OGC's resources. With this increase OGC will also be better able to provide legal services in areas focusing on civil rights, international trade and food assistance programs, natural resources, conservation, environment challenges, climate change, animal health, food safety programs, procurement, intellectual property and policy and litigation work in implementing the Administration's policies in diversity, equity, inclusion, and accessibility. Litigation before administrative forums and litigation support of Department of Justice in Federal cases will remain a high priority. In addition, OGC will be able to provide legal support to economic recovery-related enhancements to food and nutrition programs and to rural housing, broadband, healthcare facilities and other rural development programs.

Given all of these critical duties and the limited resources of OGC, this increase is critically important in the continual effort by the Department of Agriculture to build up OGC into the kind of legal services office necessary to support a department as complex and wide as the Department of Agriculture.

- C) An increase of \$1,865,000 and 7 FTEs to maintain the Office of Information Affairs (OIA).

The OIA functions (Freedom of Information Act (FOIA) and Records Management (RM)) previously operated under the Office of the Chief Information Officer. When the two functions were realigned under OGC in 2019 and 2020 respectively, direct funding to support the existing FOIA and RM positions did not follow. The necessary increase in funding will address the increasing demand for FOIA and RM training, advice, and counseling in response to deficiencies revealed during the National Archives and Records Administration's most recent RM inspection.

It is critical that the OIA's Departmental FOIA program be fully staffed to support the processing of initial requests, consultations, and administrative appeals for the Office of the Secretary, the Under Secretary's, and all other USDA staff offices. The funding will also ensure a functional Departmental FOIA Office upon an election year where the risk of FOIA litigation greatly increases.

Failure to provide these additional resources will also greatly hinder the OIA's ability to rebuild a RM program that both efficiently and adequately protects the integrity of the Department's Federal records and ensures compliance with the Federal Records Act. The importance of a mature RM program cannot be



overstated. Every single record created by a USDA employee, contractor, student, volunteer, intern, fellow and political appointee has the potential to serve as data for future management decisions. When records can be effectively retrieved and accessed, it allows for informed data driven decisions to be made thus ensuring both equity and continuity in the services USDA provides to all Americans.

The OIA also anticipates increased complexity with FOIA requests received. A single request could require an analyst to review tens of thousands of individual records prior to a release determination and heavy coordination with multiple internal and external offices. This increase will also ensure the continued funding of the existing FOIA activities and services to include the coordination of multi-component requests, standardized training for FOIA professionals, preparation of the statutorily required reports, and assistance with various litigation matters. Collectively, these activities will aid the Department in avoiding the payment of costly attorney fees and court costs for the failure to timely respond to records requests.

**GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs**

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

State/Territory/Country	2022		2023		2024		2025	
	Actual	FTEs	Actual	FTEs	Estimated	FTEs	Estimated	FTEs
Alaska .....	\$851	5	\$964	5	\$1,139	6	\$1,193	6
Arkansas.....	1,113	7	1,084	6	1,241	7	1,277	7
California .....	2,641	10	3,060	12	3,510	14	3,729	15
Colorado.....	2,016	11	2,667	13	2,750	13	2,948	14
District of Columbia .....	35,791	108	37,469	110	35,501	119	40,256	134
Georgia.....	3,250	16	3,413	17	3,978	18	4,085	19
Laos.....	-	-	-	-	188	1	202	1
Missouri .....	2,040	12	2,253	12	2,365	11	2,335	11
Montana .....	1,090	6	1,070	6	1,114	7	1,339	7
New Mexico.....	768	4	1,120	6	1,275	5	1,155	6
Oregon.....	2,138	11	2,356	12	2,510	12	2,779	13
Pennsylvania .....	1,470	8	1,690	8	1,983	10	2,146	11
Texas .....	880	5	1,125	5	1,232	6	1,347	7
Wisconsin.....	1,632	8	1,564	8	1,751	9	1,790	9
Obligations.....	55,680	211	59,836	220	60,537	238	66,581	260
Lapsing Balances .....	188	-	301	-	-	-	-	-
Total, Available.....	55,868	211	60,137	220	60,537	238	66,581	260

**CLASSIFICATION BY OBJECTS**

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

Item No.	Item	2022 Actual	2023 Actual	2024 Estimated	2025 Estimated
	Personnel Compensation:				
	Washington D.C. ....	\$14,736	\$16,191	\$18,228	\$20,917
	Personnel Compensation, Field .....	14,159	15,557	16,826	19,308
11	Total personnel compensation.....	28,895	31,748	35,054	40,225
12	Personal benefits.....	10,190	11,034	12,617	14,620
13.0	Benefits for former personnel.....	29	16	16	16
	Total, personnel comp. and benefits.....	39,114	42,798	47,688	54,861
	Other Objects:				
21.0	Travel and transportation of persons .....	17	204	250	275
22.0	Transportation of things .....	-	1	1	1
23.1	Rental payments to GSA .....	1,875	1,873	1,918	1,918
23.2	Rental payments to others .....	164	171	164	164
23.3	Communications, utilities, and misc. charges .....	401	492	629	649
24.0	Printing and reproduction.....	79	82	82	82
25.2	Other services from non-Federal sources.....	8,523	8,477	3,571	3,346
25.3	Other goods and services from Federal sources.....	3,598	4,443	5,037	4,098
26.0	Supplies and materials.....	906	1,002	1,072	1,087
31.0	Equipment .....	1,003	293	125	100
	Total, Other Objects .....	16,566	17,038	12,849	11,720
99.9	Total, new obligations .....	55,680	59,836	60,537	66,581
	DHS Building Security Payments (included in 25.3)....	\$230	\$235	\$250	\$250
	Information Technology Investments:				

Item No.	Item	2022 Actual	2023 Actual	2024 Estimated	2025 Estimated
	Major Investment 1				
	FOIA WCF- FOIAXpress				
25.2	Outside Services (FOIAXpress Consulting) .....	\$227	\$255	\$255	\$255
	Total Major Investment 1 .....	227	255	255	255
	Mission Area Standard Investment				
11	Internal Labor .....	211	200	-	-
	External Labor (ERMS Contractors).....	1,854	355	355	355
25.2	Outside Services (ERMS Consulting).....	2,474	30	30	30
	Total Major Investment 1 .....	4,539	1,095	895	895
	Matter Center				
25.6	Outside Services (Matter Center – External Labor)..	246	427	427	427
	Total Major Investment External Labor.....	246	427	427	427
	Panum Contract Support				
25.5	External Labor (Contractors).....	1,619	906	220	220
	Total Panum Contractors Support .....	1,619	906	220	220
	Mission Area Standard Investment Totals .....	6,404	1,918	1,032	1,032
25.3	Mission Area WCF Transfers (Shared Services) .....	3,801	2,684	3,038	3,038
	<b>Total IT Investments .....</b>	<b>10,432</b>	<b>4,857</b>	<b>4,325</b>	<b>4,325</b>
	Position Data:				
	Average Salary (dollars), ES Position .....	\$194,036	\$201,393	\$211,865	\$216,103
	Average Salary (dollars), GS Position .....	\$131,157	\$135,034	\$142,056	\$147,897
	Average Grade, GS Position .....	14.3	14.3	14.4	14.5

**STATUS OF PROGRAMS**

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

**Current Activities**

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

**Selected Examples of Recent Accomplishments by OGC**

- OGC has helped the FS recover more than \$95.67 million in 2023 for fire damage, of which more than \$91.1 million went directly to Forests in the Region to be used for vital post-fire restoration work.
- The Office of Information Affairs-FOIA processed more than 850 initial FOIA requests, which is 30 percent more than the previous fiscal year and also reduced its initial request backlog by 34 percent.
- Under the Perishable Agricultural Commodities Act (PACA), OGC has obtained over \$85,000 in civil penalties and in payments of approximately \$4.2 million to produce sellers and producers.
- OGC advised Rural Utilities Service through the bankruptcy of the Brazos Electric Power Cooperative (Brazos), negotiating a resolution that protects RUS from Brazos' possible default on more than \$1.8 billion in loans, while maintaining the integrity of the utility and its ability to serve its customers.

**Freedom of Information Act (FOIA) Division**

The FOIA, 5 U.S.C. §552, requires executive agencies to disclose agency records, except for those records that are protected from disclosure under one or more of the nine statutory exemptions or three statutory exclusions. The OIA's *FOIA Division* (OIA-FOIA) serves as the focal point for USDA's FOIA program. Accordingly, it provides day-to-day coordination and ensures statutory compliance with the FOIA. The OIA-FOIA processes FOIA requests, consultations, and appeals on behalf of all USDA staff offices except the Office of the Inspector General. The OIA-FOIA also handles the FOIA functions for the Research, Education and Economics and the Trade and Foreign Agricultural Affairs mission areas. Other recent services of the OIA-FOIA include maintenance of a contract vehicle for the Department's FOIA program to expeditiously procure FOIA support services, maintenance of USDA's enterprise wide FOIA tracking system, continued guidance on FOIA hiring actions, updates to USDA's FOIA landing page, and assessments of USDA's administration of FOIA.

**Records Management (RM) Division**

In accordance with the Federal Records Act (FRA), 44 U.S.C. § 3301, the USDA must create and manage information that documents its work, safeguard information that needs to be protected, and keep or dispose of records according to an approved records schedule.

Recognizing the importance of protecting the integrity of the Department's records and reducing the litigative risks associated with poor recordkeeping practices, the OIA's Records Management Division (OIA-RM) devised a multi-year plan to rebuild the Department's RM program, specifically to standardize RM training, raise the visibility of RM, create a framework to begin the process of creating an entirely digital infrastructure for USDA's programs, and ensure statutory compliance with the FRA.

As part of that plan, the OIA continued work on several initiatives to reimagine and rebuild the USDA Departmental RM program. First, in response to an OIA-initiated RM inspection from the National Archives and Records Administration (NARA), the OIA worked extensively to ensure the development of USDA's comprehensive Plan of Corrective Action (PoCA). The PoCA sets forth a detailed strategy to address NARA's four overall findings in its USDA inspection report--- inadequate funding, lack of senior level support and advocacy, absence of internal

controls to manage electronic records, and finally, a lack of RM fundamentals to include inventories, file plans, schedules, training, and policies.

The OIA also continued its work related to AgRecords, USDA’s first enterprise-wide electronic records management system, which is an integral part of achieving compliance with the Federal Records Act (FRA), and the joint Office of Management and Budget (OMB) and National Archives and Records Administration (NARA) Memorandum M-23-07, “Update to Transition to Electronic Records.” M-23-07 requires a transition to digital business, with the creation and capture of records and information and its associated metadata, electronically by June 30, 2024. The OIA oversaw the AgRecords environmental builds, with 100 percent of the development servers built and configured, and 50 percent of the test servers built, and software configured on USDA host servers.

The OIA also continued work with those activities associated with the newly established Agency Records Officers (AROs) training cohort aimed at empowering and strengthening the skill set of our existing RM community. This USDA sponsored group learning environment allowed AROs to complete their Agency Records Officer Credential (AROC), the NARA official records management training credential, ahead of the January 2023 requirement for all AROs to be certified. All of USDA’s AROs except for one recent new hire have completed the AROC. This represents a significant increase in training as just two years ago the completion rate was at 53 percent.

### **Marketing, Regulatory and Food Safety Programs Division**

The Marketing, Regulatory and Food Safety Programs Division completed action on over 10 administrative complaints and 65 non-docketed case files (stipulations and pre-complaint settlements) under the Packers and Stockyards Act (PSA). Those efforts resulted in \$197,370 in civil penalties and in payments of approximately \$24.5 million to livestock sellers and producers. In addition, numerous violators of the PSA were ordered to cease and desist from operating in violation of the Act, and numerous violators were removed from the livestock industry by Decision and Order suspending their registration to operate subject to the PSA. Finally, 14 complex PSA investigations were conducted and ongoing during this time period, two of which resulted in referrals to the Department of Justice and subsequent Consent Decrees enjoining various poultry violations under the PSA. In addition, at least 21 administrative complaints were filed for violations of the Animal Welfare Act, and 9 Consent Decisions were obtained ordering permanent license revocation, 2 decisions upholding the denial or termination of an AWA license, and decisions assessing over \$125,000 in civil penalties.

The Division provides legal advice and litigation support to two Mission Areas: Food Safety and Marketing and Regulatory Programs. The workload increased significantly as the Agricultural Marketing Service (AMS) undertook significant legal sufficiency reviews for rulemaking under the Packers and Stockyards Act and the Organic Foods Production Act; the Food Safety and Inspection Service (FSIS) developed new food safety initiatives; and the Animal and Plant Health Inspection Service (APHIS) finalized several key rulemakings. Examples of the critical work performed by the Division during 2023 appear below:

The Division was instrumental in Agricultural Marketing Service (AMS)’s rulemaking efforts under the Organic Foods Production Act. Providing critical legal and policy support to AMS, OGC was influential in the publication of two final rules, *Strengthening Organic Enforcement* and *Organic Livestock and Poultry Standards* in support of the National Organic Program.

The Division drafted 63 reparations decisions involving more than \$3.5 million in disputed claims and completed action on over 24 administrative complaints under the Perishable Agricultural Commodities Act (PACA). In addition, numerous violators of the PACA were removed from the produce industry with their officers, directors, and shareholders being held responsibly connected to the violating companies-- resulting in employment and licensing sanctions being imposed on those individuals.

The Division worked closely with AMS on its rulemaking efforts to address “unfair, unjustly discriminatory, or deceptive practice or device” and “undue or unreasonable preference or advantage” in violation of the Packers and Stockyards Act (P&S Act) and published the final rule on *Transparency in Poultry Grower Contracting and Tournaments*. The Division also provided critical support to AMS on other antitrust initiatives in coordination with the Department of Justice Antitrust Division, Federal Trade Commission, and Commodity Futures Trading Commission.

The Division worked closely with Food Safety and Inspection Service (FSIS) on several high-priority rulemaking efforts, including a final determination to declare certain levels of Salmonella as an adulterant in breaded, stuffed chicken products, and a final rule establishing criteria to label meat and poultry products as a product of the US.

The Division provided substantial assistance to Animal and Plant Health Inspection Service (APHIS) on several significant rulemaking efforts, including a final rule to establish standards for birds under the Animal Welfare Act, a proposed rule to revise the regulations under the Horse Protection Act, and a final rule to revise its Animal Quarantine and Inspection user fees. As noted above, at least 21 complaints were filed under the Animal Welfare Act, and at least 10 complaints under the Horse Protection Act. Further, OGC successfully partnered with the Department of Justice on two Animal Welfare Act cases and obtained preliminary injunctions in both cases.

#### **International Affairs, Food Assistance, and Farm and Rural Programs (FAIR) Division**

The Division provided extensive legal advice and assistance to the Farm Service Agency (FSA), Foreign Agricultural Service (FAS), Risk Management Agency (RMA), Food and Nutrition Service (FNS), and Rural Development (RD), including implementation of the 2018 Farm Bill, the CARES Act, the American Rescue Plan Act of 2021, the Consolidated Appropriations Act, 2023, the Extending Government Funding and Delivering Emergency Assistance Act (P.L. 117-43), the Inflation Reduction Act of 2022 (IRA), and the Commodity Credit Corporation (CCC) Charter Act.

OGC provided legal advice and assistance in the design and implementation of the Partnerships for Climate-Smart Commodities Grants initiative under the authority of the CCC Charter Act. This initiative both promotes climate-smart production practices and develops markets for commodities so produced. Originally targeted for \$1 billion, this initiative has proven so popular and successful that the Secretary approved funding of more than \$3.1 billion for 141 projects in all fifty states, as well as Guam and Puerto Rico. OGC led all legal matters for Notices of Funding Availability and rules to implement the Secretary's disaster relief agenda through the streamlined Emergency Relief Program, Milk Loss Rule, and Emergency Livestock Relief Program for 2020, 2021, and 2022 losses (\$13.7 billion). OGC advised on all aspects of the design, implementation, and distribution of \$3.1 billion in funds for distressed borrowers of FSA farm loans authorized under the Inflation Reduction Act.

OGC has been a key advisor in negotiations around the Indo-Pacific Economic Framework (IPEF), the U.S.-Taiwan Initiative on 21<sup>st</sup> Century Trade, and the U.S. Kenya Strategic Trade and Investment Partnership, protecting U.S., USDA, and FAS agricultural interests in those negotiations. OGC continues to provide vital counsel for programs significant to international food assistance, including the McGovern-Dole International Food for Education and Child Nutrition Program and the Food for Progress Program.

OGC provided legal advice and assistance to RMA and the FCIC Board of Directors on crop insurance policies, regulations, litigation, compliance issues, administrative proceedings, interpretations of procedure, final agency determinations, and other matters. OGC's legal guidance assisted RMA in publishing regulations, issuing manager's bulletins, responding to program participants, and managing the Federal Crop Insurance Program, which helped secure approximately \$114 billion of U.S. agricultural production.

OGC provided significant legal technical assistance to Congress to establish a new, permanent Summer Electronic Benefit Transfer (Summer EBT) program. Beginning in summer 2024, States and certain Indian Tribal Organizations (ITOs) can provide school children in low-income families \$40 per summer month to purchase food at authorized retailers. Partnering with FNS, OGC helped Congress craft the authorizing language for Summer EBT, which will help address a perennial problem of increased childhood food insecurity during the summer months, when only about 1 in 6 children who receive free or reduced-price meals during the school year access summer meal programs. After the legislation passed, OGC worked closely with FNS on an interim final rule that delved into many novel critical issues surrounding this new initiative. USDA estimates that in summer 2024 Summer EBT will serve close to 21 million children, providing a total of nearly \$2.5 billion in grocery benefits.

OGC provided legal advice and assistance to the Rural Utilities Service (RUS), Rural Business Cooperative Service (RBCS), and Rural Housing Service (RHS), which collectively administer more than 90 programs serving rural America. OGC worked closely with RUS and RBCS on the design and implementation of three major IRA programs: Powering Affordable Clean Energy Empowering Rural America (New ERA), and Rural Energy for America Together, these programs represent a \$12.7 billion investment in energy security and tackling climate change. In addition, OGC assisted RHS in the development and implementation of the Native Community Development Financial Institution Relending Program and advised RHS and RUS on the execution of disaster relief programs. OGC advised RBCS on the development and implementation of the Indigenous Animals Harvesting Grant Program, the Meat and Poultry Processing Expansion Program, and the Fertilizer Producer Expansion Program. OGC also assisted RBCS with negotiation and drafting of multiple cooperative agreements as part of the Rural Partners Network. Throughout the year, OGC advised on numerous regulations, funding announcements, ongoing litigation, and the implementation of 2020 Census data and the Build America, Buy America Act.

**Natural Resources and Environment Division**

OGC advised the Natural Resource Conservation Service (NRCS) and other agencies within the Farm Production and Conservation Business Center on program implementation issues and provided legal advice to the Forest Service (FS) on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). OGC counseled the FS on legal issues arising under laws including the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Healthy Forest Restoration Act, and the Endangered Species Act (ESA) to name just a few. In addition, OGC provided support to FS State and Private Forestry, Business Operations, and Research and Development regarding numerous conservation programs. OGC assisted the FS and other USDA offices in drafting legislation and reviewed pending legislation pertaining to the conservation title of the Bipartisan Infrastructure Law (BIL) and the IRA. OGC also reviewed legislative reports and testimony for congressional hearings and provided legal advice to the FS regarding law enforcement issues and the Secure Rural Schools Act payments.

OGC provided significant legal assistance in a wide range of issues affecting Native American tribes. OGC worked with agencies across the Department and outside USDA, including the Council on Environmental Quality to develop an Interagency Memorandum of Understanding and guide to best practices for addressing sites held sacred by Tribes and the Native Hawaiian Community located on federal lands. In addition, OGC advised a wide variety of agencies on issues arising under the Tribal Forest Protection Act and Indian Self Determination and Education Assistance Act, helping to improve USDA's work with Native American communities in a number of program areas across the Department.

OGC has worked closely with the Forest Service to advise the agency on implementation of its wildfire crisis strategy and implementation of BIL and IRA authorities to address wildfire risk across NFS lands. OGC work has included NEPA compliance advice and developing strategies to efficiently and effectively comply with NEPA, ESA, and NFMA obligations related to climate resilience and wildfire prevention and mitigation.

OGC coordinated litigation strategies and assisted in the defense of cases involving the Forest Service's use of aerial application of fire retardant in wildfire response, critical minerals development projects, and defense of Forest Service roadless area management rulemaking. In addition, OGC advised the Forest Service in bringing affirmative litigation to protect water rights on National Forest System lands.

OGC has advised the Forest Service in implementing new authorities to address climate change in the Inflation Reduction Act and Bipartisan Infrastructure Law. These new authorities provided funding and new statutory authority to develop grant programs and partnerships with states, tribes, and private entities to develop and implement climate smart forestry practices. In addition, OGC has advised NRCS in implementing Climate Smart Partnerships, and advised NRCS on expanding conservation and climate smart programs that received additional funding in the Inflation Reduction Act. The Inflation Reduction Act provided funding dedicated to implementing practices that will reduce greenhouse gas emissions from agriculture and forestry practices around the country.

OGC NRED led a national team to support Forest Service efforts to remediate hazardous waste sites resulting from past activities on the NFS such as abandon mines on NFS lands, abandoned oil and gas wells, and formerly used defense sites. These efforts included sites in Alaska, California, and Missouri in which steps were taken to mitigate public health and safety risk and restore natural resources as well as public recreation access.

NRED provides national direction to OGC attorneys engaged in review and counsel for development of new and/or revised Forest Service land management plans. NRED provided counsel to the agency regarding development of revised plans in the Pacific Northwest and Intermountain Region, including novel and complex issues regarding underserved communities and Native American tribal access to lands for traditional practices. In addition, NRED provided counsel to the agency regarding permit issuance for dozens of critical energy and wind infrastructure projects to both expedite permitting and ensure defensible decisions.

**General Law and Research Division (GLRD)**

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

In 2023, GLRD worked with DOJ and other OGC divisions and offices on many appeals, including *Kirtz v. Trans Union LLC*, which is now before the U.S. Supreme Court. The question presented in that case is whether the civil-

liability provisions of the Fair Credit Reporting Act waive the sovereign immunity of the United States. GLRD also assisted with an Eighth Circuit appeal in *Foster v. USDA* that challenged a wetlands determination by USDA's NRCS under the Wetland Conservation Provision of the Food Security Act of 1985. The Eighth Circuit affirmed the district court's summary judgment to the USDA on all claims. A petition for certiorari was filed in that case on August 10, 2023.

GLRD also coordinated USDA's participation in *Solenex LLC v. Haaland* in the D.C. Circuit, which challenged the government's decision to cancel an oil and gas lease on the Lewis and Clark National Forest. GLRD worked with DOJ in *Knezovich v. U.S.* In the case, the Tenth Circuit Court of Appeals affirmed a favorable ruling that plaintiffs' lawsuit seeking tens of millions of dollars under the Federal Tort Claims Act (FTCA) was properly dismissed. Additionally, GLRD worked with DOJ in *Gould v. U.S.* in the Ninth Circuit, which also affirmed a favorable ruling that plaintiffs' six-million-dollar suit was barred under the FTCA. GLRD also continued to work with DOJ on the *New England Anti-Vivisection Society v. Goldentyer* appeal in the D.C. Circuit, which stems from USDA's decision to deny a petition for rulemaking under the Animal Welfare Act. GLRD and other OGC offices also continued to monitor appeals resulting from litigation involving certain rights-of-way over federal public land in the State of Utah under the 1866 statute known as R.S. 2477. An appeal in *Kane County v. U.S.* concerning the right of environmental organizations to intervene in that litigation is currently pending before the Tenth Circuit.

GLRD is also responsible for preparing USDA's official recommendations to DOJ on whether to appeal adverse decisions of various lower courts or to participate as amicus in Supreme Court or other appellate cases. During 2023, GLRD prepared 19 appeal recommendations. GLRD also defends most USDA Judicial Officer decisions under the P&S Act, PACA, AWA, and the HPA that are appealed to the Federal courts of appeals. During 2023, GLRD attorneys handled appeals challenging decisions issued by the Judicial Officer in the D.C. Circuit and the Fifth Circuit.

GLRD is responsible for handling transactional, counseling, and litigation matters that arise throughout the Department and its agencies; for example, GLRD advises agencies and offices regarding the Department's legal issues and litigation related to reorganizing and realigning the Department, complying with the Federal Vacancies Reform Act, implementing COVID-19 and fiscal-related related authorities, and analyzing procurement, grant, and fiscal law issues. In addition, GLRD assisted with responses to requests for information and technical assistance from Congress and assisted the Department in implementing Farm Bill programs.

GLRD provides the primary legal support for Departmental Administration (DA) and for the Research, Education, and Economics (REE) Mission Area. For the REE mission area, GLRD provided legal services to the National Institute of Food and Agriculture (NIFA) and the Agricultural Research Service (ARS) regarding the implementation and termination of OMB administrative flexibilities related to the COVID-19 national emergency declaration. GLRD is also involved in nascent discussions on issues surrounding AI.

GLRD defended the government in litigation before Federal courts and administrative forums including approximately 40 protest-related matters initiated before the Government Accountability Office (GAO), as well as those continued from the previous fiscal year. For example, GLRD prevailed at the Court of Federal Claims (COFC) against a bid protest seeking to prevent USDA from obtaining sustainment support services for technology systems and applications from vendors on the General Service Administration's IT Multiple Award Schedule. COFC agreed with GLRD and granted a Motion for Judgment on the Administrative Record.

GLRD attorneys respond to emergency inquiries regarding the use of funds for emergency food distribution under the Stafford Act. In the past year, GLRD provided legal assistance dealing with the aftermath of devastating wildfires in the American West and the hurricanes affecting the Gulf coast.

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

GLRD continued handling and supporting DOJ in numerous FOIA cases. Many of these cases involve complex disclosure and privacy issues involving records concerning agencies and private parties. Examples include multiple lawsuits from Judicial Watch, Center for Biological Diversity, PEER, and similar organizations that sought sensitive records from senior USDA officials that GLRD resolved to the satisfaction of those officials. GLRD assists the Department in responding to governmental requests and private party subpoenas and other discovery requests.

GLRD organized and led massive electronic and hardcopy record searches across numerous offices at USDA. GLRD's effort resulted in the timely and efficient disclosure of thousands of responsive records.

GLRD is currently defending USDA, and assisting DOJ, with litigation before Federal courts in numerous cases involving complex and sensitive issues. Examples of FTCA matters include fires in National Forests and elsewhere, such as the Hermits Peak and Calf Canyon Fire takings lawsuits, and significant wrongful-death suits, such as the Hermits Peak and Cold Spring Flash Flood cases, where plaintiffs are seeking millions of dollars in damages.

GLRD also assisted with the Department's representation in anti-trust litigation. GLRD continued to represent USDA's interests in significant antitrust cases such as *in re Pork* Antitrust Litigation, *in re Cattle and Beef* Antitrust Litigation, and *in re Turkey* Antitrust Litigation. GLRD served as the primary agency point of contact in conjunction with subpoenas (both document and testimony) arising out of these cases. With GLRD's assistance, USDA satisfied its discovery obligations with minimal interference to agency operations.

GLRD participated in Federal interagency initiatives with respect to biodefense, counterintelligence, and human trafficking. GLRD provided advice and guidance on sensitive matters before the Committee for Foreign Investment in the United States, helping to ensure the security of the Nation's agricultural resources. GLRD continued to advise the Department on numerous cybersecurity and information technology law issues, interpreting and advising on statutes, regulations, and executive orders concerning national security related programs and activities. GLRD also served as the Department's legal advisor to the Office of Homeland Security's Continuity of Operation program, providing legal advice and guidance to the Department during the planning and execution phases of the largest intergovernmental continuity exercise.

GLRD provides legal services regarding intellectual property (IP) for agencies and programs throughout USDA. GLRD's IP group oversees and advises on patent procurement, invention rights, assignments, and licenses, providing legal oversight and advice regarding technology transfer, i.e., the transfer of USDA technology for use by the private sector. GLRD's IP group represents USDA before the Patent and Trademark Office regarding patent and trademark matters and at the Department of Justice regarding 28 U.S.C. 1498 litigation for alleged USDA patent and copyright infringement.

IP-related legal services provided by GLRD included: technical assistance in drafting legislation for protection of the 4-H Club Name and Emblem, including briefings for House and Senate staffs; analyzing the effects of patents on the seed industry for the Administration's initiative regarding fair competition in the seed industry; assisting DOJ in defending claims of alleged copyright infringement by USDA in the unauthorized use of photographs and illustrations on the Internet; an increase in negotiating, reviewing, and drafting copyright, trademark, and data rights language for joint research and development agreements, non-disclosure and confidentiality agreements, appearance and publishers' agreements; assisting USDA components and contractors in prosecuting patent applications and maintaining issued patents at the U.S. Patent and Trademark Office (USPTO); and, renewing USDA trademark registrations at the USPTO.

### **Civil Rights, Labor, and Employment Law Division**

OGC's Civil Rights, Labor, and Employment Law Division (CRLELD) provides advice, counsel and litigation support for matters involving civil rights and Federal sector employment, human resources, labor relations, and employee relations. CRLELD provides legal advice to management at USDA offices and client agencies on issues involving personnel and civil rights matters, including disciplinary actions, informal complaints of employment discrimination, and program implementation. CRLELD also defends the Secretary in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other federal statutory and regulatory authorities. CRLELD directly defends the Secretary's interests before the Equal Employment Opportunity Commission (EEOC), the Merit Systems Protection Board (MSPB), the Federal Labor Relations Authority, the U.S. Office of Special Counsel, and other administrative tribunals. OGC also assists the Department of Justice (DOJ) in defending the Secretary in similar claims brought in federal district and appellate courts, and the Court of Federal Claims. CRLELD's litigation work and policy work regarding these matters is subject to certain criteria.

CRLELD's Litigation Section (the Litigation Section) defends the Secretary in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other federal statutory and regulatory authorities. In 2023, CRLELD's Litigation Section was responsible for defending the Secretary in approximately 373 administrative EEOC hearings and appeals; 21 administrative MSPB cases; and (assisting DOJ)



57 federal court cases, including civil rights cases challenging aspects of USDA programs. CRLELD's Litigation Section also represented the Secretary's interests regarding whistleblower retaliation allegations, where the Office of Special Counsel conducted investigations or pursued resolution. Some of the major work of the Litigation Section is summarized below.

The Litigation Section successfully defended several District Court Administrative Procedure Act (APA) and program discrimination cases filed against the Food and Nutrition Service following the issuance of a policy update on the application of *Bostock v. Clayton County* to program discrimination complaint processing. These cases included *Tennessee v. USDA*, No. 22-cv-257 (E.D. Tenn.), which began in July 2022 and continued through 2023, wherein twenty-two State attorneys general filed suit in Tennessee challenging FNS's policy update and a SNAP Final Rule containing new template language for SNAP Federal State Agreements (FSA). The suit alleged violation of the APA and various constitutional provisions (the spending clause, the First Amendment, the Tenth Amendment, the anticommandeering doctrine, separation of powers, and the nondelegation doctrine). The Tennessee Court expressly determined that Title IX and the Food Nutrition Act protected LGBTQIA+ people's access to federally funded food-assistance benefits and nutrition education, affirming that states cannot discriminate based on gender identity and sexual orientation in the administration of SNAP and SNAP-Ed. The Litigation Section also worked actively to non-monetarily resolve several complaints filed by several religious freedom advocacy groups by ensuring the Agency was appropriately providing assurances of exemption for religious institutions.

After the IRA application process went live on July 7, 2023, the Litigation Section provided legal sufficiency reviews of a fraud prevention plan and completeness guide from the National Administrator; met with USDA OIA to discuss recommendations regarding record keeping and retention of 22007 applications incorrectly submitted to USDA via email; provided a recommendation regarding the process to use for processing claims when an applicant dies during the application process; and continuously participated in meetings with OIA, OASCR and the policy staff implementing 22007, to provide legal advice and legal sufficiency reviews.

The Litigation Section worked with DOJ to defend the Department in multiple lawsuits and appeals challenging ARPA provisions providing debt relief to socially disadvantaged farmers; defended against lawsuits filed by farmers alleging a breach of contract or discrimination based on the repeal of ARPA Section 1005; and assisted with weekly reporting on the status of litigation to the White House, Secretary, and Subcabinet; participated in regular meetings with the General Counsel, Deputy General Counsels, White House counsel, Deputy Secretary and Subcabinet on strategies and defense efforts; reviewed and provided input on multiple judicial filings; provided urgent review of documents; researched FSA loan information on named Plaintiffs in repeal of ARPA 1005 cases; worked collaboratively with attorneys in OGC's FAIR Division to ensure FSA programs were adequately explained and relevant information was provided. These efforts resulted in dismissal of all cases and dismissal of all requests for attorneys' fees. The Litigation Section continues to defend on a few remaining cases challenging the repeal of ARPA Section 1005.

The Litigation Section successfully defended the Agency and obtained dismissal of a 2015 employment discrimination class action alleging that Forest Service Region 5 female firefighters were subjected to a pattern and practice of discrimination based on their gender and in retaliation for prior EEO activity by Forest Service reassignments, hiring promotion, training, and performance. After class certification was denied and the individual EEO complaints resumed processing, the Litigation Section coordinated a comprehensive, early assessment of all the cases. The Litigation Section also successfully convinced an EEOC Administrative Judge to dismiss a class action filed by 16 USDA (Forest Service, ARS, and APHIS) employees who alleged USDA's implementation of the vaccine mandate and screening/testing procedures for federal employees subjected them to discrimination and harassment, based on being perceived as having a disability and based on religion, via verbal and written pressure to get vaccinated, denial of travel and other advancement opportunities, threats, adverse employment actions, and unwanted COVID-19 testing. The Litigation Section also successfully defended and obtained dismissal of a 2016 employment discrimination class action alleging that FSIS's policy prohibiting employees working in an Alternative Duty Program from working overtime or holidays violate the Rehabilitation Act.

The Litigation Section developed best practices for defense of the Secretary in several international civil rights, labor and employment cases. The Litigation Section continued to defend complaints brought in foreign courts in Brazil, Mexico and Panama, and established standard operating procedures for development of attorney skillsets in this new area of defense of claims brought against Foreign Agricultural Service (FAS), Animal and Plant Health Inspection Service (APHIS), and Agricultural Research Service (ARS).

The CRLELD Risk Management Section is responsible for providing advice and counsel across the Department to help leadership and management understand and manage their legal risk in civil rights, labor, and employment matters. The Risk Management Section fulfills this role, in large part, by advising managers of what options are available to them under the law, the litigation risk associated with each option, and what actions are legally defensible. Further, the Risk Management Section assists agencies in managing risk by assessing the litigation risk of EEO complaints pre-investigation, particularly when the complainant is represented by an attorney. Such assessments at the earliest stage of the EEO complaint process allow agencies to resolve meritorious complaints quickly rather than risk that an adjudicator will award substantial damages and attorney's fees.

The Risk Management Section advised on the drafting of Post-Reentry Personnel Policies and Work Environment and guided the development of the Department's approach and inclusion of the important principles of labor obligations, civil rights, employee engagement and outreach, and creative workplace flexibilities. The Section advised on the Department's Senior Executive Service Remote Work Policy, the development of all-employee instructions, and associated FAQ on Telework, and participated in Future of Work meetings with senior leadership to develop intentional policies in this post-pandemic work environment.

The Risk Management Section advised in the establishment of USDA's inaugural Anti-Harassment Program. This included drafting and implementing of the Departmental Regulation, Departmental Manual, Anti-Harassment Program FAQs, and reviewing Training Modules.

The Risk Management Section advised the Department in its implementation of the White House National Strategy on Countering Antisemitism, including reviewing its submission to the Interagency Policy Committee. The Section met with White House officials and advised on its publicly available Title VI Fact Sheet *Protection from Discrimination Based on Shared Ancestry or Ethnic Characteristics* in support of the National Strategy to Counter Antisemitism.

The Risk Management Section led legal guidance to implement Executive Order 14035 *Diversity, Equity, Inclusion and Accessibility in the Federal Workforce* and Executive Order 13988, *Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation*. The Risk Management Section reviewed and guided USDA's Equity Action Plan and Equity Action Plans for the Mission Areas and agencies, resulting in USDA becoming a leader in the DEIA space. The Section collaborated regularly with senior leaders to provide practical legal guidance to diversify the federal workforce. The Section also advised the Department in revising its Language Access Plan to ensure individuals with limited English proficiency receive meaningful access to USDA's resources, programs, and activities.

The Risk Management Section led revisions to Departmental Regulation on Legal Review and Execution for Personnel Settlement Agreements and Legal Review and Execution of Settlement Agreements for Program Civil Rights Matters. The revised regulations ensure that resolving officials meet the same requirements and receive the same training for program and personnel agreements, which also ensures a level of transparency for both agreements. The Section also advised the Department in implementation of Executive Order 14058, *Transforming Federal Customer Experience and Service Delivery to Rebuilt Trust in Government*, to update Departmental Regulation (DR) 4360-001, *Communicating with Underserved Communities*, that outlines USDA's policy for a Voice of the Customer program designed to listen from and better serve its communities and customers, with an emphasis on the underserved, as they interact with the Department. Additionally, the Section performed reviews and edits of additional proposed executive orders, inter-government regulations, and Department regulations as part of the Department's clearance process.

The Risk Management Section led the development of legal guidance to the Department on this critical initiative, including providing feedback and technical assistance to both the Agriculture and the Rural Community and Economic Development Subcommittees of the Equity Commission. The Risk Management Section assisted USDA agencies in the development, review and finalization of individual agency-level Equity Action Plans required by Executive Order. The Risk Management Section also advised the Deputy Assistant Secretary for Civil Rights on numerous reforms involving program complaints, CRIAs, ADR, and other process enhancements that have been well-received by Congressional and other external stakeholders.

### **Regional Offices**

Attorneys in OGC's field offices play a critical role in the Department, providing legal services to the USDA agencies and officials charged with implementing programs at the regional, State, and local levels on a variety of matters critical to the Department's programs and goals.

The Eastern Region of OGC consists of 3 field offices, located in Atlanta, Harrisburg, and Milwaukee with a total staff of 29 staff and four managers. The Region services all USDA Agencies in 22 States, along with the District of Columbia, Puerto Rico, and the Virgin Islands. In addition, it services the FS Southern (R8) and Eastern (R9) Regions, which encompass 29 National Forests covering 22 States and Territories.

The Eastern Region oversaw the review, under a short turnaround time, of multiple tribal agreements and MOUs, including the Jena Band of Choctaw Indians Good Neighbor Agreement, the Comanche Nation Good Neighbor Agreement, the United Keetoowah Band Good Neighbor Agreement, the Eastern Band of Cherokee Indians Good Neighbor Agreement, and the Participating Agreement with American Youthworks and the Alabama Coushatta Tribe. Reviewing and advising on these MOUs and Agreements allowed the FS to successfully accomplish the Department's objective of maintaining active relationships with numerous inter-tribal organizations, Tribal Colleges and Universities (TCUs) and American Indian professional associations and build mutually beneficial partnerships with Tribal Nations and American Indian organizations, a priority for the Department.

The Eastern Region does the title work and general problem solving for a wide variety of land acquisition cases for the FS and conservation easement acquisition for NRCS. In 2023 the Region completed almost 200 land and conservation easement acquisitions. Two highlights for the last year include 1,247 acres of land along the pristine West Branch of the Ontonagon River in the Upper Peninsula of Michigan, and a 2,800-acre land purchase on the Green Mountain National Forest in Vermont. These were very complex acquisitions that resulted in the protection of beautiful forest lands and substantial additions to the National Forest. The Eastern Region also assisted in defending the FS in the latest two lawsuits challenging the Polymet Land Exchange on the Superior National Forest in northern Minnesota, *Center for Biological Diversity v. Haaland*, 22-cv-181, and *Fond du Lac Band of Lake Superior Chippewa v. Hall*, both in the District Court of Minnesota. These are the latest in series of lawsuits filed at the State and Federal levels challenging open pit mining at the site. The site of the mine was the subject of a land exchange with the Forest Service in 2018, and litigation has been ongoing ever since.

The Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 700 loans and grants and in handling a large volume of related litigation, especially bankruptcies that arose out of such a large loan portfolio. This included over 200 eligibility reviews for program participants as well as issuing over 300 instructions for loan closings. Eastern Region staff also continued to assist RD with numerous issues related to the end of the COVID moratorium, especially related to the legal impact of the moratorium on foreclosures. Assisting RD in meeting the legal requirements for its foreclosures on its large portfolio, allows it to make those properties, many of which are single family houses, available to new program participants.

The Eastern Region handled multifamily housing related legal work including completing eligibility reviews of applicants for loans, reviewing loan proposals, and preparing closing instructions to guide the agency through the legal completion of hundreds of transactions with nearly 200 multifamily housing participants. Eastern Region attorneys also frequently drafted subordination agreements wherein the RD borrower has taken out a loan with a private lender, generally for making improvements on the property, and issued approval of transfers and assumptions of ownership of the facilities; thus, allowing these apartment complexes to stay in the program and continue to make affordable housing availability in rural America.

The Eastern Region provided legal advice to FSA on loan issues, bankruptcies, and third-party foreclosures in almost 300 matters. This included providing opinions related to IRA implementation and coordinating assistance from U.S. Attorneys' Offices where a borrower's pending bankruptcy could be impacted or dismissed as a result of IRA payments.

Eastern Region staff provided timely and effective representation of USDA and assistance to the Department of Justice, in handling FS litigation, at both trial and appellate levels. FS cases handled in 2023 include a lawsuit challenging the several management issues in the Boundary Waters Canoe Area Wilderness (BWCAW) on the Superior National Forest in northern Minnesota; *Wilderness Watch v. Hall*, 23-cv-00284 (D.Minn.). Eastern Region staff worked closely with the Forest in compiling the administrative record and working through a requested preliminary injunction by the Plaintiff. They assisted DOJ attorneys to unravel a complicated history on commercial use in wilderness and the issue of towboats, overseeing the agency's litigative position to ensure a vigorous defense on this high-profile matter in the most used wilderness area in the U.S. Wilderness System. Towboats as a legal issue are unique to the BWCAW and have been an issue on the Forest for almost 50 years.

This Project is a proposed 42-inch interstate natural gas pipeline that traverses approximately 300 miles to deliver natural gas from northwestern West Virginia to southern Virginia. The pipeline will cross the FS Southern Region's

Jefferson National Forest. MVP is expected to provide two billion cubic feet per day of natural gas from the Marcellus and Utica shale formations in West Virginia to markets in the mid and south Atlantic regions. The Bureau of Land Management, the Fish and Wildlife Service, and the Army Corps of Engineers are also involved in the administrative process for the MVP Project. The Pipeline (MVP) project has recently re-started implementation on the Jefferson National Forest after over seven years of litigation delays. The passage of the Fiscal Responsibility Act included language that exempts any agencies' authorizations (including USDA/Forest Service) from any judicial review and limits the jurisdiction of judicial review to only the D.C. Circuit and only to the review of the validity of the legislation itself. Eastern Region staff have been shepherding this project with the FS through all its litigative twists and turns.

For the past several years, FNS has aggressively implemented several measures to reduce the prevalence of trafficking in SNAP. Currently The Eastern Region has 431 open cases, which is 66 percent of all the FNS litigation being handled by OGC. Assisting in the litigation defense of these cases helps FNS uphold the integrity of SNAP by defending retailers' court challenges to the Agency's disqualifications.

OGC's Central Region is headquartered in Kansas City, Missouri with branch offices in Temple, Texas and Little Rock, Arkansas, and a total staff of 23 attorneys and professional staff. This cadre of professionals provide legal advice and services to all USDA agencies and activities in a 13-State region that is home to America's most productive farmland, and thousands of rural communities and several, urban centers. USDA activities carried out in these areas require legal advice and representation provided by the attorneys and staff in the Central Region.

Central Region attorneys provide programmatic support and defensive litigation and advice to the Food and Nutrition Service related to SNAP. FNS uses a variety of detection methods to monitor retailers that participate in SNAP. One method, known as "ALERT," detects suspicious buying patterns using a system of complex algorithms to find and investigate retailers that are "trafficking" in SNAP benefits. FNS then disqualifies these retailers from further participation in the program or in some cases issues civil monetary penalties. These retailers bring judicial challenges that require Central Region attorneys to defend these actions. There has been a steady increase in the volume, and contentiousness of the litigation, particularly as discovery disputes and electronic discovery added to the complexity of the litigation. In addition, there is a growing "SNAP litigation" group of defense attorneys that are working together to sharpen their litigative posture, sharing information to find weaknesses in the cases and the ALERT fraud detection data. Another wrinkle is the increase in "prepared foods" cases known as the "you buy—we fry" model, causing additional complications to detection efforts and prosecution of trafficking cases. Because of the investigatory nature of the FNS program, many of the ALERT system triggers cannot be shared with retailers or their counsel. This leads to discovery disputes about how the information will be used and shared, especially amongst this burgeoning group of SNAP litigation lawyers. Finally in *Euclid Market, v. U.S.*, Central Region attorneys secured a lower court decision and Court of Appeals decision that provides some clarity and consistency in litigating SNAP cases.

RD's housing programs (both single family and multi-family) continue to need legal services related to their loan portfolio. Moratoriums implemented during the pandemic created a backlog of defaulted loans that banks are now foreclosing. In the single-family arena, RHS guaranteed many such loans and under the Special Loan Servicing Modification Program, RHS has a subordinate interest that requires defensive action to protect the interests of the United States. The multi-family housing program is at a juncture where many RD properties are in need of repairs or rehabilitation or where current owners are retiring out of the program. These factors all combine to require a high volume of legal work to facilitate the numerous transfers, assumptions, and restructuring transactions. There is a heavy concentration of rural multi-family projects in economically disadvantaged southern States such as Mississippi and Louisiana that require significant work for Central Region attorneys to process these transactions legally and timely. In addition, many of these transactions are utilizing State tax credits that make the transactions more complex and time sensitive.

The Community Facility ("CF") Program is a significant part of the legal work in the Central Region involving USDA loans and grants financing essential community facilities. Rural hospitals, clinics, libraries, daycare centers, fire stations, fire trucks, ambulances, and other essential projects require OGC legal advice for loan-making, loan-servicing, and grants. Water and sewer projects are also part of this RD portfolio, and these projects facilitate additional rural economic viability by allowing rural communities to provide safe drinking water and install sewer systems that protect both the environment and the health of residents. Central Region attorneys worked on many water and sewer system projects that facilitated loan-making to rural communities.

Central Region attorneys saw a significant amount of legal work related to loans and grants for loans for firetrucks, ambulances and rescue vehicles.

Rural hospitals are also in need of RD loans and grants and the complexity of these transaction has increased due to the use of Master Trust Indentures that cooperating lenders and borrowers are utilizing. These complex transactions required legal support by Central Region attorneys. Bond transactions, which are the primary means of financing municipal debt, also provide a steady amount of legal work for Central Region attorneys in assuring USDA interests are protected and loan documents are legally enforceable debt instruments. The Central Region also continued to work with rural hospitals that are struggling financially, all while balancing the need for adequate health care in remote/rural areas and protecting the financial interests of the United States against competing creditors.

In order to defend USDA's financial interests, Central Region attorneys assisted with filing numerous claims in bankruptcy proceedings in order to protect the agency's financial interests against competing creditors involving FSA's over \$11 billion in outstanding direct and guaranteed loans. Following the pandemic, other superior creditors are resuming their collection efforts to enforce their interests, requiring legal support by OGC. Tax sale actions brought by municipalities or tax-lien holders required legal support to defend USDA's financial interests.

The Central Region provided legal assistance to RMA, FCIC, and its various components involving approved insurance providers and their administration of the crop insurance program to ensure re-insurance is proper for those policies and to defend any actions taken by RMA. Central Region attorneys review crop insurance decisions and then defend those matters at the Civilian Board of Contract Appeals or depending on the nature of the action in some cases in District Court.

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

OGC's Central Region also provides legal advice to AMS on issues as varied as the United States Warehouse Act, the Packers and Stockyards Act, and contracting issues for procurements undertaken by AMS. Programs implemented by the Inflation Reduction Act and the America Rescue Plan required legal work in reviewing various Federal Register Notices and Regulations to implement those programs. It also then required work to assist and defend various decisions made with regard to payments and eligibility. OGC provides substantial legal assistance to the staff that administers the United States Warehouse Act, protecting grain depositors at Federal licensed facilities and the integrity of electronic warehouse receipts.

The Central Region assisted the FS with a variety of matters including environmental consultations, land exchanges and acquisitions, closure orders, law enforcement issues, access issues, hunting and recreation issues and title claims. Central Region attorneys provided legal defense on an increasing number of Forest land disputes where adjoining owners claim ownership of public lands.

The Central Region defended USDA in litigation in various forums brought by employees, former employees or job applicants alleging various types of workplace discrimination, and in programmatic cases brought by program participants alleging various types of discrimination or mistreatment. Discovery and electronic discovery in particular are time-consuming parts of this litigation portfolio. These cases involve a variety of issues such as Reasonable Accommodation Claims, and defending employment termination cases where employees believe that they were discriminated against.

OGC's Mountain Region provided proactive and high-quality legal support to USDA client mission areas and staff offices in 12 states in the Rocky Mountain and western area of the country, handling over 1,464 new matters in 2023 across three field offices (Albuquerque, NM; Lakewood, CO; and Missoula, MT).

OGC's Mountain Region supports FS Regions 1-4, and the 59 National Forests and 16 National Grasslands that these regions encompass. The majority of legal challenges involved FS decisions to harvest timber, implement projects to reduce the threat of wildfire and restore forest health, approve surface use and occupancy in connection with private mining operations, construct energy infrastructure and water developments, and operate recreational facilities, brought under the NEPA, the NFMA and the ESA. The Mountain Region provided extensive advice to the FS regarding compliance with these and other laws in furtherance of the priorities of the USDA and FS, and assisted

DOJ in the defense of over 80 new litigation matters. The Region continued to observe an increase in FS legal needs due in part to climate change and the attendant expansion of agency programs to combat those changes.

Climate change, including drought, is causing more frequent and catastrophic wildfires. This has translated to substantial legal work, including numerous forest orders referred for legal sufficiency review. In support of active wildland fire programs, the Mountain Region reviewed roughly 335 forest orders, such as orders issued to protect public health and safety from the risk of wildfires, post-fire conditions, and hazardous weather, such as adverse road conditions and flooding. The Mountain Region assisted USDA agencies in answering varied legal questions and inquiries from the media, Congressional and local governmental representatives, and under FOIA related to the Tunnel Fire, Cerro Pelado Fire, and Hermits Peak/Calf Canyon Fires, among others. Post fire, Mountain Region attorneys assisted with affirmative claims for suppression costs and damages, both administrative and judicial, and helped the FS with defensive claims, liability, and management questions resulting from post-fire conditions, such as hazard tree liability and removal, to include legal issues and pending litigation related to the extensive Hermits Peak/Calf Canyon and Cerro Pelado Fires, which ignited in the wake of FS prescribed burns.

Many uses of NFS land are dependent upon water and water rights, and the Mountain Region assisted the FS in acquiring and protecting water rights necessary for National Forest purposes. The Mountain Region helped the FS participate in water rights proceedings in several States, including 23 separate basin-wide decrees in a Montana water adjudication, five basin-wide adjudications in Idaho, two adjudications with 30 subdivisions in Utah, two adjudications in Arizona with five subdivisions, and 14 individual cases in Colorado. Additionally, Mountain Region attorneys worked with DOJ in judicial water rights proceedings to acquire and protect water rights administered by the FS. The Mountain Region also assisted the FS in assuring that water users of the National Forests comply with FS regulations for the occupancy and use of the National Forests, as well as State law water rights requirements.

The Mountain Region advised and helped defend FS decisions related to several controversial proposed oil and gas leasing or development projects on NFS lands in Colorado and Montana; coal development in Utah; and mines and proposed mining projects involving critical minerals throughout the Region. The Mountain Region is advising the FS on permitting issues for critical minerals, including highly complex bonding issues for the only currently authorized cobalt mine in the United States, and permitting of a mine in Idaho that has the largest known deposit of the critical mineral antimony in the U.S. Mountain Region attorneys were particularly involved in continuing to help the FS navigate the high-profile, and still pending, Resolution Copper land exchange, which resulted in three different lawsuits in 2021 to stop the exchange. With regard to Resolution Copper, the Mountain Region helped negotiate and draft complicated transactional documents related to the exchange and continues to advise the FS on the development of NEPA documentation and ongoing tribal consultation responsibilities.

The Mountain Region assisted with legal review of FS applications, supporting documentation, and environmental analysis to the Department of the Interior to withdraw NFS land from entry and location under the mining law, leasing under mineral and geothermal leasing laws, and entry and disposal under the public land laws. The proposed withdrawal in the Thompson Divide area of Colorado would protect over 217,000 acres of NFS and public lands with high recreational and grazing values from the potential adverse effects of mineral development. The proposed withdrawal in the Pactola Watershed, Black Hills NF, South Dakota would similarly protect over 20,000 acres from the potential harm to a municipal water supply and tribal interests from proposed gold mining activity.

The Mountain Region assisted with the revision of a Tribal Forest Protection Act Agreement template which is now being used by all FS regions in the nation. It also assisted with the review of four TFPA agreements which were finalized, one TFPA proposal which was accepted for implementation in 2024, and the negotiation of two MOU's which remain in progress.

The Mountain Region advised the FS and assisted DOJ with litigation concerning winter feeding of elk by the State of Wyoming on National Forests; regulation of bison hunting on the National Forest north of Yellowstone Park; potential impacts to bighorn sheep from diseases transmitted by domestic sheep permitted on National Forests, and predator damage control by APHIS on NFS land in Nevada. It also assisted in the successful defense to a judicial challenge over a Forest Service plan amendment involving prairie dog management related to black footed ferret reintroduction in the Thunder Basin National Grassland, Wyoming.

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

Region assisted with the administrative cancellation of multiple non-compliant grazing permits, including the successful defense of the same when appealed. It continued to assist the FS with executing a plan to remove feral cattle from sensitive wilderness habitat in the Gila Wilderness via aerial gunning and provided ongoing support to the FS and DOJ in defending a lawsuit filed by the NM Cattle Grower's Association that challenged the aerial gunning operation. The Region assisted the FS in Arizona with its approach to a feral horse population near the Salt River on NFS land, to include the development of a cost sharing plan, and the successful defense of related litigation in *Center for Biological Diversity v. U.S.F.S.*, No. CV-23-00715-PHX-JAT (D. Ariz.).

The Mountain Region assisted the FS and NRCS in acquiring title to real property and interests therein to support their programs by evaluating and approving title to land to be acquired, including assisting with discretionary and congressionally mandated land exchanges. The Region also assisted agencies that hold title to real property, such as the FS and Agricultural Research Service, in protecting and defending title. It assisted in the defense of numerous Quiet Title Act matters throughout the region. Many trespassing claims, to include those involving former permittees by and against the United States, were resolved with the assistance of the Mountain Region before legal action was filed, while settlement of title claims were pursued where warranted. Mountain Region attorneys assisted the FS with the defense of title to interests in land held by the United States, including the referral of affirmative litigation to DOJ to protect the federal government's interests. One particularly notable example was the Region's support of the Forest Service in opposing the State of Arizona's decision to place more than 900 shipping containers on sensitive NFS lands over four miles along the southern U.S. border to serve as a makeshift border wall. In anticipation of a federal lawsuit, the State commenced litigation in Arizona federal court, claiming jurisdiction to install the containers. Working closely with DOJ, the Mountain Region helped prepare a complicated motion to dismiss, and led the development of a comprehensive referral and draft complaint that DOJ used to file suit against the State for trespass and ejectment. The Region's work on this high-profile matter helped influence the State's decision to unilaterally halt further construction activity, remove the trespassing containers, conduct extensive remediation work, and pay the FS over \$2 million to address any remaining natural resource impacts.

The Mountain Region assisted RD agencies in the closing of numerous loans, to include those involving the Water and Environmental Program, Community Facilities Program, and Multi Family Housing Program, totaling in excess of several million dollars in 2023. It also provided ongoing support to RD in working with the Navajo Tribal Utility Authority to close three loans on the Navajo Nation in New Mexico that totaled approximately \$21 million in water-related infrastructure.

The Mountain Region assists NRCS in the enforcement and protection of conservation easements acquired or funded by NRCS to protect farmland, wildlife habitat, wetlands, and open space, and provided substantial assistance to NRCS on various easements and program-related legal issues throughout 2023.

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

Pacific Region plays a unique role in advising the Alaska Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. In 2023, OGC defended federal interests in several cases brought by the State of Alaska that raised fundamental questions with respect to federal regulatory authority vis-à-vis the State. Our work helped secure a favorable ruling rejecting the State's challenge to issuance of a federal permit to a tribe to hunt moose and deer in the Tongass National Forest in order to address food shortages and tribal self-determination in isolated communities.

Pacific Region attorneys advise USDA agencies concerning a variety of types of contracts and contract disputes. Areas of contract advice include procurement, stewardship contracts, cooperative agreements, timber sales, leases, and licenses. When client agency contracts are the subject of disputes, OGC Pacific Region attorneys provide first-chair representation of client agencies before the Civilian Board of Contract Appeals and support to DOJ in litigation before the Court of Federal Claims and the Federal Circuit.

Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal crop insurance program. In 2023 OGC was successful in defending RMA in litigation challenging its interpretation of procedure concerning the Whole-Farm Revenue Protection (WFRP) program.

Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment litigation before the EEOC, MSPB, and the Federal courts. OGC Pacific Region attorneys continue to provide legal representation to the FS regarding claims brought by firefighters who allege unfair treatment.

Pacific Region helped the FS respond to many proposals for hydropower and other alternative energy projects. In 2023 the Klamath Dams removal project in California began implementation after decades of work and OGC actively assisted the FS on several hydropower license surrender and relicensing matters. OGC also advised USDA agencies on wind, solar, and geothermal renewable energy projects.

Pacific Region attorneys draft and review legal documentation and provide advice to FSA regarding loans to family farmers and small farming operations in the Pacific Region. OGC attorneys help ensure that FSA's use of taxpayer funds complies with applicable legal requirements and that security interests FSA obtained to secure loan repayments are valid and enforceable.

Pacific Region has an extremely active and effective role in helping the FS recover some of the millions of dollars in damages the agency incurs annually as a result of human-caused wildfires. Pacific Region attorneys' efforts include: working with FS Law Enforcement & Investigations agents and officers who conduct wildland fire origin and cause investigations to identify parties responsible for starting wildfires on NFS lands; coordinating with FS financial staff to calculate fire-suppression costs; and working with Forest Service natural resource experts and facilities managers to evaluate and value environmental and resource damages to National Forest System lands and to FS facilities. Pacific Region attorneys then partner with the Department of Justice to bring civil cases seeking recovery of these damages.

Pacific Region handles a significant number of FNS SNAP cases in which store owners are seeking judicial review of a variety of different types of sanctions for trafficking or other program-requirement violations. OGC successfully implemented a coordinated defense strategy with other OGC offices nationally, which included providing training to FNS employees.

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

Pacific Region attorneys routinely advise USDA agencies responding to *Touhy* and related FOIA requests for information from members of the public, state court litigants, and state and local government entities. Forest Service saw an increase in such requests made during 2023 involving state and private litigation related to the recent historic wildfire seasons in California, Washington and Oregon.

Attorneys in OGC's Pacific Region provide advice and review legal documentation relating to hundreds of transfers of interests in land and related property rights either from or to the United States. In 2023 the Pacific Region helped USDA agencies acquire many millions of dollars' worth of real property interests, including easements on more than 19,578 acres of private lands and fee title acquisitions that added more than 4,523 acres to National Forest System lands in the OGC Pacific Region. The Region completed a massive land exchange with the State of Alaska that Congress legislated in 2017, by which the Tongass National Forest acquired 18,000 acres of protected lands.

Pacific Region advises three FS Regions with respect to a wide range of public land-management decisions and also helps the Forest Service with legal compliance to prevent and prepare for litigation. When the FS is sued, OGC works closely with DOJ in defending the agency and ensuring that the FS can expeditiously implement important land-management decisions. For example, attorneys in the Pacific Region have successfully defended numerous FS vegetation-management decisions designed to protect and restore the environment, maintain, and improve public safety, and contribute to the socio-economic wellbeing of local communities. Attorneys also have taken the lead in providing the agency with alternative land-management strategies when the agency's litigation position has not prevailed. Outside of litigation, OGC provided substantial advice in 2023 as the FS worked to re-open forest units that were closed for safety reasons after the historic wildfire season. In sum, these efforts are resulting in more treatment on the ground, reduced threats to the national forests and nearby communities, and decreased litigation.



Pacific Region attorneys advised, reviewed, and revised more than 280 FS Forest Orders in 2023 that prohibited specified conduct and provided for criminal citations for violations. Catastrophic wildfires in Washington, Oregon, and California resulted in dozens of emergency closure orders being issued, which attorneys reviewed and revised as needed on an expedited basis. OGC Pacific Region attorneys additionally advise FS Law Enforcement & Investigations agents regarding the scope of their authority when handling matters with varying degrees of nexus to NFS lands.

The Pacific Region provided legal advice and compliance reviews for RD agencies in loan and grant transactions, totaling more than \$299.1 million in loans, \$13.7 million in loan guarantees, and \$26.5 million in grants in 2023. Pacific Region attorneys protected the government's interests by analyzing loan and security instruments, assessing the adequacy of loan security, reviewing contracts and intercreditor agreements, and preparing detailed loan closing instructions, as well as providing advice and representation to USDA agencies with respect to loan servicing issues, delinquencies, debt collection, and bankruptcy matters. Where documents were unavailable or inadequate, Pacific Region attorneys drafted security documents for use by RD. Attorneys helped RD identify strategies to address the increasingly common issues of prepayment requests and re-amortization of maturing loans, and they represented RD in prepayment litigation, including both owner and tenant claims.

Pacific Region provides advice to the FS on a wide range of types of special use permits authorizing individuals and entities to engage in specified activities on NFS lands. Special use permit issues relating to wildfires have been noteworthy this year. In 2023, OGC Pacific Region attorneys advised multiple Forests in California engaged in the process of determining whether to allow recreation residence permit-holders to rebuild cabins that were substantially destroyed by wildfire in preceding years.

Pacific Region adjudicates a variety of FTCA claims. OGC attorneys carefully review the factual and legal basis for the claim to determine whether payment is authorized under the FTCA and, if so, what amount of payment is supported by the evidence. They also represent USDA agencies in FTCA litigation filed by claimants who are dissatisfied with the administrative disposition of their claims.