

2022 USDA EXPLANATORY NOTES – EXECUTIVE OPERATIONS
OFFICE OF THE GENERAL COUNSEL

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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 centralized within OGC, and the General Counsel reports directly to the Secretary. The General Counsel is the chief law officer of USDA and is responsible for providing legal services for all programs, operations, and activities of USDA. Three Deputy General Counsels, five Associate General Counsels, 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.

Administrative Proceedings

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

Federal and State Court Litigation

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

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

Freedom of Information Act

OGC manages the Department's Freedom of Information Act (FOIA) Program as required by 5 U.S.C. §552, as amended; formulates and develops department wide FOIA policies; and supports and monitors FOIA programs of Mission Areas outside of the OIA to ensure statutory compliance.

Records Management

OGC manages and develops the Department's Records Management Program as required by the Federal Records Act of 1950, formulates and develops department-wide records management policies and supports and monitors the Department's records management programs.

Law Library

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

Geographic Location

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

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

As of September 30, 2020, there were 239 permanent full-time employees, of which 123 were located in the headquarters office and 116 in the field offices.

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

| Item | 2019 | | 2020 | | 2021 | | 2022 | |
|---------------------------------------|----------|-----|----------|-----|----------|-----|----------|-----|
| | Actual | FTE | Actual | FTE | Enacted | FTE | Budget | FTE |
| Salaries and Expenses: | | | | | | | | |
| Office of the General Counsel | \$45,146 | 208 | \$45,146 | 212 | \$45,390 | 224 | \$60,723 | 236 |
| Transfers Out: | | | | | | | | |
| Working Capital Fund | -900 | | -375 | | - | | - | |
| Total Available | 44,246 | 208 | 44,771 | 212 | 45,390 | 224 | 60,723 | 236 |
| Lapsing Balances | -197 | | -103 | | - | | - | |
| Total Obligations, OGC | 44,049 | 208 | 44,668 | 212 | 45,390 | 224 | 60,723 | 236 |
| Other USDA: | | | | | | | | |
| CCC | - | - | 173 | 1 | 458 | 2 | 458 | 2 |
| Civil Rights EEO Reimbursements | 2,509 | 15 | 2,417 | 14 | 2,365 | 14 | 2,440 | 15 |
| Detail Support | 6 | - | 107 | - | 64 | - | - | - |
| OCIO/FOIA Support | - | - | 482 | 2 | 475 | 2 | 475 | 2 |
| FOIAXpress and DOJ Portal | - | - | 262 | - | 270 | - | - | - |
| FS Non-Litigation Travel | 5 | - | - | - | - | - | 5 | - |
| Hazardous Material Management Program | 891 | 4 | 978 | 4 | 965 | 4 | 965 | 4 |
| Ombudperson | 119 | 1 | - | - | - | - | - | - |
| Records Management | - | - | 33 | - | 312 | 3 | - | - |
| AMS User Fees | 612 | 3 | 666 | 3 | 748 | 3 | 748 | 3 |
| APHIS User Fess | 30 | - | 26 | - | 33 | - | 33 | - |
| Total, Other USDA | 4,172 | 23 | 5,144 | 24 | 5,690 | 28 | 5,124 | 26 |
| Total, Agriculture Available | 48,221 | 231 | 49,812 | 236 | 51,080 | 252 | 65,847 | 262 |
| Other Federal Funds: | | | | | | | | |
| Department of Army | - | - | 26 | - | 21 | - | - | - |
| Total, Other Federal | - | - | 26 | - | 21 | - | - | - |
| Total Available, OGC | 48,221 | 231 | 49,838 | 236 | 51,101 | 252 | 65,847 | 262 |

PERMANENT POSITIONS BY GRADE AND FTES**Table OGC-2. Permanent Positions by Grade and FTEs**

| Item | 2019 | | | 2020 | | | 2021 | | | 2022 | | |
|--------------------|------|-------|--------------|------|-------|--------------|------|-------|---------------|------|-------|--------------|
| | D.C. | Field | Actual Total | D.C. | Field | Actual Total | D.C. | Field | Enacted Total | D.C. | Field | Budget Total |
| EX | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 |
| SES | 14 | 4 | 18 | 14 | 4 | 18 | 15 | 4 | 19 | 15 | 4 | 19 |
| GS-15 | 26 | 23 | 49 | 25 | 20 | 45 | 28 | 20 | 48 | 31 | 20 | 51 |
| GS-14 | 62 | 50 | 112 | 50 | 47 | 97 | 59 | 42 | 101 | 70 | 42 | 112 |
| GS-13 | 8 | 4 | 12 | 9 | - | 9 | 14 | 1 | 15 | 8 | 13 | 21 |
| GS-12 | 3 | - | 3 | 11 | 1 | 12 | 8 | 13 | 21 | 9 | 4 | 13 |
| GS-11 | 12 | 14 | 26 | 4 | 24 | 28 | 9 | 14 | 23 | 8 | 12 | 20 |
| GS-9 | 6 | 2 | 8 | 4 | 9 | 13 | 4 | 3 | 7 | 4 | 3 | 7 |
| GS-8 | 2 | 7 | 9 | 3 | 7 | 10 | 2 | 7 | 9 | 3 | 9 | 12 |
| GS-7 | 2 | 3 | 5 | 1 | 4 | 5 | 2 | 5 | 7 | 2 | 3 | 5 |
| GS-6 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 | 1 | - | 1 |
| Total Permanent | 137 | 107 | 244 | 123 | 116 | 239 | 143 | 109 | 252 | 152 | 110 | 262 |
| Unfilled, EOY | 19 | 3 | 22 | - | - | - | - | - | - | - | - | - |
| Total Perm. FT EOY | 118 | 104 | 222 | 123 | 116 | 239 | 143 | 109 | 252 | 152 | 110 | 262 |
| FTE | 197 | 34 | 231 | 137 | 99 | 236 | 143 | 109 | 252 | 152 | 110 | 262 |

SHARED FUNDING PROJECTS**Table OGC -3. Shared Funding Projects (dollars in thousands)**

| Item | 2019 Actual | 2020 Actual | 2021 Enacted | 2022 Budget |
|--|----------------|----------------|-----------------|----------------|
| Working Capital Fund: | | | | |
| Administrative Services: | | | | |
| Material Management Service..... | \$26 | \$54 | \$53 | \$3 |
| Mail and Reproduction Services..... | 312 | 329 | 343 | 149 |
| Integrated Procurement Systems..... | 24 | 17 | 19 | 21 |
| Procurement Operations Services..... | 57 | 59 | 57 | 51 |
| Human Resources Enterprise Management Systems..... | 3 | 3 | 5 | 5 |
| Subtotal..... | 422 | 462 | 477 | 229 |
| Communications: | | | | |
| Creative Media & Broadcast Center..... | 3 | 31 | 27 | 25 |
| Finance and Management: | | | | |
| National Finance Center..... | 77 | 74 | 74 | 74 |
| Financial Shared Services..... | 175 | 174 | 186 | 186 |
| Subtotal..... | 252 | 248 | 260 | 260 |
| Information Technology: | | | | |
| Client Experience Center..... | 1,268 | 716 | 1,691 | 1,713 |
| Department Administration Information Technology Office... | - | 201 | 566 | 577 |
| Digital Infrastructure Services Center..... | 102 | 231 | 94 | 142 |
| Enterprise Network Services..... | 96 | 212 | 87 | 88 |
| Subtotal..... | 1,466 | 1,360 | 2,438 | 2,520 |
| Correspondence Management Services..... | 44 | - | - | - |
| Office of the Executive Secretariat..... | - | 44 | 47 | 47 |
| Total, Working Capital Fund..... | 2,187 | 2,145 | 3,249 | 3,081 |
| Department-Wide Shared Cost Programs: | | | | |
| Agency Partnership Outreach..... | 21 | 21 | 21 | - |
| Human Resources Self-Service Dashboard..... | 2 | 2 | - | - |
| Medical Services..... | 8 | 10 | 39 | - |
| Office of Customer Experience..... | 8 | 17 | 28 | 26 |
| Personnel and Document Security Program..... | 6 | 6 | 7 | - |
| Physical Security..... | - | 16 | 12 | - |
| Security Detail..... | 12 | 12 | 13 | 12 |
| Security Operations Program..... | 28 | 16 | 19 | - |
| TARGET Center..... | 3 | 3 | 3 | - |
| USDA Enterprise Data Analytics Services..... | - | 22 | 14 | - |
| Total, Department-Wide Reimbursable Programs..... | 88 | 125 | 156 | 38 |
| E-Gov: | | | | |
| Budget Formulation and Execution Line of Business..... | - | 259 | 295 | 295 |
| Financial Management Line of Business..... | - | 286 | 318 | 318 |
| Human Resources Line of Business..... | - | 799 | 865 | 865 |
| Integrated Acquisition Environment..... | - | 4,040 | - | - |
| Total, E-Gov..... | - | 5,384 | 1,478 | 1,478 |
| Agency Total..... | 2,275 | 7,654 | 4,883 | 4,597 |

OFFICE OF GENERAL COUNSEL: SALARIES AND EXPENSES

APPROPRIATIONS LANGUAGE

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

For necessary expenses of the Office of the General Counsel, [~~\$45,390,000~~] \$60,723,000.

LEAD-OFF TABULAR STATEMENT

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

| Item | Amount |
|-------------------------|-------------------|
| 2021 Enacted | \$45,390,000 |
| Change in Appropriation | + 15,333,000 |
| Budget Estimate, 2022 | <u>60,723,000</u> |

PROJECT STATEMENT

Table OGC-5. Project Statement (thousands of dollars, FTEs)

| Item | 2019 | | 2020 | | 2021 | | Inc. or Dec. | FTE | Chg Key | 2022 | | |
|-------------------------------|----------|-----|----------|-----|----------|-----|--------------|-----|---------|----------|-----|--|
| | Actual | FTE | Actual | FTE | Enacted | FTE | | | | Budget | FTE | |
| Discretionary Appropriations: | | | | | | | | | | | | |
| Legal Services..... | \$45,146 | 208 | \$45,146 | 212 | \$45,390 | 224 | +\$15,333 | +12 | (1) | \$60,723 | 236 | |
| Transfers Out: | | | | | | | | | | | | |
| Working Capital Fund..... | -900 | - | -375 | - | - | - | - | - | - | - | - | |
| Total Available..... | 44,246 | 208 | 44,771 | 212 | 45,390 | 224 | 15,333 | 12 | - | 60,723 | 236 | |
| Lapsing Balances..... | | | | | | | | | | | | |
| Total Obligations..... | -197 | - | -103 | - | - | - | - | - | - | - | - | |
| Total Obligations..... | 44,049 | 208 | 44,668 | 212 | 45,390 | 224 | 15,333 | 12 | - | 60,723 | 236 | |

Table OGC-6. Project Statement (thousands of dollars, FTEs)

| Item | 2019 | | 2020 | | 2021 | | Inc. or Dec. | FTE | 2022 | |
|----------------------------|--------|-----|--------|-----|---------|-----|--------------|-----|--------|-----|
| | Actual | FTE | Actual | FTE | Enacted | FTE | | | Budget | FTE |
| Discretionary Obligations: | | | | | | | | | | |
| Legal Services..... | 44,049 | 208 | 44,668 | 212 | 45,390 | 224 | 15,333 | 12 | 60,723 | 236 |
| Lapsing Balances..... | 197 | - | 103 | - | - | - | - | - | - | - |
| Total Available..... | 44,246 | 208 | 44,771 | 212 | 45,390 | 224 | 15,333 | 12 | 60,723 | 236 |
| Transfers Out: | | | | | | | | | | |
| Working Capital Fund..... | 900 | - | 375 | - | - | - | - | - | - | - |
| Total Appropriation..... | 45,146 | 208 | 45,146 | 212 | 45,390 | 224 | 15,333 | 12 | 60,723 | 236 |

JUSTIFICATION OF INCREASES AND DECREASES

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

- 1) An increase of \$15,333,000 (\$45,390,000 and 224 FTE available in 2021).

The funding change is requested for the following items:

- a. An increase of \$934,000, which includes \$636,000 for pay inflation and \$298,000 for the Federal Employee Retirement System (FERS).

This increase will support the 2.7 percent Cost of Living pay increases for civilian employees, and a 1.1 percent increase to cover expenses for the mandated increase of USDA’s contribution to FERS. This increase will allow OGC to continue to determine legal policy and direct the performance of all USDA legal work.

b. An increase of \$1,944,000 to maintain current staff hired at the end of FY 2021.

This critical increase is needed to support and maintain current staffing levels to meet the program demands and statutory requirements imposed on OGC. Approximately 88 percent of OGC's budget is expended in support of personnel salaries and benefits, which leave no flexibility for absorbing increased costs for pay or any other salary adjustments. OGC can absorb any such increases only by reducing staff or reassessing its operating requirements for travel, maintenance of equipment, training, IT end user support, and supplies. As these items comprise only 12 percent of the overall budget, OGC's flexibility to reduce expenses is extremely limited and, when increased pay costs and salary adjustments are not fully funded, the only available option is to consider staff reductions. This increase is also needed for OGC to continue to carry out its mission of providing legal services and maintaining its legal research database licenses and training resources. OGC is providing legal services essential to the implementation of American Rescue Plan Act (ARP) programs. OGC is also assisting the Department with its multi-dimensional Pandemic Assistance Program under the 2021 Consolidated Appropriations Act and other authorities. In addition, OGC is providing legal support to economic recovery-related enhancements to food and nutrition programs and to rural housing, broadband, healthcare facilities and other rural development programs. Additional legal resources are needed for (1) ongoing COVID-19 responses, including assistance with supply chain resiliency enhancement, (2) providing advice on the return of USDA employees to the physical office spaces and facility usage planning, (3) carrying out programs funded under the CARES Act and ARP Act in accordance with statute and governmentwide regulatory policies, and (4) enhanced cybersecurity measures in the wake of the Solar Wind and the Coastal Pipeline attacks and intellectual property protection measures, both for the Department and the food and agriculture sector of the economy.

c. An increase of \$12,455,000 for records management system and staff.

The Office of Information Affairs' (OIA) Departmental Records Management team is responsible for performing records inventories for all USDA staff offices, preparation of schedules for all USDA staff offices, preparation of the required annual reports, counseling and training USDA agency records officers, and ensuring records compliance during the onboarding and offboarding of all political appointees and all employees in the USDA staff offices. The Records Management team currently operates at a cost of \$454,704 which include salaries, benefits, and Departmental assessments. An ongoing assessment of the Records Management program revealed the absence of continued funding to support an enterprise wide electronic records platform. This is critical as the Office of Management and Budget (OMB) has issued M-19-21 requiring agencies, among other things, to ensure its federal records are created, managed, and retained in an electronic format by December 2022. To ensure compliance with M-19-21, OGC intends to partner with the Office of the Chief Information Officer (OCIO) to procure a platform. The platform has many benefits that include management of electronic records in accordance with M-19-21, automation of insider risk policies, and overall better preservation of those records responsive to litigation holds and other administrative actions. The \$12 million is to cover all costs associated with the first option year.

GEOGRAPHIC BREAKDOWN OF OBLIGATIONS AND FTEs**Table OGC-7. Geographic Breakdown of Obligations and FTEs (thousands of dollars, FTE)**

| State/Territory/Country | 2019 | | 2020 | | 2021 | | 2022 | |
|-------------------------|--------|-----|--------|-----|---------|-----|--------|-----|
| | Actual | FTE | Actual | FTE | Enacted | FTE | Budget | FTE |
| Alaska | \$567 | 3 | \$571 | 3 | \$724 | 5 | \$845 | 5 |
| Arkansas | 1,026 | 6 | 1,118 | 7 | 1,049 | 8 | 1,217 | 8 |
| California | 2,694 | 12 | 2,113 | 9 | 2,315 | 10 | 2,567 | 12 |
| Colorado | 2,035 | 9 | 2,224 | 12 | 1,848 | 11 | 1,900 | 11 |
| District of Columbia | 24,754 | 107 | 26,290 | 113 | 26,869 | 118 | 41,223 | 127 |
| Georgia | 2,915 | 17 | 2,743 | 15 | 3,025 | 16 | 3,052 | 16 |
| Missouri | 1,798 | 12 | 1,656 | 10 | 1,923 | 11 | 2,033 | 12 |
| Montana | 1,304 | 8 | 1,244 | 8 | 1,163 | 8 | 1,209 | 8 |
| New Mexico | 612 | 4 | 683 | 5 | 769 | 5 | 816 | 5 |
| Oregon | 1,924 | 8 | 2,097 | 8 | 1,724 | 9 | 1,755 | 9 |
| Pennsylvania | 1,885 | 8 | 1,454 | 8 | 1,594 | 9 | 1,675 | 9 |
| Texas | 1,225 | 7 | 1,158 | 7 | 1,002 | 6 | 1,029 | 6 |
| Wisconsin | 1,310 | 7 | 1,317 | 7 | 1,385 | 8 | 1,402 | 8 |
| Obligations | 44,049 | 208 | 44,668 | 212 | 45,390 | 224 | 60,723 | 236 |
| Lapsing Balances | 197 | - | 103 | - | - | - | - | - |
| Total, Available | 44,246 | 208 | 44,771 | 212 | 45,390 | 224 | 60,723 | 236 |

CLASSIFICATION BY OBJECTS**Table OGC-8. Classification by Objects (thousands of dollars, FTE)**

| Item No. | Item | 2019 Actual | 2020 Actual | 2021 Enacted | 2022 Budget |
|-------------------------|---|-------------|-------------|--------------|-------------|
| Personnel Compensation: | | | | | |
| | Washington D.C. | \$14,234 | \$14,377 | \$14,786 | \$15,995 |
| | Personnel Compensation, Field | 13,675 | 13,814 | 14,207 | 15,368 |
| 11 | Total personnel compensation | 27,909 | 28,191 | 28,993 | 31,363 |
| 12 | Personal benefits | 8,580 | 9,298 | 9,965 | 11,337 |
| 13.0 | Benefits for former personnel | 17 | 30 | 18 | 18 |
| | Total, personnel comp. and benefits | 36,506 | 37,519 | 38,976 | 42,718 |
| Other Objects: | | | | | |
| 21.0 | Travel and transportation of persons | 215 | 75 | 20 | 100 |
| 22.0 | Transportation of things | 5 | 1 | 4 | 4 |
| 23.1 | Rental payments to GSA | 1,426 | 1,427 | 1,488 | 1,488 |
| 23.2 | Rental payments to others | 132 | 165 | 165 | 167 |
| 23.3 | Communications, utilities, and misc. charges | 892 | 676 | 664 | 664 |
| 24.0 | Printing and reproduction | 197 | 196 | 193 | 193 |
| 25.2 | Other services from non-Federal sources | 889 | 1,334 | 216 | 12,188 |
| 25.3 | Other goods and services from Federal sources | 3,041 | 2,490 | 2,950 | 2,954 |
| 26.0 | Supplies and materials | 679 | 754 | 689 | 222 |
| 31.0 | Equipment | 67 | 31 | 25 | 25 |
| | Total, Other Objects | 7,543 | 7,149 | 6,414 | 18,005 |
| 99.9 | Total, new obligations | 44,049 | 44,668 | 45,390 | 60,723 |
| | DHS Building Security Payments (included in 25.3) | \$245 | \$247 | \$250 | \$250 |
| Position Data: | | | | | |
| | Average Salary (dollars), ES Position | \$173,343 | \$176,341 | \$183,366 | \$189,515 |
| | Average Salary (dollars), GS Position | \$123,896 | \$125,633 | \$128,640 | \$131,244 |
| | Average Grade, GS Position | 14.6 | 14.3 | 14.4 | 14.4 |

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

Selected Examples of Recent Progress

- More efficient processing of Freedom of Information Act requests and operation of the department-wide records management program as a result of the establishment of the Office of Information Affairs.
- OGC was instrumental in assisting the Food Safety and Inspection Service and the Agricultural Marketing Service in identifying regulatory flexibilities to ensure the continued availability of meat, eggs, and poultry products to consumers during the pandemic and to ensure the continued operation of meat and poultry slaughter and processing facilities to ensure an adequate supply of meat and poultry products to consumers nationwide.
- OGC provided extensive advice to Farm Service Agency and the Secretary in connection with the development of the Coronavirus Food Assistance Program (CFAP) and the subsequent expanded program, CFAP2, that provided \$9.5 billion to support agricultural producers to prevent, prepare for, and respond to coronavirus, and up to \$14 billion in additional payments to producers of agricultural commodities who continued to face market disruptions, low farm-level prices, and significant marketing costs, respectively.
- OGC played a key role in advising the Forest Service regarding environmental analysis and decision-making reform, including implementation of newly revised Council on Environment Quality National Environmental Protection Act (NEPA) regulations, and development of proposed amendments to Forest Service NEPA regulations and directives.
- OGC helped the Department ensure food production and security, including assistance with the use of authorities and funding supporting the Farmers to Families Food Box Program (FFFBP). FFFBP was funded at \$4.5 billion and supplied food boxes of fresh fruits and vegetables, dairy products, and meat products to millions of Americans in need during the pandemic that distributed more than 100 million food boxes in support of American farmers and families affected by the COVID-19.
- OGC advised the Food Safety and Inspection Service and Agricultural Marketing Service on issues surrounding masks and personal protective equipment in response to the coronavirus and pay for meat and poultry inspectors, affecting the entire country's food chain.

Administration and Resources Management

In FY 2020, OGC entered into a service agreement with Microsoft Premier Support to help facilitate the deployment of Legal Matter Center and end user training for its new case management solution. The deployment of Legal Matter Center will result in increased work productivity for OGC's employees by allowing the integrated use of the Government Community Cloud's Office 365 and Dynamics 365 applications.

Office of Information Affairs

The Departmental FOIA program was realigned under the Office of the General Counsel, specifically in a new stand alone, the Office of Information Affairs (OIA). The OIA has assumed the FOIA functions for all of USDA's staff offices, as well as Research Education and Economics and the Trade and Foreign Agricultural Affairs mission areas. Accordingly, the General Counsel was designated as the Department's Chief FOIA Officer in compliance with § 552(j) of the FOIA. The realignment also continues to ensure standardization in critical areas such as

management, training, policy, and records processing, all of which can greatly improve the overall FOIA requester experience.

Since the realignment, there has been a 12.8 percent total backlog reduction in all components absorbed under the Departmental FOIA Office. Processing of those same components also increased by 19.1 percent.

USDA, under the guidance of the OGC Departmental FOIA Office, was also able to close out its ten oldest initial requests, administrative appeals, and consultations, reduce the overall initial FOIA backlog by 5.4 percent, and reduce the overall appeal backlog by 20.4 percent.

Records Management (RM): In accordance with the Federal Records Act, 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.

The Departmental RM program was realigned under the Office of the General Counsel's OIA in August 2020. Since then, an assessment was performed to determine the state and needs of the records program. A Blanket Purchase Agreement was executed to better streamline the RM contract services across the Department. The Departmental RM team also initiated work to procure and build out a comprehensive enterprise-wide electronic records program to ensure compliance with the Office of Management and Budget's (OMB) 2022 mandates regarding Federal records digitization.

Marketing, Regulatory and Food Safety Programs Division

The Marketing, Regulatory, and Food Safety Programs Division (MRFSP) provides legal advice and litigation support to two mission areas: Food Safety and Marketing and Regulatory Programs. The workload has increased significantly as AMS implements two new national programs, Animal and Plant Health Inspection Service (APHIS) continues to update its regulatory programs, and FSIS makes steady progress in furthering the administration's deregulatory agenda and in modernizing swine and poultry slaughter. A few examples of the critical work performed by the Division during FY 2020 appear below:

Agricultural Marketing Service (AMS)

Response to COVID-19 Pandemic

Following the onset of the global pandemic, the Division conducted an immediate review of applicable statutory and regulatory provisions and devised legal solutions that provided greater regulatory flexibility to regulated entities and the USDA employees that enforce the regulations. This work allowed AMS to seamlessly respond to shifting market demands for the grading of livestock and shelled eggs, and to reduce regulatory burdens amid the pandemic. The Division also identified the legal authority used to fund alternate housing for AMS personnel working in processing plants. The Division also adapted USDA's formal rulemaking hearing procedures to accommodate virtual hearings, to include revising procedures to examine witnesses, handle motions and objections, and admit evidence in a virtual environment, allowing AMS to conduct its first ever virtual formal rulemaking hearing. Additionally, the Division facilitated the issuance of Department Of Justice (DOJ) Antitrust Division's business review letter that enabled USDA to oversee a voluntary program to depopulate swine. This program addressed one of the supply chain issues that arose from the COVID-19 pandemic.

Dairy Bankruptcies

The Division worked closely with DOJ in the Dean Foods and Borden Dairy bankruptcies involving over \$70 million in debts owed to USDA, the bulk of which represent payments to producers for their milk. The Division aided DOJ in understanding the complex structure of Federal Milk Marketing Orders and dairy pricing, allowing the bankruptcy attorneys to negotiate robust settlements that will return the majority of funds owed to producers, making producers as whole as possible.

Hemp Program

The Division was also instrumental in AMS's efforts to establish and implement the Domestic Hemp Production Program, including publishing the interim final rule for this industry with sales estimated to be \$1.3 billion in 2020. The Division conducted legal review of dozens of State and Tribal hemp plans and contributed to the approval of 65 plans which authorized the States and Tribes to assume regulatory responsibility for hemp production within their jurisdiction.

Perishable Agricultural Commodities Act

The Division also drafted over 100 reparations decisions involving more than \$2.8 million in disputed claims and caused the filing of approximately 30 administrative complaints under the Perishable Agricultural Commodities Act

(PACA). The Division also closed more than 11 administrative cases resulting in \$1.1 million in payments to unpaid PACA creditors and over \$25,000 in civil penalties.

Antitrust/Anticompetition Issues

The Division provided critical representation of USDA's interests in discussions with DOJ's Antitrust Division. The Division coordinated sensitive information sharing requests as antitrust investigations ensued. The Division also provided legal advice and support to AMS on COVID-19 pandemic relative to beef and swine prices fluctuations and the allegations of possible price manipulation.

Food Safety

Swine Slaughter Modernization

The Division provided legal counsel to FSIS as it began implementation of a significant rule to modernize the inspection process in swine slaughter facilities using science-based approaches to food safety. This rule is currently the subject of three lawsuits filed in Minnesota, New York and California and the Division is providing significant assistance to the DOJ in defending these lawsuits.

Poultry Line Speed Waivers

The Division also provided significant legal support regarding FSIS' decision to grant line speed waivers to poultry slaughter facilities in order to inform the agency's decision regarding rulemaking. These waivers allow establishments to test new equipment, technologies, or procedures in order to operate at faster line speeds, provided process control is maintained. The Division is providing to the DOJ in defending two lawsuits challenging the waivers.

Animal and Plant Health Inspection Service

Biotechnology Regulations

The Division assisted APHIS in finalizing a rule to revise its biotechnology regulations in order to make them more effective and efficient. The rule marks the first comprehensive revision of the regulations since they were established in 1987 and responds to advances in genetic engineering and APHIS' understanding of the plant pest risk posed by genetically engineered organisms.

Wildlife Services

The Division provided substantial assistance to the DOJ in defending Wildlife Services in eight Federal court cases challenging various program activities in multiple states. For example, the Division attorneys contributed to the favorable resolution of one of the most significant tort claim cases involving Wildlife Services in years. The judge granted partial summary judgment for the government and dismissed two of the three plaintiffs in the lawsuit, which paved the way for a favorable settlement of the case.

Animal Care

The Division provided substantial assistance to Animal Care in finalizing a rule that completely revamps the renewal process for licenses issued under the Animal Welfare Act. The rule requires all licensees to undergo an inspection and demonstrate compliance with all regulatory requirements prior to renewing a license.

User Fee Program

The Division provided substantial assistance in defending APHIS against a challenge to its ability to collect user fees and maintain a reasonable balance in a reserve account. User fees are essential to funding activities to protect American agriculture by preventing the introduction into the United States of foreign pests and diseases, and the ability to maintain a reserve account is essential to continuing inspection services at ports of entry in the event of an unforeseen decline in international travel. In this fiscal year, the Division drafted an interpretative rule that was published in the *Federal Register* clarifying APHIS' legal authority to continue collecting user fees to maintain a reasonable reserve. The Division also provided substantial technical drafting assistance on proposed legislation to address a substantial shortfall in user fee collections due to the COVID-19 pandemic.

International Affairs, Food Assistance, and Farm and Rural Programs

OGC provided extensive legal advice to FSA, Foreign Agricultural Service (FAS), Risk Management Agency (RMA), Food and Nutrition Service (FNS), and Rural Development (RD) in connection with implementation of the Agriculture Improvement Act of 2018. Eight of twelve titles involved these agencies.

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

OGC provided legal advice and assistance in drafting bilateral and implementing agreements as part of an interagency effort to provide debt relief to six low-income countries to assist them to fight the health crisis caused by

the global coronavirus pandemic. This effort resulted in the rescheduling of debt owed to CCC under Title I of the Food for Peace Act and the Export Credit Guarantee Program (GSM-102).

OGC played a significant role in the drafting of the preamble to the 2020 Council on Environmental Quality NEPA rule, as well as responses to comments on the related proposed rule, with particular emphasis on FSA guaranteed loans. Under the new rule, FSA guaranteed loans are specifically described as not a major Federal action. As part of the COVID pandemic response, OGC was instrumental in its assistance to Farm Loan Programs by reviewing and revising legislation to confer additional servicing flexibility during a national emergency.

Foreign Agricultural Service (FAS)

OGC advised the Department on various World Trade Organization, United States-Mexico-Canada Agreement (USMCA), and other international matters. This included extensive review and advice with respect to USDA's sugar and dairy import programs; review and advice in bilateral negotiations with Brazil, India, the United Kingdom, and China over numerous agricultural trade issues, including tariff rate quotas, domestic support, and sanitary and phytosanitary issues; the successful culmination of the reciprocal organic equivalence recognitions with Japan and Taiwan; and extensive support in investigations of potential USMCA implementation issues involving Mexico and Canada.

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

OGC provided extensive legal advice to RMA and the FCIC Board of Directors on new and existing crop insurance policies, regulations, litigation, compliance issues, administrative proceedings, interpretations of procedure, final agency determinations, and various other matters. RMA has relied on OGC's legal guidance to respond to the COVID-19 emergency, publishes new and amended regulations, issued manager's bulletins, responded to program participants, and otherwise managed the \$11.8 billion Federal Crop Insurance Program. OGC advised FCIC during its six annual crop insurance Board meetings.

Food, Nutrition and Consumer Services

OGC provided legal advice to the Center for Nutrition Policy and Promotion on the 2020 Dietary Guidelines for Americans. OGC provided substantial support for programmatic waivers in the nutrition programs in response to COVID-19.

Rural Development (RD)

OGC participated significantly in the development and clearance of several rules to support rural broadband connectivity: two ReConnect pilot funding notices, which are expected to award around \$2 billion in funding by early 2021, the ReConnect Program final rule, the Farm Bill Broadband Program final rule, the Smart Utility final rule, which will allow recipients of most RD programs to utilize funding for broadband infrastructure, and the Telecommunications loan servicing rule, which will facilitate the restructuring and refinancing of telecommunications loans. Additionally, OGC assisted in guiding the agency to quickly implement additional funding (\$125 million) which was provided under the CARES Act for the ReConnect pilot and Distance Learning and Telemedicine Program.

During this difficult time of COVID, OGC was instrumental in drafting legislation for Multi-Family Housing (MFH) responsive to the pandemic. This included legislation to provide additional rental assistance to MFH tenants affected by COVID, as well as expansion of the voucher program for similarly affected rural residents. OGC also advised Rural Housing Service (RHS) on the implementation of the CARES Act provisions for forbearance and foreclosure moratoriums for single family housing loans, and on RHS's policy to continue the foreclosure moratorium beyond the expiration of the CARES Act provision.

OGC also worked on the CARES Act for the Rural Business Cooperative Service (RBCS). OGC worked with agency and congressional staff to draft the legislation and responded to all inquiries of congressional staff regarding the Business & Industry (B&I) Guaranteed Loan Program as they worked on this legislation. RBCS received funding and authority under the CARES Act to provide for additional funds under the B&I Guaranteed Loan Program to prevent, prepare for and respond to the effects of the Covid-19 pandemic. OGC assisted in drafting both an amendment to the current B&I regulation and a Notice of Funding Availability to ensure availability of funding on an accelerated basis. Under these authorities, this funding is primarily being used for working capital loan purposes to support business operations and facilities in rural areas. Since Small Business Administration's Paycheck Protection Program's funding was depleted, this funding helped fill the gap for rural businesses that were severely impacted due to the economic impacts of the Covid-19 emergency. This critical funding provides rural businesses with bridge funding for operating expenses allowing them to stay open.

OGC also assisted RD in its efforts to combine the regulations for four RD guaranteed loan programs (Business and Industry Guaranteed Loan Program, Rural Energy for America Program, Water, and Community Facilities) into one regulation titled “OneRD.” OGC assisted RD in developing a unified guaranteed loan platform for enhanced delivery of these four existing guaranteed loan programs.

Natural Resources and Environment Division

OGC advised the Forest Service on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS) and provided legal services to the Natural Resource and Conservation Service. OGC counseled the Forest Service on legal issues arising under laws including the Administrative Procedures Act, the 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 Forest Service State and Private Forestry, Business Operations, and Research and Development regarding a myriad of conservation programs. OGC assisted the FS and other USDA offices in drafting legislation, and reviewed pending legislation pertaining to the conservation title of the Farm Bill and the John D. Dingell, Jr. Conservation, Management and Recreation Act of 2019. OGC also reviewed legislative reports and testimony for congressional hearings and provided legal advice to the Forest Service regarding law enforcement issues and the Secure Rural Schools Act payments. In the past year, OGC provided legal services to the Forest Service and National Resource and Conservation Service on a wide range of agency activities:

Energy and Mineral Development

OGC provided legal assistance to the Forest Service in several rulemaking efforts intended to expedite energy development and permitting for significant mineral projects, including Forest Service regulations governing oil and gas development and hard rock mineral development on Forest Service land. OGC also provided significant assistance to the Forest Service regarding the development of mineral deposits in Arizona, Montana, and Minnesota valued in the billions of dollars.

Infrastructure

OGC provided legal advice to the Forest Service to expedite infrastructure development involving the national forests, especially with regard to expansion of broadband capacity, electric transmission lines, water developments. In addition, OGC assisted the Forest Service in identifying infrastructure projects that could be expedited as part of the economic recovery efforts in response to the COVID-19 pandemic.

Regulatory Reform and Forest Planning

OGC assisted the Forest Service in identifying barriers and obstacles to national forest management resulting from obsolete and redundant regulations and directives. OGC provided legal research and informal advice regarding significant land and management plan amendments and revisions, as well as objections concerning plans, projects, and permits, including critical habitat regulations under the Endangered Species Act.

Litigation

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

Forest and Range Management

OGC provided informal advice concerning shared stewardship and contracting authority and assisted the Forest Service in the development of a number of shared stewardship and Good Neighbor agreements with several States. OGC also provided advice and represented the agency in various administrative forums, including appeals before the Civilian Board of Contract Appeals, suspension and debarment proceedings, bid protests before the General Accounting Office, small business set-aside appeals, and export sourcing area proceedings. OGC assisted the Forest Service with development of its Forest Products Modernization initiative and with its efforts to modernize the Forest Service timber handbook. Finally, OGC provided advice to the FS on a number of issues relating to wildfire response and firefighter safety in light of the COVID-19 pandemic during an extremely busy fire season.

Roadless Area Management

OGC advised the Forest Service and Under Secretary for Natural Resources and Environment concerning the 2001 roadless rule and development of the Alaska Roadless Rule in response to Alaska’s petition for rulemaking.

Recreation

OGC provided advice to the Forest Service on maintaining access for hunting and fishing, recreation fees, recreation residences, special use administration, ski area permitting, travel management, and numerous other issues arising from recreational use of NFS lands. OGC also assisted in the drafting of key notices, directives, and policies concerning Forest Service recreation programs in response to the COVID-19 pandemic, including orders relating to public access to FS lands, and advice on providing Forest Service assistance to concessioners and contractors with issues related to closure and access restrictions affecting Forest Service lands.

Lands, Water, Wilderness and Wild and Scenic Rivers

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

Natural Resources Conservation Service (NRCS)

OGC will continue to support the agency's natural resource conservation activities on private or non-Federal lands, including legal advice regarding the administration of programs such as the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Agricultural Conservation Easement Program, and the Regional Conservation Partnership Program. OGC provided advice to NRCS on multiple litigation matters involving conflicts over NRCS easements and litigation over NRCS wetland compliance regulations.

Environmental Law

OGC provided litigation support and legal advice for all USDA agency matters related to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act, including the Stibnite mine in Idaho, and nationwide cleanup efforts at Formerly Used Defense Sites on Forest Service lands. OGC advised and represented the Department and individual agencies regarding compliance with pollution control standards and continued to provide advice on hazardous materials liability arising out of real property transactions.

Deepwater Horizon Oil Spill

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

Real Property Matters

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

General Law and Research Division

Appellate Litigation

The General Law and Research Division (GLRD) provides the Department with a broad array of legal services in practice areas including appellate litigation, contracts, fiscal law, FOIA, torts, and intellectual property law.

In addition, GLRD assisted DOJ in a number of affirmative appeals. GLRD assisted in numerous Supplemental Nutrition Assistance Program (SNAP, formerly called the Food Stamp Program) cases. These include *District of Columbia v. USDA*, a matter involving a challenge to USDA's revisions to the SNAP program waiver provisions; *Pena Martinez et al. v. Azar* and *United States v. Vaello Madero*, which involve the applicability of Social Security Administration (SSA) and SNAP benefits in Puerto Rico; *Schaller v. SSA*, which involves the applicability of SSA benefits in Guam; and *Gilliam v. USDA* and *Hall v. USDA*, which concern the extent of SNAP emergency allotments provided under Congress's CARES Act. GLRD also continued to assist DOJ with an affirmative appeal before the Ninth Circuit in *2 Bar Ranch Limited Partnership. v. Forest Service* that defends the FS' choice of grazing standards on the Dry Cottonwood Allotment on the *Beaverhead-Deerlodge National Forest* in Montana. GLRD also coordinated USDA's participation in a number of cases where the government filed petitions for panel rehearing or rehearing en banc, including two cases in the Ninth Circuit. GLRD also continued to assist DOJ in *State of Alaska v. Perdue*, where Alaska is challenging USDA's Roadless Rule. In addition, GLRD assisted in a First Amendment challenge to the Beef Checkoff Program, *Ranchers-Cattlemen Action Legal Fund et al. v. USDA (R-CALF)*.

GLRD also defends most USDA Judicial Officer decisions that enforce the P&S Act, PACA, AWA, and the HPA, and that are appealed to the Federal courts of appeals. GLRD attorneys brief and argue these cases before Federal courts of appeals. During FY 2020, GLRD handled two petitions for review in the D.C. Circuit defending decisions issued by the Judicial Officer under the PACA. GLRD also continued to assist DOJ with multiple cases in the D.C. Circuit asserting Appointments Clause challenges to USDA's administrative law judges and judicial officer: *Fleming, Joe v. USDA*, *Perkins, Sam v. USDA*, and *Bradley, Jarrett v. USDA*.

Contracts and Fiscal Law

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 relating to reorganizing and realigning the Department, implementing COVID-19 related authorities, procurements, grants, 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 regarding the implementation of OMB administrative flexibilities related to the COVID-19 national emergency declaration, including issues surrounding no-cost extensions, payment of salaries, donation of personal protective equipment, and permitted use of grant funds in response to the emergency. GLRD also assisted with issues related to the move of NIFA and Economic Research Service (ERS) to Kansas City, and assisted National Agricultural Statistics Service (NASS) on several data sharing issues.

GLRD assisted the Department's response to the COVID-19 pandemic, including engagements under the Families First Coronavirus Response Act, Pub. L. 116-127, to purchase commodities for emergency distribution during a public health emergency designation, and under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, to prevent, prepare for, and respond to COVID-19 by providing support for agricultural activities and producers affected by pandemic related issues.

In supporting Departmental and agency procurement and contract actions, GLRD defended the government in litigation before Federal courts and administrative forums including over 57 protest-related matters before the Government Accountability Office (GAO). For example, OGC successfully defended DA in a GAO bid protest that challenged the award of a contract for end-user IT support services across the National Capital Region (NCR).

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

Disclosure and Tort Claims

GLRD handles on behalf of the Department's agencies and offices the legal work and litigation that arises under FOIA, the Federal Tort Claims Act (FTCA), the Privacy Act (PA), and the Federal Advisory Committee Act (FACA).

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 litigation that led to a Federal court's opinion in *Cause of Action v. USDA*, that established that browsing histories of the Secretary of Agriculture contained on government computers and mobile devices are not agency records and therefore, not subject to disclosure. Over the past year, FOIA suits pending increased by approximately 15 percent, and FOIA appeals received increased more than two-fold but were processed in a special project that enabled a major agency to reduce substantially its appeals backlog. 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 being handled by GLRD include fires in National Forests and elsewhere, such as the Gap Fire and LoLo Peake Fire, and significant wrongful-death suits, such as the Cold Spring Flash Flood case, where plaintiffs are seeking millions of dollars in damages. Among successes in FY 2020, GLRD secured the dismissal of complaints in the North Schell Fire and Pautre Fire cases, FTCA suits against the Forest Service in which plaintiffs were seeking nearly \$100 million in damages. FTCA suits pending increased by approximately 10 percent, and FTCA administrative claims pending increased by 3 percent.

GLRD also assists with the Department’s representation in other civil litigation. Examples include a class action that asserted approximately \$1.3 billion in Fifth Amendment takings claims on behalf of several thousand raisin growers challenging a marketing order reserve following the Supreme Court’s 2015 decision in *Horne v. Dept. of Agriculture*. With GLRD’s assistance, these claims have been resolved favorably to the government, and GLRD began assisting the DOJ to implement a court-approved settlement that released the government from these claims.

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

Intellectual Property Law

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. In FY 2020, GLRD filed about 20 new patent applications.

In FY 2020, GLRD applied to register the USDA Organic certification mark; continued to maintain and move forward applications for the symbols for USDA’s National Bioengineered Food Disclosure Standard; obtained registration of the Biobased certification mark for the BioPreferred program; advised on the availability, adoption, and use of a new program mark for Center for Nutrition and Policy Promotion; initiated renewal of registrations for the WIC program marks for FNS; advised on unauthorized use of the Smokey Bear character and the Forest Service Insignia as constrained by First Amendment and fair use principles; assisted DOJ regarding 28 USC 1498 litigation for alleged USDA patent and copyright infringement, and advised the FS on use, ownership, and registration issues for multiple national scenic and historic trail symbols.

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 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 USDA 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 DOJ in defending the Secretary in similar claims brought in federal district and appellate courts, and the Court of Federal Claims. CRLELD’s litigation work and policy work regarding the aforementioned matters is subject to certain criteria.

CRLELD Litigation Section

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 FY 2020, CRLELD’s Litigation Section was responsible for defending the Secretary in more than 650 EEOC administrative cases and appeals and ensured capacity for defending the Secretary in approximately 770 cases and appeals that remain active at any given time in USDA related to labor and employee relations decisions, in various forums across the country. CRLELD’s Litigation Section also represented the Secretary’s interests regarding whistleblower retaliation allegations, where the Office of Special Counsel conducted investigations or pursued resolution. The Litigation Section, which was responsible for promoting a national practice of civil rights litigation throughout the Department to ensure consistency and best practices, held numerous in-person and videoconference training sessions for both Agency representatives and managers throughout USDA, to carry out the Department’s vision of upholding civil rights. Some of the major work of the Litigation Section is summarized below.

Handling Civil Rights, Labor and Employment Law Litigation Remotely During Pandemic

The Litigation Section ensured Department-Wide compliance with EEOC Guidance issued during the outset of the COVID-19 pandemic. The Litigation Section provided guidance to Departmental agency representatives to ensure compliance with guidance from the EEOC and MSPB on litigating cases during COVID-19 pandemic, including changes in the EEOC's administrative civil rights hearing processes while Agencies, complainants and judges were working remotely. This resulted in improvement in USDA's remote litigation processes, including the Litigation Section's coordination and defense of a two-day hearing before an MSPB Judge with all participants – Agency counsel, Appellant, Appellant's counsel, witnesses, court reporter and Judge – attending via video teleconference from separate remote locations.

Defending All EEOC Complaints Involving Multiple Client Agencies

The Litigation Section absorbed more than 264 new cases and appeals, closed 232 cases and appeals, and successfully secured dismissals on dispositive motions for 72 individual administrative employment cases. Litigation Section attorneys were successful in obtaining dismissal of 34 EEOC hearing requests and successful on appeal with the EEOC in 75 cases. Litigation Section attorneys worked closely with DOJ on 8 program discrimination cases, including the dismissal of the last judicial appeal of claims involving the *Pigford* black farmers discrimination litigation initiated over 20 years ago. Litigation Section attorneys also worked closely with DOJ to receive judicial decisions in the Agency's favor in 6 cases and in 5 appeals of personnel actions before the MSPB.

Administrative Employment Discrimination Class Actions

The Litigation Section was successful in obtaining the dismissal of certified class actions affecting the Forest Service, Office of the Assistant Secretary for Civil Rights (OASCR), APHIS and FSIS this year. The Litigation Section continues to represent the Secretary in a formal class complaint filed by a group of USDA employees alleging that the agency has failed to accommodate their disabilities since it decentralized sign language interpreting services for deaf and hard of hearing employees in USDA's NCR in May 2014. The EEOC certified this class action and CRLELD has engaged in extensive discovery of litigation while helping Departmental leadership determine whether resolution of the class action outside of the litigation process was in the Secretary's best interest. The Litigation Section is also defending the Secretary at the pre-certification litigation stage in a putative administrative class action in which female firefighters in Region 5 allege that Forest Service discriminates and retaliates against women with respect to reassignments, hiring and promotions. The Litigation Section continues to defend the Secretary at the pre-certification litigation stage in a class action complaint in which employees allege that FSIS' policy prohibiting employees who have alternative duty assignments from working overtime or on holidays violates the Rehabilitation Act.

Judicial Employment Complaint Involving Hazard Pay for Poultry Inspectors During Pandemic

The Litigation Section assisted DOJ in defending judicial class action claims brought by federal employees, including an FSIS poultry inspector, seeking hazard pay for work during the pandemic. The Litigation Section's work resulted in the assurance that legal arguments are limited in scope and duration based on equipment now provided to inspectors, saving potential hundreds of thousands of dollars in damages.

Program Discrimination Class Action Challenging Constitutionality of Limits to Eligibility of SNAP Benefits to Residents of Puerto Rico

The Litigation Section paired with OGC's International Affairs, Food Assistance, and Farm and Rural Programs Section to assist DOJ in defense of a complaint challenging the constitutionality of SNAP; 2) Supplemental Security Income; and, 3) the Low-Income Subsidy for Medicare Part D. After the Court denied the Government's Motion to Dismiss, the Litigation Section worked with leadership at the Food and Nutrition Service to implement Court orders and develop creative responses to ensuring the constitutionality of the program.

Program Discrimination Group and Class Action Cases

The Litigation Section worked on the following ongoing implementation issues involving former class action complaints and group complaints of program discrimination. The Litigation Section managed continuing issues involving resolutions of *Pigford II* and *Keepseagle*, and provided regular guidance to and collaboration with DOJ to ensure that the *cy pres* funding (funds exceeding those distributed to beneficiaries) in both cases were directed at experienced non-profits, CDFIs, and educational institutions in the agricultural sector.

CRLELD Policy Section

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

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

Guidance on COVID-19

The Policy Section advised on USDA's Reopening Playbook in accordance with White House, Center for Disease Control, EEOC and Occupational Safety and Health Administration guidance. The Policy Section provided the highest quality legal analyses to enable the Department to make well-reasoned and legally defensible decisions in very short timeframes on nuanced issues such as the requirements for on-site mask-wearing, medical inquiries to ask employees returning to worksite, and visitor screening questions. The Policy Section counseled Forest Service in its response to the State of Alaska's novel requirement that wildland fire resources receive a COVID-19 test upon arrival at an Alaskan airport, oversaw the development of Talking Points for the Secretary ahead of his briefing with all 50 State Attorney Generals on the steps that USDA took to protect the health and safety of the meat and poultry inspectors, advised AMS in its response to whether religious non-profits participating in the Farmers to Families Food Box Program could place religious iconography on the food distribution boxes, and counseled the Department in response to Washington Post, Politico, and other national press articles about the safety and well-being of USDA inspectors at industry plants.

Guidance on One Neighborhood

On the Secretary's priority of implementing OneNeighborhood, The Policy Section advised on the Department's needs to ensure compliance with the reasonable accommodation laws. The Policy Section ensured the Department's ongoing legal obligation to be responsive to all employee reasonable accommodations throughout OneNeighborhood implementation, and that agencies must protect personally identifiable information and only provide "need to know" information.

Advisement on Departmental Regulation on Reasonable Accommodation (RA) and Personal Assistance Services (PAS)

The Policy Section also worked with the Office of the OASCR and the Office of Human Resources Management on updating the Reasonable Accommodation (RA) and PAS Departmental Regulation (DR). CRLELD assisted with drafting language and providing legal advice and counseling throughout the process. This major initiative was a priority for USDA because the DR was last updated in 2000, prior to significant changes in the laws and regulations providing for RA and PAS.

Guidance to General Counsel on Policy Decisions from The Federal Labor Relations Authority (FLRA)

The Policy Section advised on OGC's request for a policy decision on whether an agency head could review an expiring agreement that included a continuance provision, resulting in a landmark decision where FLRA agreed with OGC and concluded that when an expiring union contract is renewed indefinitely while parties negotiate on a new contract, this is a new agreement subject to agency head review. The Policy Section also advised on OGC's response to the FLRA that supported Office of Personnel Management's (OPM) recommendations to make certain CBA clauses a mandatory subject of bargaining, resulting in FLRA accepting OPM's recommendation in a decision that eliminates an unfavorable inequality in federal-sector bargaining where only reopener clauses (favorable to unions) can be bargained to impasse.

Advice and Counsel

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

OGC Collective Bargaining Agreement

The Policy Section provided significant legal support to the OGC management team as it filed and responded to petitions and Unfair Labor Practices, implemented a new Collective Bargaining Agreement with the OGC

employees' union (AFGE Local 1106), and drafted submissions to Federal Labor Relations Authority and Federal Service Impasses Panel.

Departmental Training

The Policy Section provided extensive training throughout the Department on topics including *Resolving Official Training: Updates with EO 13839 Section 5 and Departmental Regulation 1521-001*; *Toolkit for Successful Hiring Practices*; *Retaliation*; *Addressing Age Discrimination in the Workplace*; *Understanding Harassment*; *Workplace Violence*; *Hostile Environment Claims*; *Reasonable Accommodations*; and more. The Policy Section also served as a legal advisor during FPAC's six webinars to supervisors and employees on Worker's Compensation and COVID-19 Special Accommodation Requests and created an updated presentation on Title VII sex discrimination in accordance with recent Supreme Court jurisprudence.

Regional Offices

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

Eastern Region

FS Oil, Gas and Mineral Development

OGC Eastern Region assisted the Forest Service in upholding its forest plans and projects in numerous litigation matters, including continuing to defend the Forest Service in several matters challenging its oversight of minerals and oil and gas development on NFS lands including developments in Minnesota, Virginia and West Virginia. Multiple Pipelines have become a significant issue for OGC's Eastern Region and have generated substantial controversy. During FY 2020, Eastern Region attorneys assisted DOJ in appealing a challenge to one such pipeline slated to cross a national forest resulted in litigation that culminated in a favorable Supreme Court decision in *United States Forest Serv. v. Cowpasture River Pres. Ass'n*, 140 S. Ct. 1837 (2020).

Forest Service Law Enforcement

During FY 2020, the Eastern Region reviewed and advised the Forest Service on numerous Forest Orders which prohibited specified conduct and provided for criminal citations for violations to minimize the spread of COVID-19 on NFS lands.

FNS

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

RD

OGC Eastern Region assisted RD with the origination, servicing, restructuring and collection of over 1,200 direct loans and in handling a large volume of related litigation, especially bankruptcies that arose out of such a large loan portfolio. Eastern Region attorneys also assisted RD with numerous issues related to the implementation of the CARES Act.

Rural Utilities Service (RUS) and RBCS

Eastern Region OGC offices assisted with rural infrastructure development and job creation for the American economy by reviewing grant and loan proposals and preparing closing instructions to guide the agency through the legal completion of these transactions.

Farm Service Agency

OGC Eastern Region provided legal advice to FSA on loan issues and bankruptcies in almost 595 matters. It also assisted DOJ in defending FSA in cases challenging its implementation of program funds.

NRCS Easement Acquisition

NRCS offers easement programs to landowners who want to maintain or enhance their land in a way that benefits both agriculture and the environment. The Agricultural Conservation Easement Program provides financial and technical assistance to conserve agricultural lands and wetlands. Agricultural Land Easements help Indian tribes, state and local governments, and non-governmental organizations protect working agricultural lands. Wetlands Reserve Easements help restore, protect, and enhance enrolled wetlands. While the Healthy Forests Reserve Program helps landowners restore, enhance, and protect forests on private lands through easements and financial assistance.

OGC Eastern Region attorneys assisted NRCS with all three of these programs. During FY 2020, the Eastern Region staff handled 78 conservation easement Preliminary Title Opinions with a combined value of over \$38 million. In addition, the Eastern Region staff handled 155 conservation easement Final Title Opinions with a combined value of over \$54 million.

Employment Law

Eastern Region attorneys continued to assist all USDA agencies in the Eastern United States in the defense of personnel actions pending before the EEOC and cases filed under Title VII in various Federal district courts. Employment discrimination and programmatic discrimination claims constituted a large and growing segment of the cases handled by the Eastern Region attorneys.

Central Region

FPAC (Farm Production Conservation and Business Center)

OGC provided legal support to FPAC in a variety of matters. As a tenant in hundreds of Service Centers, USDA has frequent issues with building owners and related leasing issues. OGC works with FPAC to ensure that leases are being properly transferred when the real property is sold, but also to resolve issues when owners do not properly maintain the property. OGC assisted FPAC with lease issues in Houston, Pontotoc, Jackson, and Fannin Counties in Texas and in Oklahoma. FPAC also processes actions under the Federal Tort Claims Act, and OGC defended and processed numerous claims, ensuring that claimants are justly compensated but that insurance carriers also fully pay as required under the terms of various policies.

FNS

Retailers routinely challenge actions brought by FNS to disqualify their stores or to assess a civil monetary penalty regarding SNAP. Representation and advice on these cases requires on-going OGC litigation and programmatic support. A new wrinkle in this program involves Senior Meal Providers whose applications to participate as a SNAP authorized meal service provider are denied or withdrawn because they are ineligible “institutions” and not covered by the Agriculture Improvement Act of 2018 moratorium expiring December 31, 2020. Litigation by such institutions has begun and will require additional litigation support after the moratorium expires. In other cases, the Central Region worked to resolve litigation involving unique buying patterns in communities that test established fraud detection methodologies employed by FNS. The volume of SNAP retailer litigation continues to increase and coordinated efforts by Plaintiffs’ bar is also adding a new level of complexity to defend challenges to FNS actions, requiring legal services.

FSA and CCC Programs

In the Central Region that has one million farms, FSA has over \$10.5 billion in outstanding direct and guaranteed loans. FSA requires significant legal counseling and representation for these loans, commodity, and farm payment programs to address market disruption, natural disasters, and high land prices. To protect the agency’s financial interests as to competing creditors in bankruptcies, OGC represented FSA. Higher thresholds for filing Chapter 12 cases meant additional producers were eligible for these reorganizations. FSA also administers Commodity Credit Corporation (CCC) programs and ensures that program funds are disbursed consistent with program parameters. Routine questions involving program questions on payment limitation “schemes or devices” and other payment eligibility issues (divorces, deceased producers, etc.) provide a steady and constant need for legal assistance. The Central Region also provided support to review Environmental Assessments, Environmental Impact Studies, and to review new Regulations implemented by the Council on Environmental Quality.

NRCS

OGC continues to provide legal services to NRCS to assist it in acquiring easements for the Agricultural Conservation Easement Program, the Emergency Watershed Protection Program and other issues involving the John D. Dingell, Jr., Conservation, Management, and Recreation Act. Enforcement and management of existing easements continues to increase, becoming a larger part of the challenges facing NRCS that require OGC legal

support. The Central Region has several pending enforcement actions seeking to compel grantors to uphold the obligations imposed by the easement deeds.

RMA and FCIC

OGC provided legal assistance to RMA, FCIC and its various in compliance cases involving the approved insurance providers and their administration of the crop insurance program to ensure re-insurance is proper for those policies.

AMS

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. OGC assisted AMS with an acquisition of a warehouse used to house cotton classification activities. OGC provides substantial legal assistance to the staff that administers the United States Warehouse Act, protecting grain depositors at federally licensed facilities and protecting the integrity of the electronic warehouse receipts. Similarly, OGC's Central Region provides legal representation to the Packers and Stockyards program by bringing actions to enforce its provisions.

RD, RHS, RUS, RBCS

The Community Facility Loan Program is a significant part of the workload in the Central Region as USDA makes loans and grants for essential community facility projects. Rural hospitals, clinics, libraries, daycare centers and other essential projects require OGC legal advice for loan-making, loan-servicing, and grants. Rural hospitals continue to struggle financially, and OGC provided legal assistance in several Chapter 9 bankruptcies, balancing the need for adequate health care in remote/rural areas with also protecting the financial interests of the United States against competing creditors.

RD's housing programs continue to need legal services to defend the Agency's financial interest in bankruptcy, as well as claims made by other creditors and adjoining landowners. Actions by municipalities to force USDA to remediate problem properties increased and required additional representation by OGC attorneys. OGC works with RHS to stamp out fraud, such as where an applicant attempted to use a false social security number in a loan application. As the Multi-Family program portfolio continues to age, it continues to require a high volume of legal work to facilitate numerous transfers, assumptions, restructuring, and tax credit transactions including 11 in Oklahoma and 22 in Texas. Pre-payment issues also require significant legal assistance as multi-family borrowers seek to leave the program.

Water and sewer environmental programs require significant legal advice to facilitate loan making and servicing actions. Actions by municipalities challenging utility service areas in rural areas provided a new level of complexity in providing legal services in support of RUS programs.

Forest Service

OGC's Central Region assisted the Forest Service with a wide variety of matters including environmental consultations, land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, title claims and fire cost recovery actions. Challenges brought by adjacent landowners involving boundary disputes, title challenges, title questions and access rights continued to necessitate legal representation for the Central Region.

Employment and Discrimination Cases

The Central Region defended USDA in litigation in various forums brought by employees, former employees or job applicants alleging various types of workplace discrimination. In addition, the Central Region defended the Department in programmatic cases brought by program participants alleging various types of discrimination or mistreatment. EEOC defensive work has added to the caseload for attorneys as OGC transitions to handling more of these cases directly.

Miscellany

The National Centers for Animal Health, the National Bio-Agri Defense Facility and the Meat Animal Research Center are all located in the Central Region. In FY 2020, OGC successfully petitioned the state utility board to resolve a long-running territorial dispute that threatened the National Centers for Animal Health and its ability to conduct its scientific research.

Mountain Region

Forest Service Programs

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

Water Rights

Many uses of NFS land are dependent upon water and water rights, and OGC assisted the Forest Service to acquire and protect water rights necessary for National Forest purposes. The Mountain Region of OGC represented the Forest Service in administrative water rights proceedings in Nevada, Arizona, New Mexico, Idaho Montana, and Utah. OGC also worked with DOJ in judicial water rights proceedings to acquire and protect water rights administered by the Forest Service for National Forest purposes. OGC assisted the Forest Service in assuring that authorized users of the national forests who use water are in compliance with State law water rights requirements.

Mining and Energy Development

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

Wildlife Management

OGC advised the Forest Service and assisted DOJ in litigation concerning: transplantation of mountain goats by the State of Utah on State land, where transplanted goats may eventually wander onto a national forest; winter feeding of elk by the State of Wyoming on national forests; use of lead projectiles by hunters in Arizona; regulation of bison hunting on the national forest north of Yellowstone Park and potential impacts to bighorn sheep from diseases transmitted by domestic sheep permitted on national forests.

Grazing and Range

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

Fire

The four Forest Service regions served by the Mountain Region of OGC have active wildland fire programs, which led to a large number of claims for collection of fire suppression costs and damages totaling in excess of \$50 million. Numerous cost collection suits are pending, and OGC routinely assists the Forest Service with administrative cost collection efforts.

Real Property

OGC assisted the Forest Service and agencies such as the ARS in acquiring title to real property to support their programs by evaluating and approving title to land to be acquired. OGC also assisted agencies that hold title to real property, such as the Forest Service and ARS, in protecting and defending title and boundaries. Many trespass claims by and against the United States were resolved with the assistance of OGC before legal action was filed, and many of the lawsuits filed were settled quickly with OGC assistance. Where title disputes could not be resolved by settlement, OGC assisted the DOJ in defending and prosecuting quiet title and trespass actions.

Infrastructure Projects

The Mountain Region assisted the Forest Service and other agencies of the Department of Agriculture in accommodating infrastructure projects on federal land. OGC assisted the Forest Service in implementing new legislation to facilitate maintenance of utility corridors on NFS.

NRCS Conservation Easement program

OGC assists NRCS in enforcement and protection of conservation easement acquired or funded by NRCS to protect farmland, wildlife habitat, wetlands, and open space.

Pacific Region

Alaska Subsistence Program

The OGC 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. Pacific Region attorneys supported opening seasons and loosening restrictions on hunting during the COVID-19 pandemic so that food-insecure tribes living in isolated communities could feed their families.

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.

Crop Insurance

The OGC Pacific Region provides advice and litigation representation to RMA and the FCIC concerning the Federal Crop Insurance Program.

Employment Law

The OGC Pacific Region plays an important role in providing employment advice to USDA client agencies and in representing USDA agencies in employment litigation before the EEOC and the Federal courts. . OGC Pacific Region attorneys also ably represent multiple USDA agencies in individual EEO complaints pending before EEOC Administrative Judges, in appeals pending before the EEOC Office of Federal Operations, and in Title VII complaints filed in the Federal courts.

Energy

OGC Pacific Region helped the Forest Service respond to many proposals for hydropower and other alternative energy projects.

Farm Loan Programs

OGC attorneys helped ensure that FSA's use of taxpayer funds complied with applicable legal requirements and that security interests FSA obtained to secure loan repayments are valid and enforceable. OGC Pacific Region attorneys also provided advice and representation to FSA in loan servicing, borrower default, debt collection and bankruptcy situations where OGC helped FSA to enforce its security interests and to recover debts owed to the United States. During this fiscal year, OGC Pacific Region attorneys have also provided advice to FSA about loan servicing issues related to the COVID-19 pandemic, particularly with regard to federal and state programs providing relief and protection to borrowers.

Fire Cost Recovery

OGC Pacific Region attorneys work with the Forest Service in accounting for fire cost expenditures and in calculating associated damages to Forest Service facilities and natural resources. OGC then plays a central role working with the DOJ in civil cases seeking recovery of these damages. The OGC Pacific Region has helped the Forest Service obtain more than half a billion dollars in fire damage recovery over the years, including more than \$6.6 million in FY 2020.

FNS

The OGC Pacific Region handles a significant number of FNS SNAP cases in which store owners are seeking judicial review of their disqualification from SNAP participation. This year, OGC Pacific Region attorneys successfully defended many of these cases and worked with FNS and DOJ to create model responses to written discovery and a unified litigation strategy.

Lands Transfers

Attorneys provide advice and review legal documentation relating to hundreds of transfers of interests in land either from or to the United States. OGC helps ensure that these transactions comply with legal standards and that the interests of the United States are protected

Land Management Decisions and Litigation

The OGC Pacific Region advises three Forest Service Regions, including 39 National Forests, with respect to a wide range of public land management decisions. OGC Pacific Region attorneys have continued to advise the

Forest Service on its response to a proposal for the removal and replacement of dams in the Alpine Lakes Wilderness, a matter that has drawn scrutiny from environmental groups and Forest Service permittees. The Pacific Region has successfully defended numerous Forest Service 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. Such projects include both the thinning of overly dense forests to reduce the risk of catastrophic fires and the salvage of forests killed by fire, insects, or drought. Pacific Region attorneys have also taken the lead in providing the agency with alternative land management strategies when the agency's litigation position has not prevailed. These efforts are resulting in more treatment on the ground, reduced threats to the National Forests and nearby communities, and decreased litigation.

Law Enforcement Assistance

During FY 2020, OGC Pacific Region reviewed and advised the Forest Service on hundreds of Forest Orders which prohibited specified conduct and provided for criminal citations for violations. Notably, two historic crises – the COVID-19 pandemic and unprecedented wildfires in Washington, Oregon, and California – presented a need to quickly issue dozens of emergency closure orders, which OGC Pacific Region attorneys expeditiously reviewed. In addition, OGC Pacific Region advised the Forest Service on law enforcement issues relating to implementation of the new requirements in the 2019 John D. Dingell, Jr. Conservation, Management, and Recreation Act and unauthorized occupancy of National Forest lands.

Legislative and Congressional Affairs

The Pacific Region provides advice to USDA client agencies concerning proposed legislation and with respect to inquiries from Members of Congress. During FY 2020, attorneys guided the Forest Services' response to a Congressional request regarding a newly revised forest plan's compliance with federal law concerning National Trails, a Wilderness Study Area, and Wild and Scenic-eligible rivers in Alaska.

Mining and Minerals

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

Rural Development

The Pacific Region provided legal advice and compliance reviews for RD agencies in hundreds of loan and grant transactions. In providing formal opinions regarding applicant eligibility, attorneys applied regulations governing scores of financial assistance programs, thereby ensuring consistent compliance with program requirements. Attorneys supported RD programs and protected the government's interests by analyzing loan and security instruments, assessing the adequacy of loan security, reviewing contracts and intercreditor agreements and preparing detailed loan closing instructions, as well as providing advice and representation to USDA agencies with respect to loan servicing issues, delinquencies, debt collection, and bankruptcy matters. Where documents were unavailable or inadequate, OGC Pacific Region attorneys drafted security documents for use by RD. Attorneys also advised RD about loan servicing issues related to the COVID-19 pandemic, particularly with regard to federal and state programs providing relief and protection to borrowers.

Special Use Permitting

Special use permit issues relating to wildfires has been noteworthy, including loss of recreational cabins and the accompanying clean-up both material and hazardous waste; cancellation or limitation of recreational events due to fire danger or impact; and the generation of fires from permitted facilities, particularly power lines.