Ex 5

From: "Wardzinski, Karen (ENRD)" <K.Wardzinski@ENRD.USDOJ.GOV>
Date: December 5, 2016 at 7:31:38 PM EST
To: ENRD-All Section Chiefs <ENRD-AllSectionChiefs@ENRD.USDOJ.GOV>
Cc: "Williams, Jean (ENRD)" <J.Williams@ENRD.USDOJ.GOV>, "Gelber, Bruce (ENRD)" <B.Gelber@ENRD.USDOJ.GOV>
Subject: Transition matter: public information only

Chiefs –

As you know, last week the front office met with Ron Tenpas and Zina Bash (the President-Elect Transition Team or “PETT”) who have been assigned the task of preparing a report to the incoming political appointees about the Division.

1. The PETT identified several topics on which they would like to receive one page briefing memos. Jean and Bruce have already talked to many of you about the requested memos. Below is a summary list of the topics for which these one-pagers have been requested and which section(s) is responsible for preparing them.

   Please send these one-pagers

   Wildlife Trafficking Task Force (LPS/ECS)
   VW litigation (EES)
   Deepwater Horizon (EES)
   Tribal trust cases (NRS)
   Tulalip (IRS)
   Border fence issues and past litigation (LAS/NRS/WMRS)
   International Work (LPS/ECS)
   Legislative reporting requirements incl. Bishop letter process (LPS/IRS on Bishop)
   Listing of Task Forces and working groups in which ENRD participates (LPS)

2. The PETT hopes to meet with each section before Christmas, and has contacted Jean to begin scheduling meetings this week. They have requested relatively small meetings of no more than about 4 individuals from each section.

3. The PETT is interested in hearing about your work, with an emphasis on the most significant or high profile cases/matters being handled by your section that may need attention in the first few months of the new Administration. (“Cases” may be a category of cases.) The PETT noted a few topics (identified below) on which they would like to hear more from particular sections. Beyond these topics, please identify the cases/matters you would propose to discuss with the PETT, including a short parenthetical or sentence describing what the case/matter is about. Please aim to discuss no more than 5-10 cases/matters. If in doubt, consult your DAAG, or Bruce or Jean.

FOIA 2017-04351_0000530-1
Topics identified by the PETT for discussion at individual section meetings are:

- Legislative reporting requirements: (LPS)
- Budget and staffing (EO)
- Any cases/matters involving Alabama and Indiana, unless they are routine (all sections)
- Neville AFB (LAS)
- Hanford vapors case (EDS)
- Gold King Mine litigation (EDS)
- Everglades (NRS)
- St. Bernard Parish (NRS)
- ACF original jurisdiction (NRS)
- ESA listing decisions, especially where impacts oil & gas development, sage grouse, lesser prairie chicken (WMRS/NRS)
- Navy Sonar (WMRS)
- CWA/sewer CD negotiations (EES)
- Other civil enforcement initiatives (EES)
- New criminal work since Tenpas' departure (ECS)

4. The PETT had two requests regarding categories of upcoming case deadlines:

   a) for cases that generally meet the above criteria, that is, cases or matters that will be on your list for the PETT briefing, or close to it, and that will require action BEFORE January 20, please keep a running list of significant filings that you can provide as needed, with the case name, court, filing date, and a short parenthetical or sentence describing the case and filing;

   b) for cases which generally meet the above criteria, and for which action will be required within the first two months of the new Administration, please prepare a list of such cases, with current deadlines and a short parenthetical or sentence describing the case and the action that needs to be taken. We will prepare of chart of all such cases, with filing deadlines, which we anticipate will be revised on a rolling bases.

Please send your initial list of cases/matters requested in this subpart.
Judy, where do we meet at 10:30? Thanks.

Sent from my iPhone
Ron, Zina—

Per your request, see attached for updated briefing paper on the Deepwater Horizon oil spill and ENRD’s current role.

Thanks,

Judy
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
ENVIRONMENTAL ENFORCEMENT SECTION

UNITED STATES v. BPXP (DEEPWATER HORIZON)

Summary: U.S. v. BPXP, et al (E.D. La.) stems from a multi-million barrel discharge of oil into the Gulf of Mexico from the Macondo oil well and the Deepwater Horizon drilling rig. This disaster sparked U.S. pursuit of responsible parties for both civil penalties and injunctive relief under the Clean Water Act (CWA), and for response costs and natural resource damages (NRD) under the Declaratory Judgment Act, based on the Oil Pollution Act (OPA). We successfully concluded those civil claims against all defendants:

<table>
<thead>
<tr>
<th>BP Entities (owner/operator of well)</th>
<th>$8.1 billion in NRD damages, $5.5 billion in CWA civil penalty, plus several hundred million dollars in assorted response and assessment costs, royalty payments, and other miscellaneous claims (15-year, installment terms, with interest).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transocean Entities (owner/operator of drilling rig)</td>
<td>$1 billion in CWA civil penalty (paid) plus injunctive relief to improve operation of its drilling rigs (5 years of compliant performance required by the settlement).</td>
</tr>
<tr>
<td>Anadarko Entities (minority owner of well)</td>
<td>$159.5 million in CWA civil penalty (paid) plus taxed costs (paid).</td>
</tr>
<tr>
<td>MOEX (smaller, minority owner of well)</td>
<td>$70 million CWA civil penalty (paid as required) plus supplemental environmental projects valued in excess of $20 million (completed).</td>
</tr>
</tbody>
</table>

Action Required: DOJ now: (1) monitors settlements for timely performance; (2) provides legal assistance regarding the disbursement of CWA penalty funds; (3) counsels natural resource trustees in selection and completion of restoration under OPA; and (4) defends federal trustees when their restoration work is challenged. No other action required at this time.

Background: Our five-year litigation included: hundreds of depositions; production by U.S. of more than 100 million pages of material (along with significant but lesser amounts produced by the defendants); robust motions practice (substantive and discovery topics); and three lengthy trials (addressing defendants’ degree of fault, amount of oil discharged, and factors relevant to assessment of civil penalties).

Implementation of Settlements and Distribution of Civil Penalties:

- RESTORE Act: Under the RESTORE Act, an amendment to the Clean Water Act (CWA), 80% of civil and administrative penalty payments made after the date of the Act’s enactment related to this oil spill (> $5.3 billion) go into a new trust fund dedicated to ecosystem restoration, economic recovery, and scientific research in the Gulf region. The CWA dispatches remaining penalty payments to the Coast Guard’s Oil Spill Liability Trust Fund to finance responses to future spills.
In addition to creating the trust fund, the RESTORE Act established the Gulf Coast Ecosystem Restoration Council, which is chaired by the U.S. Secretary of Agriculture, and members include the Governors of the States of Alabama, Florida, Louisiana, Mississippi, and Texas, as well as the Secretaries of the U.S. Departments of Commerce, Homeland Security, the Army and the Interior, and the Administrator for the U.S. Environmental Protection Agency. The Council is responsible for developing a comprehensive plan to restore the ecosystem and economy of the Gulf Region and carrying out other responsibilities. A plan establishing the Council’s goals was approved in 2013, and in 2015 the Council approved funding for certain foundational restoration activities. The Council updated the plan in December, 2016.

The Council has oversight of the expenditure of 60% of the funds made available from the Trust Fund. The remaining funds not within the Council’s oversight responsibilities are as follows: 35% is divided equally among the five Gulf states for ecological and economic restoration and 5% is dedicated to scientific research in the region. Interest on the trust fund is split among several components. Both the Council and Department of Treasury have developed plans, procedures, and regulations for carrying out their respective duties in conformance with RESTORE Act requirements. From the Council’s inception, ENRD (primarily through LPS, EES, and NRS) has provided legal advice concerning implementation of the RESTORE Act, which includes issues related to interpretation of the Act, environmental compliance requirements, rulemakings and project development, planning, and implementation. We expect to continue to track the Council’s activities and provide legal assistance to the Council as needed.

- **Natural Resource Damages:** Under the Oil Pollution Act (OPA), all sums secured for natural resource damages in this case (> $8 billion) must be used by the federal and state natural resource trustees to restore or mitigate the natural resource injuries resulting from the oil spill. Federal and state trustees coordinate through the Deepwater Horizon Natural Resource Damage Assessment Trustee Council. Federal agencies represented on the Council are the Department of Commerce (National Oceanic and Atmospheric Administration), Department of the Interior, Environmental Protection Agency, and Department of Agriculture. The state agencies on the Council are from Alabama, Florida, Louisiana, Mississippi, and Texas. The Council first studied the effects of the spill, and has continued to work together following the settlement with BP. The Council has approved standard operating procedures for long-term management, implementation, and administration of settlement funds for natural resource restoration.

ENRD has counseled the trustees in the: preparation of a 1,700-page restoration plan and programmatic environmental impact statement; and development of business rules to assure compliance with OPA, the documentation of decisions, and the auditing of performance. ENRD support continues, as needed. When decisions of the federal and state trustees (such as selection of individual restoration projects consistent with the trustees’ Gulf-wide restoration plan) are challenged in court, ENRD will be called on to defend them.
Ron and Zina,

In response to your previous requests, please find attached the following documents:

- Briefing on Clean Water Rule litigation (and spreadsheets reflecting status of (1) district court cases and (2) petitions for review)
  - List of interagency workgroups that ENRD participates in
  - Memo on significant appellate matters

Thanks,
Judy

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932
December 20, 2016

MEMORANDUM

To: Karen Wardzinski
Chief, Law & Policy Section

From: Jim Kilbourne
Chief, Appellate Section

Re: Significant Appellate Section cases for the new Administration

I. Court of Appeals Matters

A. Pending Recommendations to the SG

Murray Energy v. EPA (4th Cir.). In this citizen suit, coal companies allege that EPA failed to perform a nondiscretionary duty under Section 321(a) of the Clean Air Act to conduct “continuing evaluations” of the Act’s employment effects. The district court issued an adverse ruling on summary judgment on October 17, 2016, and requested further briefing on remedy, which concluded on November 14, 2016. The court held a status conference regarding remedy on December 15, 2016. We filed a protective notice of appeal from the summary-judgment order on December 16, 2016.

B. Significant Court of Appeals Briefs due December 19, 2016-February 28, 2017

Universal Welding & Fabrication, Inc. v. United States Army Corps of Engineers (9th Cir.). Our answering brief as appellee is was filed on December 19, 2016. Plaintiff applied for and was granted a permit to fill approximately 14-acres of wetlands on its property in order to expand its operations. Plaintiff, however, disliked some of the conditions on the permit, so it declined to accept the permit, and instead sued the Corps of Engineers arguing that the wetlands are not subject to federal regulation. The district court granted summary judgment to the Corps.

1 The Appellate Section currently has approximately 30 briefs that are due to be filed in the federal courts of appeals in the next two months. Only the most significant of those are listed here. Briefs in ENRD cases to be filed in the Supreme Court are listed in a separate part of this memo.

Updated 12/20/16; Provided to PETT 12/21/16
**Herr v. United States Forest Service** (6th Cir.). Our brief as appellee is due to be filed on December 22, 2016. The Herrs own riparian property on a lake part that is partially within the Sylvania Wilderness, on the Ottawa National Forest in Michigan’s Upper Peninsula. The Forest Plan imposed a no-wake speed limit and prohibits the use of gasoline-powered motors within the Wilderness; electric motors up to 4 hp are allowed. The district court upheld the restrictions. On appeal, the Herrs contend those restrictions violate their riparian rights and are therefore contrary to the Michigan Wilderness Act, which directs the Forest Service to manage the Wilderness “subject to valid existing rights.”

**United States v. Black Elk Energy Offshore Operations, et al.** (5th Cir.). Our reply brief as appellant is due to be filed on December 30, 2016. This criminal prosecution arises from a welding accident and explosion that occurred on an offshore oil platform. The explosion killed three workers and injured others. We are prosecuting the owner and operator of the platform and five independent contractors on the platform. The district court dismissed all counts against the five contractor defendants under OCSLA, holding that the Interior Department regulations did not apply to these particular contractors. We appealed that ruling.

**United States v. Robertson** (9th Cir.). Our brief as appellee is due to be filed on December 30, 2016. Defendant Robertson was convicted of depositing fill material into stream beds (creating unpermitted impoundments) without a permit as required by CWA Section 404. After conviction, Robertson moved to have his conviction vacated on the grounds that the “Kennedy test” set out in *Rapamos v. United States* (S. Ct.) can no longer be used to establish CWA jurisdiction and thus the jury was erroneously instructed. The district court rejected this argument and Robertson appealed.

**Caquelin v. United States** (Fed. Cir.). Assuming the appellees file their responding brief on December 21, 2016, our reply brief in our appeal would be due on January 4, 2017. Plaintiffs in this Rails-to-Trails Act case allege that the United States effected a taking of their property when the Surface Transportation Board issued a Notice of Interim Trail Use (“NITU”) for a section of rail corridor crossing their land. The NITU was in effect for six months, expired on its own terms, and the railroad subsequently abandoned the line. The CFC found liability based on its 2010 decision in *Ladd v. United States*, which in turn relied on its 2004 decision in *Caldwell v. United States*. In our opening brief, we argued that both Caldwell and Ladd were wrongly decided, and suggested an initial hearing en banc.

**Penobscot Nation v. Mills** (1st Cir.). Our reply/response brief as appellant/cross-appellee is due to be filed on January 5, 2017. This case involves a dispute between the Penobscot Nation and the United States, on the one hand, and the State of Maine, on the other hand, over whether any portion of the bed of the Penobscot River is included within the Penobscot Reservation. The State argues that none is included. The district court issued a split decision, holding that none of the riverbed was within the reservation for purposes of determining ownership, but that the Tribe had a fishing right that extended from bank to bank. All parties filed appeals.

**United States v. Citgo Petroleum Corp.** (5th Cir.). Our brief as appellee/cross-appellant is due to be filed on January 19, 2017. This is a Clean Water Act civil penalty case arising from a major oil spill in 2006 at a Citgo refinery located in Louisiana. Initially, the district court found

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Updated 12/20/16; Provided to PETT 12/21/16
that the spill was caused by Citgo’s negligence and issued a civil penalty of $6 million (roughly the amount of one day’s profit for Citgo at this refinery). The government appealed, and the Fifth Circuit vacated and remanded for determination of a new penalty. On remand, the district court found that Citgo’s economic benefit (measured as the money it saved by delaying the installation of equipment that would have prevented the spill) was approximately $92 million, and that the spill was caused by Citgo’s gross negligence. However, without explanation, the court issued a civil penalty of $81 million, that is, an amount below Citgo’s economic benefit as found by the court itself. Both parties appealed.

**Sierra Club v. United States Dep’t of Energy (“Sabine Pass” and “Corpus Christi”)** (D.C. Cir.). In these two separate petition for review cases, our briefs as respondent are due to be filed on January 30, 2017. Sierra Club filed separate challenges under the Natural Gas Act seeking review of two Department of Energy (DOE) orders authorizing exports of liquefied natural gas (LNG) from facilities in Sabine Pass, Louisiana, and Corpus Christi, Texas. Sierra Club claims that DOE’s decision to authorize LNG exports was arbitrary and capricious because DOE’s environmental assessment did not analyze the indirect effects of the exports, including greenhouse gas emissions, higher domestic gas prices, increased natural gas production, and the replacement of gas consumption with coal. Sierra Club has also filed petitions for review challenging two other similar DOE orders.

**St. Bernard Parish v. United States** (Fed. Cir.). On December 9, 2016, the United States filed an opening brief in our appeal from an adverse Court of Federal Claims (CFC) judgment. If the appellees do not seek an extension on filing their brief, our reply brief could be due sometime in February 2017. The CFC held the United States liable for a temporary taking of a subset of business, residential, and local-government real properties in the New Orleans area damaged during Hurricane Katrina. The CFC found damage was caused by the Army Corps of Engineers’ construction, operation, and failure to maintain the Mississippi River-Gulf Outlet, a 76-mile navigation channel between New Orleans and the Gulf of Mexico.

**Detroit Int’l Bridge Co. v. Gov’t of Canada** (D.C. Cir.). Our brief as appellee is due to be filed on February 8, 2017. This case is the latest piece of litigation involving attempts by the plaintiff, the owner of the Ambassador Bridge between Detroit, MI and Windsor, ON, Canada, to prevent a competing bridge from being constructed. Plaintiffs sued the State Department, the Coast Guard, and the Department of Transportation, the Federal Highway Administration, their respective Secretaries, as well as Canada and the Ontario Department of Transportation, alleging a variety of claims arising under the Equal Protection Clause, the ‘Takings’ Clause, the APA, and the International Bridge Act. The district court granted Federal Defendants’ motion to dismiss with respect to all but one count.

**United States v. Walker River Irrigation District** (9th Cir.). The United States’ reply brief is due to be filed on February 17, 2017. This subproceeding seeks modification of a 1936 water-rights decree that adjudicated various parties’ rights in surface waters of the Walker River basin. The district court dismissed all of the claims of the United States and the Walker River Paiute Tribe. The Tribe sought to modify the decree to reflect its federal reserved right in reservoir storage and additional irrigation water for lands restored to the Reservation. Our claims included the rights the Tribe claimed as well as claims for groundwater rights and rights unrelated to the Walker River Paiute Reservation (including for a different Reservation, Indian allotments, a
National Forest, an Army base and a Marine base). We have appealed, seeking both reversal and recusal of the district judge.

C. Significant Oral Arguments during January and February 2017

**Wyoming v. United States Dep’t of the Interior** (10th Cir.). Oral argument is scheduled for January 17, 2017, in Denver, CO. Several states, a federally recognized Indian tribe, and two oil and gas industry associations filed petitions for review challenging a Bureau of Land Management revised rule governing hydraulic fracturing on federal and Indian lands. We appealed the district court’s judgment on the merits setting aside the rule for the same legal reasons articulated in the court’s preliminary injunction ruling.

**New Mexico Dep’t of Game and Fish v. United States Dep’t of the Interior** (10th Cir.). Oral argument is scheduled for January 18, 2017 in Denver, CO. In 2015, the state of New Mexico denied the U.S. Fish & Wildlife Service’s application for state permits to release endangered Mexican wolves on federal land, as needed to improve the health of the experimental wolf population in New Mexico and Arizona. The Service informed New Mexico that it would nonetheless proceed with planned releases for 2016 without a permit, because Interior regulations do not require the Service to comply with state permitting law before releasing animals if doing so will “prevent” the Service from “carrying out its statutory responsibilities.” 43 C.F.R. 24.4(i)(6). New Mexico sued Interior. The district court granted a preliminary injunction barring the Service from transporting or releasing any wolves in New Mexico without first obtaining state approval. We appealed, challenging the district court’s findings on all four injunction factors.

II. Supreme Court Matters

A. Pending Petitions for Certiorari and Responses

**United States v. Lost Tree Village Corp.** (S. Ct.). On March 22, 2016, the United States filed a petition for certiorari seeking review of a Federal Circuit decision affirming the Court of Federal Claims (CFC) decision holding the United States liable for a Fifth Amendment taking of property based on the Corps of Engineers’ denial of a Clean Water Act permit to fill portions of a five-acre wetland that was part of a much larger 1,300-acre luxury housing development. The question presented in the case is whether the parcel for considering whether a taking has occurred is only the five-acre parcel that was the subject of the wetland permit application, or the much larger 1,300-acre development. The Court has not acted on our petition yet.

**Citizens Against Reservation Shopping v. Jewell** (S. Ct.). Our response to the petition for certiorari is due to be filed on December 28, 2016. This is a challenge to a decision by the Department of the Interior to take land into trust for the Cowlitz Tribe of Washington and to declare the land eligible for gaming under the “initial reservation” exception, an exception to the prohibition on gaming on lands acquired after the 1988 Indian Gaming Regulatory Act

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2 The Appellate Section currently has 18 oral arguments scheduled between December 20 and February 28. Only the most significant of those are listed here. Supreme Court arguments of ENRD cases are listed in a separate part of this memo.

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Updated 12/20/16; Provided to PETT 12/21/16
("IGRA"). It is the first time since the Supreme Court’s 2009 decision in Carcieri v. Salazar that Interior has taken land into trust for a tribe that was not recognized until after enactment of the Indian Reorganization Act in 1934. Petitioners assert that not only must a tribe have been “under Federal jurisdiction” in 1934, it must also have been formally recognized by that time. The lower courts held to the contrary.

**Alaska Oil and Gas Ass’n v. Jewell** (S. Ct.). Our response to the petitions for certiorari in these cases is due to be filed January 6, 2017. The State of Alaska and the Alaska Oil and Gas Association each filed petitions seeking review of a Ninth Circuit decision upholding, contrary to the district court’s decision, the U.S. Fish and Wildlife Service’s designation under the Endangered Species Act of critical habitat for the polar bear. The State of Alabama, along with 17 other states, filed an amicus brief in support of the petitions. The Ninth Circuit held that the FWS had adequately explained why, in light of the challenges faced by the polar bear with potential loss of habitat, it designated as critical various units of land. The court also held that the Service’s notice to the State of Alaska, which cross-referenced various response to comments in the rulemaking, provided the State with adequate notice of the Service’s decision. Both the State of Alaska and the Alaska Oil and Gas Association have filed petitions for certiorari seeking review of the Ninth Circuit’s decision.

**Noble Energy v. Sally Jewell** (S. Ct.). Our response to the petition for certiorari is due to be filed on January 23, 2017. The question in the case is whether certain remedial obligations regarding offshore oil and gas development survive where the government has been held to have breached the lease. In 2009, the Federal Circuit held that, for reasons not critical here, the Interior Department had breached an offshore lease with Noble Energy. Noble was reimbursed the fees it had paid the Federal government for acquiring and developing the lease. Interior then ordered Noble Energy to permanently plug the well, as required by regulations. Litigation resulted, with the D.C. Circuit holding Interior Department obligations require Noble to permanently plug the well. In its cert petition, Noble asserts the government’s breach of the lease renders this regulatory obligation inapplicable.

**B. Oral Arguments**

**Lewis v. Clarke** (S. Ct.). The Supreme Court will hold argument on January 9, 2017, in this case in which the United States has filed an amicus brief urging reversal of the lower court judgment. The Supreme Court granted certiorari to review the Connecticut Supreme Court’s decision that the Mohegan Tribe’s sovereign immunity bars a suit for damages against a tribal employee in his personal capacity arising out of an off-reservation car accident that occurred while the employee, a driver for the Mohegan Sun Casino, was carrying out his duties. We filed an amicus brief arguing that tribal sovereign immunity is not a bar to the suit because Respondent was sued in his personal capacity. However, we argue that the matter should be remanded to the state court for it to determine whether Respondent could invoke official immunity.

**Murr v. Wisconsin** (S. Ct.). This case is fully briefed, but the Court has not yet set an argument date. The United States filed an amicus brief supporting affirmance of the lower state court decision. Petitioners are the owners of two adjoining lots on the Wisconsin side of the St. Croix River. A county ordinance, enacted prior to petitioners’ acquisition of the lots, prevents the
separate sale or development of commonly owned, contiguous lots that are deemed sub-standard because they do not meet minimum area and river-frontage requirements for independent development. The question presented in the case is whether the Wisconsin Court of Appeals erred in considering the two lots together as the relevant “parcel as a whole” in rejecting petitioners’ claim that the ordinance effected a regulatory taking.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION

LITIGATION CHALLENGING THE CLEAN WATER RULE

Since publication, the rule has been the subject of a multitude of suits filed in district court (18) and petitions for review filed in circuit court (22). The entire first year of litigation concerned whether jurisdiction to review the Clean Water Rule lies in district courts or in the courts of appeals under section 509(b) of the CWA.

Petitions for Review Pursuant to CWA Section 509 (Consolidated in Sixth Circuit)

In July 2015, the 22 petitions for review of the rule, which had been filed in various circuit courts nationwide, were consolidated by the Judicial Panel on Multidistrict Litigation in the Sixth Circuit in In re: Environmental Protection Agency and the Department of Defense Final Rule: Clean Water Rule. In October 2015, the Sixth Circuit stayed the rule nationwide pending further action of the court. In February 2016, a three-judge panel in the Sixth Circuit denied all motions to dismiss the petitions for lack of jurisdiction and held that the Sixth Circuit has jurisdiction to review the rule. On April 21, 2016, the Sixth Circuit denied petitions for rehearing en banc of this decision. On September 2, 2016, the National Association of Manufacturers filed a petition for a writ of certiorari to review the Sixth Circuit’s jurisdictional decision in the U.S. Supreme Court. EPA’s opposition to the cert. petition was filed on December 7, 2016. Meanwhile, merits briefing has begun, and EPA’s consolidated response brief is due on January 18, 2017.

District Court APA Challenges and Associated Appeals

Eighteen district court complaints were filed across the United States. The only district court to find it had jurisdiction to review the rule was the District of North Dakota, which had initially entered a limited stay of the rule pending judicial review, but later stayed the entire case following the Sixth Circuit’s assertion of jurisdiction and grant of a stay pending review. All of the other cases also have now either been dismissed or effectively stayed. There were three associated appeals, only one of which is still active. The appeals are summarized below.

Eleventh Circuit: Plaintiff states appealed the District of Georgia’s denial of a preliminary injunction to halt the rule. After various proceedings, in August 2016, the Eleventh Circuit in Georgia v. McCarthy declined to proceed with the case in the interest of wise judicial administration and ordered that the appeal be held in abeyance pending a decision of the Sixth Circuit on the validity of the Clean Water Rule or further order of the court. It also directed the district court to stay all further proceedings.

Tenth Circuit: In Chamber of Commerce v. EPA, Oklahoma and various industry groups appealed the decision of the Northern District of Oklahoma to dismiss the case for lack of jurisdiction. The appeal was argued on November 17, 2016, and is pending a decision.

Sixth Circuit: The State of Ohio, The Michigan Attorney General, and the State of Tennessee filed a challenge to the rule in the Southern District of Ohio, which was dismissed by the district court in light of the Sixth Circuit’s decision that it had jurisdiction under CWA Section 509. The
Sixth Circuit then proceeded to hold that appeal in abeyance pending a decision on the merits in the consolidated petition for review action (or further order of the court).
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION

INTERAGENCY TASK FORCES, COMMITTEES AND WORKGROUPS

Summary: Below is a list of Task Forces and interagency workgroups that ENRD participates in, often on behalf of the Department of Justice (DOJ). Some of these groups are long-standing and meet regularly while other groups are ad hoc or episodic in nature. Some involve participation by the AAG or a Deputy AAG, but for many others attorneys from the Law and Policy Section (LPS) represent ENRD, sometimes in partnership with other sections.

Deadlines: We are aware of no imminent deadlines related to these task forces or workgroups.

Action Required: No specific action required.

List of Task Forces, Committees and Workgroups:

I. Committees with OAAG Involvement
   - Task Force on Combatting Wildlife Trafficking
   - Task Force on Illegal, Unreported, and Unregulated Fishing and Seafood Fraud
   - Arctic Executive Steering Committee
   - National Ocean Council
   - Coral Reef Task Force
   - Interagency Committee on Trade in Timber Products under the Peru Trade Promotion Agreement
   - Council on Climate Preparedness and Resilience
   - Federal Interagency Working Group on Environmental Justice
   - Trade Policy Review Group
   - White House Council on Native American Affairs Subgroups
   - RESTORE Act Council

II. Committees primarily involving staff level involvement
   - National Response Team Workgroup
   - Lacey Act Interagency Implementation Group
   - Federal Electronic Discovery Work Group
   - Interagency NEPA Contacts
   - Interagency Workgroup for FAST Act Infrastructure Permitting Implementation
   - ICWA Interagency Workgroup
   - NAGPRA/ARPA Interagency Working Group
   - Underwater Cultural Heritage Interagency Work Group
   - Lake Ontario-St. Lawrence River Working Group
   - Interagency Marine Debris Coordinating Committee
   - Task Force on Environmental Health Risks and Safety Risks to Children
   - Baseline Committee
I. Groups with OAAG Involvement

- **Task Force on Combatting Wildlife Trafficking.** This Task Force (TF) was established in 2013 by Executive Order 13648 and was codified in the recently passed Eliminate, Neutralize, and Destroy Wildlife Trafficking Act (or “END Act”). It is co-chaired by the Attorney General and the Secretaries of State and the Interior and includes senior-level representatives from an additional fourteen federal agencies or offices, including the United States Agency for International Development, the Departments of Commerce, Agriculture, Homeland Security, and Defense, and the Office of the Director of National Intelligence. ENRD represents the Department of Justice on this Task Force. The TF was established in recognition of the fact that wildlife trafficking, once viewed primarily as a conservation issue, is now an escalating international crisis, with armed and organized transnational criminal networks increasingly involved in this highly profitable activity. The Law & Policy Section (LPS) and the Environmental Crimes Section (ECS) jointly staff ENRD’s participation in working-level groups under the TF; the AAG is a very active participant in principal-level-meetings of the TF as well as numerous other activities related to the work of the TF.

- **Task Force on Illegal, Unreported, and Unregulated (IUU) Fishing & Seafood Fraud.** On June 17, 2014, the President issued a Memorandum entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud” and established a Task Force (TF) on IUU Fishing and Seafood Fraud. The Task Force is co-chaired by the Departments of State and Commerce with nine other Federal agency members, including DOJ. The TF has made recommendations to the National Ocean Council on numerous actions, including the development of a risk-based seafood traceability program and the strengthening of enforcement tools both domestically and through international capacity-building efforts. LPS and ECS jointly staff ENRD’s participation in the TF; the AAG or a DAAG attends principal-level meetings of the group.

- **Arctic Executive Steering Committee (AESC).** On January 21, 2015, the President issued an Executive Order on “Enhancing Coordination of National Efforts in the Arctic,” which established the Arctic Executive Steering Committee (AESC). The AESC includes the heads of OSTP, CEQ, the Domestic Policy Council, and the National Security Council, among whom the Chairmanship rotates, and Deputy Secretary or equivalent officer from multiple federal agencies and offices. The AESC was established to better coordinate federal actions in and related to the Arctic. ENRD represents DOJ at the AESC on environmental issues and otherwise coordinates with other DOJ components, including FBI, CRM, NSD, and OTJ, depending on the issues. LPS staffs ENRD’s participation in the TF; the AAG or a DAAG attends principal-level meetings of the group. There have been various working groups dating back to the Bush Administration on Arctic issues. This was an effort to consolidate the work of many of those.
• **National Ocean Council (NOC).** Created pursuant to a June 12, 2009 Memorandum from President Obama to Department and Agency Heads “Concerning the Development of an Ocean Policy for the Oceans, Coasts and Great Lakes,” the NOC is a dual cabinet and subcabinet-level interagency committee established to advise the president and implement a National Ocean Policy. The NOC is comprised of 24 senior policy-level officials from executive departments, agencies, and offices across the federal government, including the Department of Justice. The NOC is co-chaired by the Chair of CEQ, the Director of the White House Office of Science and Technology Policy (OSTP), and the Administrator of NOAA. In addition to being responsible for the implementation of ocean policies, the NOC was established to serve as a forum for dispute resolution of interagency disputes. The NOC occasionally calls deputy-level meetings, but more regularly operates through several lower-level committees. LPS monitors meetings of the various subgroups (several of which are very technical in nature). Prior to the NOC there was a Committee on Ocean Policy established in the Bush Administration to similarly coordinate interagency action to develop and implement ocean policies.

• **Coral Reef Task Force (CRTF).** In June 1998, the CRTF was established by Executive Order 13089 to “lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems.” The CRTF is co-chaired by NOAA and Interior, and includes representatives of 12 federal agencies (including DOJ), seven U.S. states and territories, and three freely associated states. The CRTF meets twice a year—in the spring in Washington D.C. and in the fall in one of the member jurisdictions. There is also a Steering Committee of lower-level staff representatives of the member agencies that convenes monthly by phone to implement the various resolutions adopted by the CRTF during its biannual meetings and otherwise conduct the business of the CRTF. LPS represents DOJ on the Steering Committee; the AAG or a DAAG attends principal-level meetings of the group.

• **Interagency Committee on Trade in Timber Products under the Peru Trade Promotion Agreement.** As required by section 501 of the United States-Peru Trade Promotion Agreement Implementation Act, Pub. L. No. 110-138, 121 Stat. 1455 (2007), an Interagency Committee was established by President Obama in 2009 to oversee implementation of the Forestry Governance Annex to the Environment Chapter of the Peru TPA. The Committee is responsible for ensuring that timber exporters are complying with applicable Peru laws regarding timber products. The Departments of State, Justice, Agriculture, and Interior, and the U.S. Trade Representative are designated members of the Interagency Committee. The AG designated the AAG of ENRD to serve as DOJ’s representative. In the last several years the Committee has taken action in response to a citizen’s petition to ask Peru to audit aspects of its timber industry practices and report on results.

• **Council on Climate Preparedness and Resilience.** This is an interagency workgroup of senior agency officials led by the Council on Environmental Quality (CEQ) and the National Security Council (NSC), as established under Executive Order 13653, “Preparing the United States for the Impacts of Climate Change”
(November 6, 2013). The Council generally has met at a senior level on a quarterly basis. Among other tasks over the last several years, it has managed or assisted in the management of the development of significant documents regarding the new Federal Flood Risk Management Standard, International Screening for Climate Resilience, Climate Data Initiative and Resilience Toolkit, agency-specific climate change adaptation planning documents updated on a regular basis, and resilience planning for climate-related hazards. ENRD was delegated the responsibility to represent DOJ on the group. LPS staffs ENRD’s participation in the workgroup; the AAG or a DAAG attends principal-level meetings of the group.

- **White House Council on Native American Affairs Subgroups.** The White House Council on Native American Affairs was formed by Executive Order 13647 (June 2013). DOJ is primarily represented on the Council by other DOJ offices (i.e., the Office of Tribal Justice) but ENRD periodically is involved in staff-level subgroups and ENRD is generally represented in higher level meetings by the DAAG supervising the Indian Resources Section.

- **Federal Interagency Working Group on Environmental Justice.** This Interagency Working Group (IWG) was created by Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) issued by President Clinton in 1994 to facilitate coordination among federal agencies in the area of environmental justice. The IWG is chaired by the EPA Administrator and includes 17 Federal agencies and White House offices with standing committees and committees established as necessary to carry out responsibilities outlined by EO 12898. The group meets 2-3 times per year. Division involvement is primarily handled by DAAG Gelber and Cynthia Ferguson, the Division’s EJ Coordinator, who coordinates with representatives from interested sections of the Division.

- **Trade Policy Review Group (TPRG).** Established in 1975 by Executive Order 11846 and USTR regulations, 15 C.F.R. 2002.1, this group coordinates all U.S. trade policy, including negotiation and implementation of trade and investment agreements and handling of trade and investment. The TPRG meets as issues arise and is chaired by Deputies at the Office of the U.S. Trade Representative. The Antitrust Division has the lead for DOJ, but ENRD is often asked to participate as appropriate. The TPRG meets only at the Assistant Secretary level when there is an issue that requires resolution at that level; other interagency work is handled at the staff level, with meetings chaired by USTR on particular negotiations or other ongoing processes or activities.

- **RESTORE Act Council.** In July 2012, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) established the Gulf Coast Ecosystem Restoration Council (Council), which is comprised of governors from the five affected Gulf States, the Secretaries from the U.S. Departments of the Interior, Commerce, Agriculture, and Homeland Security and the Secretary of the Army and the Administrator of EPA. The Council has responsibilities under the Act to determine
how certain of the funds obtained through settlement of the Deepwater Horizon case are spent. DOJ is not a member of the Council, but from its inception ENRD staff have played a role in advising the members of the Council and continue to participate in staff-level calls and meetings of the steering committee for the Council. On occasion, the AAG or DAAG is invited to participate in principal-level meetings of the federal members of the Council.

II. Committees with Staff-Level Involvement

- **National Response Team Workgroup (NRT).** Required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as Superfund) and its regulations, this Team facilitates interagency coordination in preparing to respond to emergencies caused by releases of chemicals and other hazardous substances. The Team meets monthly at a staff level and has been increasingly focusing on preparation for intentional releases caused by terrorists. LPS represents ENRD. The Civil Division also represents the Department on NRT issues.

- **Lacey Act Interagency Implementation Group.** This is an interagency staff-level group established in 2008 that meets periodically to discuss ongoing issues related to implementation of the provisions added to the Lacey Act in 2008 prohibiting trade in illegally harvested timber and other plant products. LPS and ECS jointly participate in this group.

- **Interagency Marine Debris Coordinating Committee (IMDCC).** This is an interagency committee chaired by EPA and NOAA, with staff-level members from NMFS, Coast Guard, Navy, Army, MMS, and DOJ. The Committee was established in 2006 by the Marine Debris Research, Prevention, and Reduction Act, and submits biennial reports to Congress with updates on activities, achievements, and recommendations. The group served during the Bush Administration to advance that Administration’s Ocean Action Plan; currently it convenes regularly at a staff-level. It meets four times yearly to develop and recommend a comprehensive, multi-disciplinary approach to reduce the sources and impacts of marine debris on the nation’s marine environment and natural resources. An LPS staff attorney represents ENRD.

- **Underwater Cultural Heritage Interagency Work Group (UCH IWG).** This workgroup has convened at a staff level for over 10 years to address legislation regarding the Titanic and other shipwrecks and to otherwise coordinate on shipwreck issues that arise from time-to-time. It was first established by ENRD lawyers, later run by staff in the State Department, and is currently run by NOAA staff. It includes staff-level members from the Advisory Council for Historic Preservation (ACHP), State, EPA, DOI-NPS, Coast Guard, Navy, NSF and DOJ (ENRD, Civil-Admiralty and EOUSA). LPS and NRS attorneys represent ENRD at the group’s quarterly meetings.

- **ICWA Interagency Workgroup.** Workgroup members include the Departments of the Interior, Health and Human Services, and Justice; multiple components from
each agency are represented on the workgroup. This workgroup was formed in 2014 to address issues related to implementation of and compliance with the Indian Child Welfare Act. The workgroup meets every 4-6 weeks, and is chaired at a staff level by LPS. The workgroup facilitates coordination on a variety of projects, including data collection, new regulations by both DOI and HHS, amicus and other litigation, and training.

- **NAGPRA/ARPA Interagency Working Group.** This is a staff-level interagency work group established in 2015 to discuss issues related to the protection of Native American cultural resources. It meets monthly. In addition to ENRD, several other DOJ components participate including OTJ, Criminal Division, FBI and the Executive Office for U.S. Attorneys, as well as DOI, the Department of State and the Department of Homeland Security.

- **Task Force on Environmental Health Risks and Safety Risks to Children.** Originally established in 1997 by Executive Order 13045, the most recent iteration of this Task Force was established in 2010 by Presidential memorandum. This Task Force is currently chaired by EPA and HHS Administrators; its mission is to identify priority issues concerning environmental health and safety risks to children and develop interagency strategies to protect children’s environmental health and safety. DOJ is an identified member of the TF; LPS monitors its activities on behalf of ENRD.

- **Federal Electronic Discovery Work Group (FEDWG).** The FEDWG was formed by DOJ and other agencies as an interagency workgroup to share best practices and conduct training on e-discovery for federal agencies. This group meets periodically and conducts training annually. EES represents ENRD on the group.

- **Interagency NEPA Contacts.** The “NEPA Contacts” workgroup is an interagency workgroup convened by CEQ to facilitate the dissemination of information regarding, and coordination with respect to, NEPA-related matters. The workgroup is comprised of representatives from a broad range of federal agencies, including DOJ. In addition to ENRD, the workgroup consists of representatives from JMD and various Department of Justice bureaus that are required to perform NEPA analyses in connection with construction projects or awards of federal grants.

- **Interagency Workgroup for FAST Act Infrastructure Permitting Implementation.** A Federal Permitting Improvement Steering Council (Council) was created by Title 41 of the Fixing America’s Surface Transportation (FAST) Act of 2015 and tasked with modernizing large federal infrastructure permitting to create efficient project delivery and improved outcomes. The interagency workgroup was recently convened by OMB for the purpose of providing assistance to the Council. DOJ is not a member of the Council but does assist in the work of the workgroup. Covered by the work of the Council and workgroup are infrastructure construction projects in the areas of aviation, energy development, pipelines, electricity transmission, and manufacturing. Excluded from coverage are federally funded transportation projects and water resources development projects.
which are covered by somewhat similar statutory frameworks enacted by Congress in the last several years. LPS attorneys represent ENRD on the workgroup.

- **Lake Ontario-St. Lawrence River Working Group.** The International Joint Commission (IJC) was established in 1909 by the Boundary Waters Treaty to help manage and resolve disputes that arise with respect to water sharing on the boundary of the United States and Canada. This working group was convened and has been meeting for a number of years to assist the IJC in its evaluation of a proposal that would incorporate ecosystem considerations into the order of approval for the Moses Saunders Dam, which controls the water levels of Lake Ontario and the St. Lawrence River. ENRD has been working as part of an interagency group led by the State Department and CEQ to review the IJC’s proposal for revising the order pursuant to the IJC’s Lake Ontario-St. Lawrence River (LOSLR) Plan 2014. The IJC recently issued its decision with respect to this Plan so we believe the work of this workgroup is now complete.

- **Baseline Committee.** This is a long-standing staff-level committee established in 1970 for the purpose of providing an interagency forum to discuss and make recommendations on all questions and issues relating to the delimitation of the coastline of the United States (e.g., where is the coast, so that you can draw 3-mile limits and 200-mile limits). It meets only when needed. LPS staff's ENRD’s involvement, with assistance from NRS on certain issues.
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<td>National Ass’n of Mgrs did not petition for review; it intervened as a respondent to challenge jurisdiction; environmental petitioners are intervenors in support of respondents in state/industry cases; industry groups are intervenors in support of respondents in environmental group cases; NY, CT, HI, MA, OR, VT, WA, and DC intervened in support of the federal government</td>
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<td>N.D. Ok.</td>
<td>4:15-cv-386</td>
<td>Chamber of Commerce, NFIB, State Chamber of Oklahoma, Tulsa Regional Chamber, Portland Cement Ass’n</td>
<td>7/10/15</td>
<td>dismissed; appeal pending</td>
<td>No. 16-5038 (10th Cir.)</td>
</tr>
<tr>
<td>Case Title</td>
<td>Court</td>
<td>Docket</td>
<td>Plaintiff</td>
<td>Date</td>
<td>Status</td>
<td></td>
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<td>---------------------------------------------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Southeastern Legal Found., Inc. v. EPA</td>
<td>N.D. Ga.</td>
<td>0:00</td>
<td>Southeastern Legal Foundation, Inc., Georgia Agribusiness Council, Inc., and Greater Atlinda Homebuilders Ass'n, Inc.</td>
<td>7/13/15</td>
<td>stayed</td>
<td></td>
</tr>
<tr>
<td>Washington Cattleman's Ass'n v. EPA</td>
<td>D. Minn.</td>
<td>0:15-cv-3058</td>
<td>Washington Cattleman's Ass'n, California Cattleman's Ass'n, New Mexico Cattle Growers Ass'n, New Mexico Wool Growers, Inc., Federal Lands Council, Duarte Nuersery, Inc., Pierce Investment Co., LPF Properties LLC, Hawkes Co., Inc.</td>
<td>7/15/15</td>
<td>dismissed; appeal deadline runs on 1/7/2017</td>
<td></td>
</tr>
<tr>
<td>Puget Soundkeeper Alliance, Sierra Club v. EPA</td>
<td>W.D. Wa.</td>
<td>2:15-cv-01342</td>
<td>Puget Soundkeeper Alliance, Sierra Club</td>
<td>8/20/15</td>
<td>administratively closed</td>
<td></td>
</tr>
<tr>
<td>NRDC v. EPA</td>
<td>D.D.C.</td>
<td>1:15-cv-01324</td>
<td>Natural Resources Defense Council, INC., National Wildlife Federation, One Hundred Miles, South Carolina Coastal Conservation League</td>
<td>8/14/15</td>
<td>voluntarily dismissed</td>
<td></td>
</tr>
<tr>
<td>Arizona Mining Ass'n v. EPA</td>
<td>D. Az.</td>
<td>2:15-cv-1752</td>
<td>Arizona Mining Ass'n, Arizona Farm Bureau, Ass'n of Commerce and Industry, New Mexico Mining Ass'n, Arizona Chamber of Commerce &amp; Industry, Arizona Rock Products Ass'n, and New Mexico Farm &amp; Livestock Bureau</td>
<td>9/1/15</td>
<td>voluntarily dismissed</td>
<td></td>
</tr>
<tr>
<td>Texas Alliance for Responsible Growth, Environmental &amp; Transportation v. EPA</td>
<td>S.D. Tex. Galveston</td>
<td>3:15-cv-00322</td>
<td>Texas Alliance for Responsible Growth, Environment, and Transportation</td>
<td>11/13/15</td>
<td>dismissed</td>
<td></td>
</tr>
<tr>
<td>Southeast Stormwater Association v. EPA</td>
<td>N.D. Fl.</td>
<td>4:14-cv-579</td>
<td>Southeast Stormwater Association, Inc.; Florida Stormwater Association, Inc.; Florida Rural Water Association, Inc.; and Florida League of Cities, Inc.</td>
<td>11/30/15</td>
<td>stayed</td>
<td></td>
</tr>
<tr>
<td>Am. Exploration &amp; Mining Ass'n v. EPA</td>
<td>D.D.C.</td>
<td>1:16cv1279</td>
<td>American Exploration &amp; Mining Ass'n</td>
<td>6/23/16</td>
<td>stayed pending 6th Cir. proceedings</td>
<td></td>
</tr>
</tbody>
</table>
Calendar is correct-1:30 is in 2333. Thanks!

Sent from my iPhone

> On Dec 16, 2016, at 12:47 PM, "zina.bash@gmail.com" <zina.bash@gmail.com> wrote:
> 
> Judy my calendar says that the 1:30 is in 2333. But it's been moved, right? Sorry for the confusion!
> 
> Sent from my iPhone
3134. It's a Civil Division conf. room.

--- Original Message ---
From: Ex 6 - Zina Bash
Sent: Friday, December 16, 2016 9:15 AM
To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Subject: 10:30 meeting location?

Judy, where do we meet at 10:30? Thanks.

Sent from my iPhone
got it, thanks! With all the recent changes, I just wanted to confirm.

On Fri, Dec 16, 2016 at 9:27 AM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote: 3134. It's a Civil Division conf. room.

-----Original Message-----
From: Ex 6 - Zina Bash
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To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Subject: 10:30 meeting location?

Judy, where do we meet at 10:30? Thanks.

Sent from my iPhone
Hi, Zina, as to item 1. I believe John is sending you that information directly, but I will check.
For item 2, and sorry for any miscommunication; I thought that was one of the matters to be discussed during section meetings, and NRS has that on its list for the Friday briefing. May I suggest we have the briefing first, and then if you’d like the full one-pager, we will produce it?
For item 3: likewise, I thought that was a trigger for items to be addressed in the section meetings. I will talk with Judy about coming up with a list.

Bruce has jurisdiction over item 4, so I will let him address that.

Thanks, Jean

From: Zina Gelman Bash
Sent: Wednesday, December 14, 2016 12:27 PM
To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Cc: ronald.tenpas@morganlewis.com; Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>
Subject: Re: ENRD Meeting Requests

Judy, thank you very much. In my notes, I still have a few items outstanding from our initial meeting with the Division on November 29 that I don't believe we have received yet. They are:

1. A list of positions in each Section that will be open as of January 20;
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I know that you already have our requests from the Land Acquisition and LPS meetings, so the final request is the one from my email on Sunday for a list from the Appellate Section of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

Thanks a lot for all of your incredibly helpful assistance.
Zina

On Tue, Dec 13, 2016 at 4:32 PM, Harvey, Judy (ENRD) <Judith Harvey@usdoj.gov> wrote:
Ron and Zina,

Attached please find another batch of briefing papers. These will complete the initial materials you requested, with the exception of the list of task forces/workgroups, which is currently being revised to reflect additional information you asked for during the LPS meeting. Additional information requested during your meetings with Land Acquisition and LPS will follow once complete.

Thanks,
Judy

From: Harvey, Judy (ENRD)
Ex 6 - Zina Bash

Sent: Tuesday, December 13, 2016 1:58 PM
To: 'Zina Gelman Bash' <ronald.tenpas@morganlewis.com>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; Gelber, Bruce (ENRD) <BGelber@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>

Subject: RE: ENRD Meeting Requests

Ron and Zina,

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From: Harvey, Judy (ENRD)
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To: 'Zina Gelman Bash' <ronald.tenpas@morganlewis.com>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGelber@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>

Subject: RE: ENRD Meeting Requests

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Noon – Meeting with Natural Resources Section (RFK 2333)
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Thanks,
Judy

From: Zina Gelman Bash
Sent: Monday, December 12, 2016 2:35 PM
To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>

Subject: Re: ENRD Meeting Requests

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On Mon, Dec 12, 2016 at 1:40 PM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:
Zina and Ron—

Are you available to start a meeting at 9:30am on Thursday 12/15?
Thanks, 
Judy

U.S. Department of Justice  
Environment and Natural Resources Division  
Law and Policy Section  
(202) 514-3932

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Ex 6 - Zina Bash

From: Ex 6 - Zina Bash  
Date: December 11, 2016 at 10:19:07 PM EST  
To: "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov>  
Cc: "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>, "Tenpas, Ronald J." <ronald.tenpas@morganlewis.com>  
Subject: Re: ENRD Meeting Requests

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We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.
Zina
Judy (and others),

For future e-mails, I'd be grateful if you could mail to my official transition e-mail. That is:

Ronald.j.tenpas@ptt.gov.

Thanks.

Ronald J. Tenpas
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW | Washington, DC 20004-2541
Direct: +1 202.739.5435 | Main: +1 202.739.3000 | Mobile: +1 202.316.8347 | Fax: +1 202.739.3001
ronald.tenpas@morganlewis.com | www.morganlewis.com
Assistant: Linda J. Ramsburg | +1 202.739.5241 | linda.ramsburg@morganlewis.com

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DISCLAIMER
This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential and/or it may include attorney work product. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.
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To: Harvey, Judy (ENRD)
CC: ronald.tenpas@morganlewis.com; Williams, Jean (ENRD); Gelber, Bruce (ENRD); Wardzinski, Karen (ENRD)
Sent: 12/14/2016 12:27:24 PM
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DEPARTMENT OF JUSTICE – LAW AND POLICY AND
ENVIRONMENTAL CRIMES SECTIONS

INTERNATIONAL TRAVEL IN INITIAL WEEKS OF NEW ADMINISTRATION

Summary: Attorneys working for the Environment and Natural Resources Division (ENRD) engage in international travel to support fundamental Division objectives. (We have prepared a separate transition memo describing ENRD’s international work.)

Deadlines/Relevant Dates: ENRD attorneys have commitments to engage in international travel for the following meetings and training programs in January and February, 2017:

1. From January 23-27, 2017, Deborah Harris and Joe Poux of the ENRD’s Environmental Crimes Section (ECS) will travel to Brussels, Belgium, for INTERPOL’s Environmental Compliance and Enforcement Committee Advisory Board meeting. Ms. Harris will travel in her capacity as a board member; Mr. Poux in his capacity as the head of INTERPOL’s Pollution Crimes Working Group. The purpose of the meeting is to plan the bi-annual meeting of member nations held in November 2017. Travel for Ms. Harris will be funded by the State Department’s Bureau of Oceans and Environmental and Scientific Affairs (State/OES) through an Inter-Agency Agreement (IAA) with ENRD on timber issues. Mr. Poux’s travel will be covered by ENRD.

2. From February 13-17, 2017, four ECS and LPS attorneys will travel to Togo, to conduct a follow-up workshop on combating international illegal wildlife trafficking for prosecutors and magistrates from Togo, Ghana, Nigeria, Republic of Congo, and Gabon. In June, 2016 ENRD provided the first part of this training, which focused on practical evidentiary and advocacy skills. A second follow-up session was planned to work with initial participants on site-specific cases and more in-depth training on certain issues. All costs for this workshop will be paid from funds provided by the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (State/INL) under an Inter-Agency Agreement (IAA) with ENRD on wildlife issues.

3. From February 27 to March 3, 2017, an ECS attorney will travel to Kathmandu, Nepal, as an instructor at a workshop on international illegal wildlife trafficking, focusing on the trade of Bengal Tigers. The workshop attendees will be Nepalese judges and prosecutors. The workshop is being organized by the Resident Legal Adviser in the American Embassy in Kathmandu and funded by the DOJ’s Office of Overseas Prosecutorial Development, Assistance, and Training.

4. In late February, 2017, an LPS attorney will attend the meeting of the Asia Pacific Economic Cooperation forum (APEC) Experts Group on Illegal Logging and Associated Trade, in Nha Trang City, Vietnam. The LPS attorney has represented the United States at these APEC meetings for several years. The trip will be paid by State/OES under the IAA.

Action Required: The Assistant Attorney General of ENRD must approve international travel by ENRD personnel before the commencement of travel.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAW AND POLICY/ENVIRONMENTAL CRIMES SECTIONS

WILDLIFE TRAFFICKING TASK FORCE

Summary: The Department of Justice is one of three co-chairs of the Presidential Task Force on Wildlife Trafficking, which was established in 2013 in light of a worsening wildlife trafficking epidemic that posed both conservation and security concerns. The Division is DOJ’s representative on the Task Force. The Task Force developed and is implementing a National Strategy for Combating Wildlife Trafficking (“Strategy”), and has additional statutory authority and responsibilities set out in the recently enacted Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 (“END WT Act”).

Deadlines: The only formal deadlines are reporting requirements in the END WT Act: on October 6, 2017, and annually thereafter, the Task Force must submit to Congress a strategic assessment of its work; 90 days after the State Department issues a list of focus countries (due by October 6, 2017, and annually thereafter), the Task Force must issue a mission assessment for each; 180 days later, it must issue a strategic plan for each.

Action Required: No immediate action is required by the front office. The Assistant Attorney General ordinarily co-chairs the principal-level meetings of the Task Force, which are held twice a year, and participates in high-level international meetings.

Background: Wildlife trafficking has grown to crisis proportions, with a surge in recent years fueled in part by increasing wealth and concomitant demand in Asia and exacerbated by growing involvement of sophisticated transnational criminal networks. Estimates of the illegal wildlife trade range from $7-23 billion per year. This has devastating effects on the targeted species, threatening the extinction of iconic species like elephants and tigers as well as lesser-known species like pangolin and totoaba. It also destabilizes the countries involved, hinders economic development, fuels corruption and armed conflict (especially in Africa) and undermines the rule of law.

In response, President Obama issued Executive Order 13648 on Combating Wildlife Trafficking (July 1, 2013) (“EO”). The EO established a new, whole-of-government approach to tackling wildlife trafficking, creating a Task Force co-chaired by the Departments of Justice, State, and the Interior with representation from 14 additional federal departments and agencies, including the Departments of Defense, Commerce, Homeland Security, Treasury, and Agriculture, as well as USAID and the Office of the Director of National Intelligence. The Task Force developed the Strategy, issued in February 2014, as well as a detailed Implementation Plan, issued in February 2015.

The Division’s primary role in stopping wildlife trafficking is prosecuting traffickers. ENRD also works with other Task Force agencies to increase both domestic and global capacity to fight wildlife trafficking, including through an ongoing series of regional workshops for judges and prosecutors in Africa, scheduled to conclude in February 2017. ENRD also co-chairs an intelligence working group that the Task Force is establishing.

This past September, the General Accountability Office (GAO) issued a report praising federal efforts to combat wildlife trafficking in Africa, but noting a lack of performance targets for
assessing progress. The Task Force is addressing this by reviewing metrics and updating the implementation plan. GAO is now reviewing anti-trafficking efforts in Asia.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
INDIAN RESOURCES SECTION

TULALIP TRIBES v. STATE OF WASHINGTON (W.D. Wash.)

Summary: The United States intervened in this litigation concerning state and local taxation of businesses operating on leased trust lands on the Tulalip Tribes’ Reservation, and within a tribally chartered municipality financed, built, and managed by the Tribe and the federal government. This action is to be decided under the “preemption” balancing test set forth in White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980), which has long-governed the validity of state and local taxes on reservations.

Background: The Tulalip Reservation is located in Snohomish County, Washington, 35 miles north of Seattle. Tulalip chartered its own municipality, the Consolidated Borough of Quil Ceda Village, on federal trust land within its Reservation adjacent to Interstate 5. The municipality was established pursuant to a federally-approved tribal ordinance and is governed by a Village Charter, a Village Council, and other federally-approved tribal ordinances. In 2001, the Village received approval from the United States to be treated as a political subdivision of the Tribe for certain tax purposes after review by the IRS and the Department of the Interior pursuant to federal statute. Tulalip is the only federally recognized tribe to date to have created its own municipality to promote economic activity.

The Tribe and the federal government worked in concert to develop the Village as a source of tribal economic development. With direct financial support and other assistance from the federal government, Tulalip built the infrastructure necessary to support an economic center at Quil Ceda Village. In addition, the Tribe and federal government exclusively provide all governmental services to the business tenants and visitors at the Village.

The State and County neither contributed to the development of Quil Ceda Village, nor do they provide significant governmental services at the Village. The State and County, however, impose over $40 million annually in sales, property, and business and occupation taxes on the businesses leasing trust lands at the Village. Even though Tulalip has its own applicable tribal tax laws, if the Tribe were to impose its own taxes it would drive away business investments due to double taxation.

Deadlines: Discovery is ongoing and consists almost entirely of documents and information about the development and construction of Quil Ceda Village, as well as the relevant governmental services provided within the Village by tribal, federal, state, and county governments. Discovery must be completed by the end of February. The parties are in the process of scheduling a total of 32 depositions to occur in January and February 2017. In addition, expert reports are due March 17, 2017; rebuttal reports are due April 28, 2017; and the deadline for expert related discovery is May 18, 2017.

Action Required: Over the next six months, we anticipate engaging in fact and expert witness discovery. We are also currently awaiting two decisions from the court: a ruling on Defendants
motion for summary judgment; and a ruling on the parties’ arguments regarding the relevant scope of government services to be considered under a *Bracker* analysis.
DEP'T OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAW AND POLICY/ENVIRONMENTAL CRIMES SECTIONS

ENVIRONMENT DIVISION INTERNATIONAL ACTIVITIES

Summary: The Environment and Natural Resources Division implements a robust and diverse program of international activities to support fundamental Division objectives. First and foremost, the Division prosecutes environmental and natural resource crimes that involve foreign evidence regarding transnational movement of illegal goods, foreign targets, cooperation with foreign law enforcement officials, or that include a violation of underlying foreign law as a predicate offense. Division attorneys also train foreign law enforcement counterparts to be more effective enforcement partners, assist in the negotiation and implementation of trade and other international environmental agreements, and engage in other international activities to advance the Administration’s and the Division’s law enforcement priorities.

Deadlines: There are no deadlines for action in the near future related to the Division’s international work.

Action Required: No action is currently required with respect to the Division’s international work. However, before Division attorneys may engage in international travel, they are required to obtain the approval of the Assistant Attorney General.

Background: The Environment Division is involved in international matters in the following ways:

(1) Prosecution of Cases: Attorneys from the Environmental Crimes Section (ECS) prosecute environmental and natural resource crimes involving predicate acts and/or evidence located in other countries. For example, the Lacey Act, 16 U.S.C. § 3371-3378, prohibits importation of or trade in fish, wildlife, or plants taken in violation of the laws of a foreign country. ECS attorneys have in recent years prosecuted many cases involving trade in illegal wildlife parts such as rhinoceros horn and elephant ivory. Evidence of such crimes is found both in the country where the illegal hunt occurred and in the United States where the federal violation occurred. ECS also prosecutes cases involving ships that enter U.S. ports that conceal their illegal discharge of waste oil at sea in violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1905-1915. Evidence, particularly witness testimony, may have to be obtained in the country where sea-faring witnesses reside.

(2) Capacity Building: With funding from the Department of State, other federal agencies, and international organizations, Division attorneys, primarily from ECS and the Law and Policy Section (LPS), train law enforcement counterparts in other countries to build their capacity for effective environmental enforcement. By sharing our expertise on environmental law enforcement with foreign counterparts, Division attorneys build relationships with important partners that support domestic prosecutions of transnational crimes in the United States. In recent years, Division attorneys have organized and implemented training programs each year for law enforcement officials in South and Central America, Africa, and Asia, and participated as instructors at training programs organized by other law enforcement partners.
(3) The Development of International Agreements and Implementing Legislation: LPS and ECS attorneys participate in the interagency processes for development and implementation of trade and investment agreements, international environmental agreements, and domestic implementing legislation, primarily to protect and promote effective environmental enforcement. Recent examples involve interagency review of the Port State Agreement implementing legislation (to reflect international commitments related to addressing international fisheries issues) and of revisions to the Montreal Protocol to address ozone depleting substances. LPS represents the Division in certain international groups such as the enforcement working group established through the Commission for Environmental Cooperation (CEC) among Canada, the U.S. and Mexico. We are also called upon to provide support to the State Department on litigation-related to treaty compliance or arbitration claims under NAFTA and CAFTA, and have provided significant expertise in the negotiation and implementation of environment and investment chapters of trade agreements. Under the Trade Act of 2002, free trade agreements must contain provisions that call on the parties to maintain high levels of environmental protection. Trade agreements may also establish arbitral remedies for foreign investors in the United States, but must comply with Congressional directives that such investors have “no greater rights” than domestic individuals and businesses do in U.S. courts.

(4) International Environmental Policy Matters and Law Enforcement Partnerships: Division attorneys from ECS and LPS participate in a number of international organizations or meetings that advance the Division’s environmental enforcement goals. For example, ECS Chief Deborah Harris was elected to serve on INTERPOL’s Environmental Compliance and Enforcement Committee Advisory Board and ECS attorneys participate in INTERPOL’s Wildlife Crimes and Pollution Crimes Working Groups. Division attorneys and front office personnel also represent the United States in a variety of international meetings related to our work on transnational environmental and natural resources law enforcement. For example, in recent years the Assistant Attorney General served as the U.S. head of delegation to international conferences on combating wildlife trafficking. Division attorneys have also been asked to participate (most often with State Department funding) in the U.S. delegation to international meetings relating to efforts to combat wildlife trafficking and illegal logging, such as the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Asia Pacific Economic Cooperation (APEC) Experts Group on Illegal Logging and Associated Trade, and the U.S.-China Strategic and Economic Dialogue.
DEP’T OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAW AND POLICY SECTION

CONGRESSIONAL REPORTING REQUIREMENTS

**Summary:** The Division is subject to certain Congressional reporting requirements, either by virtue of express requirements or as a matter of practice. The following is a summary of those requirements and applicable deadlines.

**Deadlines:** (1) The quarterly settlement report is submitted to the Office of the Associate Attorney General and is typically submitted shortly after the end of the calendar quarter; (2) a Wildlife Trafficking Task Force “Strategic Review” report is due October 6, 2017, and (3) “Bishop letters” are submitted when Congress considers new Indian water rights settlements.

**Action Required:** The substance of the required reports is described below.

**Background:** The following reporting requirements apply to the Division:

1. **Quarterly Settlement Reporting.** Under section 202 of Pub. L. No. 107-273, the 21st Century Department of Justice Appropriations Authorization Act (2002), 28 U.S.C. 530D, the Department reports to Congress on a quarterly basis certain settlement agreements falling into two categories: (1) settlements in cases brought by a plaintiff against the United States where the settlement exceeds or is likely to exceed $2 million, excluding pre-judgment interest; and (2) settlements in cases in which the United States obtained an injunction or other non-monetary relief that exceeds or is likely to exceed three years’ duration. Each quarter, ENRD submits a memorandum describing its qualifying agreements, along with copies of the agreements, to the Associate’s Office, where submissions from various components are consolidated.

2. **Wildlife Trafficking Reporting.** The Department is a co-chair of the Task Force on Wildlife Trafficking (“TF”) and in 2015 and 2016 submitted reports to Congress on its efforts to combat wildlife trafficking and implement the National Strategy. These reports satisfied requests for such reporting contained in report language to DOJ’s appropriations bills. Report language to this year’s Senate Appropriations Committee mark-up of the Commerce, Justice, Science, and Related Agencies Appropriations Act, requires the Department to continue such reporting, but Congress has not taken further action on the DOJ appropriations bills. Additionally, under the newly enacted Eliminate, Neutralize, and Disrupt (“END”) Wildlife Trafficking Act of 2016, the TF, of which DOJ is a co-chair, is required to submit three types of reports. Two of those reports are a “mission assessment” and a “mission strategic plan” with respect to “focus countries” identified by the State Department, which arguably will be submitted principally, if not solely, by State. But beginning on October 6, 2017, and annually thereafter, the full Task Force is required to submit to Congress a “Task Force Strategic Review,” which must contain an assessment of the TF’s implementation of the END Act, its annual priorities and objectives, and an accounting of total U.S. funding.

3. **Indian Water Rights Settlements: “Bishop” Letter Requirement.** The Division works with the Department of the Interior to assert water rights claims for the benefit of Indian tribes, and both agencies typically seek to resolve such claims through negotiated settlements rather than the
protracted litigation otherwise required. Indian water rights claims generally involve assertion of “federally reserved” water rights associated with lands set aside for Tribes. Settlement of such claims generally requires authorizing legislation, since Indian water rights, like other Indian real property, are held in trust by the United States and, under the Indian Trade and Intercourse Act, 25 USC 177, may not be alienated without approval by Congress. In 1990, the first Bush Administration published the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (March 12, 1990), which provides a general framework for assessing these settlements. On February 26, 2015, House Natural Resource Committee Chair Rob Bishop sent a letter to DOJ and DOI stating that the Committee would not consider any new Indian water rights settlements unless both DOJ and DOI provided a letter supporting and conveying the settlement and the implementing legislation, as well as affirming that the settlement adheres to the Criteria and Procedures. The Departments responded, indicating we would do our best to accommodate the Committee’s requests. Although this letter does not create a legally binding obligation, we have worked with Interior and OMB to provide the requested letters of support on newly introduced water rights settlements that the Administration supports. This currently includes water rights settlements involving the San Luis Rey bands, Blackfeet Tribe, Pechanga Band of Luiseno Mission Indians, and, most recently, the Chickasaw Nation and Choctaw Nation of Oklahoma.
Thanks very much for these. We really appreciate the quick turnaround and will be on the lookout for the additional papers.

On Tue, Dec 13, 2016 at 1:57 PM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Ron and Zina,

Please see attached for three of the initial briefing papers you requested (US v. BPX, US v. Volkswagen, and border fence/port of entry cases).

Additional papers will follow when completed.

Thanks,

Judy

---

From: Harvey, Judy (ENRD)  
Sent: Tuesday, December 13, 2016 10:01 AM  
To: Zina Gelman Bash <Ex 6 - Zina Bash>  
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGELBER@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>  
Subject: RE: ENRD Meeting Requests

All,

I just sent out calendar invites for the meetings this week, but so that you can have all the information in one place, here it is:

Thursday, 12/15

9:30am – Meeting with Wildlife & Marine Resources Section (RFK 2333)

11:30am – Meeting with Environmental Defense Section (RFK 2333)
Friday, 12/16

10:30am – Meeting with Environmental Enforcement Section (Location TBD)
Noon – Meeting with Natural Resources Section (RFK 2333)
1:30pm – Meeting with Indian Resources Section (RFK 2333)

Thanks,
Judy

From: Zina Gelman Bash
Sent: Monday, December 12, 2016 2:35 PM
To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>
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Judy, we are available at that time. Thank you.

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U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932
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Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.
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Zina
DEP'T OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
ENVIRONMENTAL ENFORCEMENT SECTION

UNITED STATES v. VOLKSWAGEN

Summary: On January 4, 2016, ENRD, on behalf of the Environmental Protection Agency ("EPA"), filed a civil complaint (amended on October 7, 2016) in the Eastern District of Michigan against six Volkswagen-related entities (collectively "VW") for violations of the Clean Air Act. The suit seeks civil penalties and injunctive relief for VW’s sale of approximately 580,000 2.0 and 3.0 liter diesel cars in the United States that are equipped with "defeat devices." The defeat devices are computer software algorithms and calibrations that recognize when the vehicles are undergoing a federal emissions test and then operate emissions controls to meet federal standards, but reduce or shut off emission controls under real world driving conditions. This results in emissions of nitrogen oxides ("NOx") up to 40 times the allowable limit.

Deadlines: No trial or dispositive motion deadlines have been set.

Action Required: No specific action is required.

Background: After filing, our case was transferred to the Northern District of California (Judge Charles Breyer), for coordinated pre-trial proceedings as part of the multidistrict litigation ("MDL") that was established to handle the multitude of private consumer claims pending against VW nationwide; these private parties are represented by the Plaintiffs’ Steering Committee ("PSC"). On March 29, 2016, the Federal Trade Commission ("FTC") filed suit, and on June 27, 2016, California filed suit. A number of other states have also filed suit and some of those have been conditionally transferred to the MDL pending a decision by Judge Breyer on remand motions. The court has made clear that its priority is to address the cars on the road, and appointed a settlement master (former FBI Director Robert Mueller) to facilitate settlement discussions.

On October 25, 2016, the court entered a partial consent decree between the United States, the California Air Resources Board, the California Attorney General and VW to address what VW must do with the 2.0 liter cars on the road. This partial settlement does not address civil penalties, other injunctive relief to prevent future violations, or what to do with the 3.0 liter cars on the road. Both the PSC and the FTC filed related settlements addressing consumer relief related to the 2.0 liter cars. Discussions about the 3.0 liter cars are ongoing.

Meanwhile, the litigation continues. Document discovery is ongoing, and some depositions have begun.
DEP'T OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
ENVIRONMENTAL ENFORCEMENT SECTION

UNITED STATES v. BPXP (DEEPWATER HORIZON)

Summary: U.S. v. BPXP, et al (E.D. La.) stems from a multi-million barrel discharge of oil into the Gulf of Mexico from the Macondo oil well and the Deepwater Horizon drilling rig. This disaster sparked U.S. pursuit of responsible parties for both civil penalties and injunctive relief under the Clean Water Act (CWA), and for response costs and natural resource damages (NRD) under the Declaratory Judgment Act, based on the Oil Pollution Act (OPA). We successfully concluded those civil claims against all defendants:

| BP Entities (owner/operator of well) | $8.1 billion in NRD damages, $5.5 billion in CWA civil penalty, plus several hundred million dollars in assorted response and assessment costs, royalty payments, and other miscellaneous claims (15-year, installment terms, with interest). |
| Transocean Entities (owner/operator of drilling rig) | $1 billion in CWA civil penalty (paid) plus injunctive relief to improve operation of its drilling rigs (5 years of compliant performance required by the settlement). |
| Anadarko Entities (minority owner of well) | $159.5 million in CWA civil penalty (paid) plus taxed costs (paid). |
| MOEX (smaller, minority owner of well) | $70 million CWA civil penalty (paid as required) plus supplemental environmental projects valued in excess of $20 million (completed). |

Deadlines: None.

Action Required: DOJ now: (1) monitors settlements for timely performance; (2) counsels natural resource trustees in selection and completion of restoration; and (3) defends federal trustees when their restoration work is challenged. No other action required at this time.

Background: Our five-year litigation included: hundreds of depositions; production by U.S. of more than 100 million pages of material (along with significant but lesser amounts produced by the defendants); robust motions practice (substantive and discovery topics); and three lengthy trials (addressing defendants’ degree of fault, amount of oil discharged, and factors relevant to assessment of civil penalties).

Payments follow CWA and OPA. In general, 80% of CWA civil penalty payments fund a Congressionally-created RESTORE Council, composed of federal and state representatives authorized to select and fund projects for economic development and environmental restoration in the Gulf region. The remaining 20% goes to Coast Guard’s Oil Spill Liability Trust Fund to finance responses to future spills. Recoveries of natural resource damages under OPA are held in a fund that the natural resource trustees use to fund projects to restore natural resources in the Gulf region.
DEPT' OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAND ACQUISITION SECTION, NATURAL RESOURCES SECTION, WILDLIFE &
MARINE RESOURCES SECTION

EMINENT DOMAIN LITIGATION / BORDER FENCE &
LAND PORTS OF ENTRY PROJECTS

Summary: Condemnations brought on behalf of the Department of Homeland Security (DHS) stemming from Congress' mandate beginning in 2007 to construct fencing and infrastructure along the Southwest border of the United States and to modernize and expand land ports of entry along the northern and southern borders. These actions impacted state and local governments and private landowners. Litigation was active and contentious in at least five districts, with valuation disparities in the tens of millions of dollars. All told almost 600 cases have been filed for these projects with about 100 active matters remaining, although virtually all high value disputes have already been resolved.

Deadlines/Action Required: We do not expect that these cases will require immediate attention, but wanted to identify it as there are still a number of active cases.

Background: For over a decade ENRD has worked with DHS, the Army Corps of Engineers (Corps), and various USAOs to acquire lands for construction of 225 miles of fencing along the United States/Mexico border. To date, over 450 condemnation cases have been filed to allow construction of roads, fencing, towers and related infrastructure designed to curtail smuggling, drug trafficking and illegal immigration along the border in Texas, Arizona, New Mexico, and California. Although initiated by ENRD, since the filing of the first cases this project has been a unified effort of the various USAOs and ENRD that in turn forged a strong advisory relationship with the client agencies. As this project evolved, complications associated with rapid filing without adequate knowledge as to ownership interests, impacts upon landowners and project needs became apparent. Virtually every case has been amended and scores of additional cases filed.

Prior to 2008, judicial challenges to border fence construction were brought under the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). However, subsequent authorizing legislation for the border fence provides that the Secretary of DHS may waive compliance with statutory requirements of other federal laws, e.g., NEPA, ESA, and the Administrative Procedure Act (APA). The Secretary exercised this waiver authority for all border fence construction initiated in FY 2008 and thereafter. Environmental groups challenged the Secretary’s waiver but lost on appeal. Since then, there have not been any further NEPA or ESA challenges.

Approximately 150 cases have been filed since the inception of the land ports of entry (LPOE) project, however, only one case is currently active. It is anticipated that additional cases related at least three major LPOEs expansions will be referred in the coming years in Texas, New Mexico and California.
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Date: December 11, 2016 at 10:19:07 PM EST
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Cc: "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>, "Tenpas, Ronald J." <ronald.tenpas@morganlewis.com>
Subject: Re: ENRD Meeting Requests

Correct. Thank you!

Sent from my iPhone

On Dec 11, 2016, at 10:10 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Zina, I'm sure we can make this happen. To be clear, you are available anytime (let's say starting at 10) on Thursday and Friday as long as the meetings end at 4?

Sent from my iPhone

On Dec 11, 2016, at 9:39 PM, Zina Gelman Bash <Ex 6 - Zina Bash> wrote:

Jean and Bruce,

Would it be possible to schedule one-hour meetings this week on Thursday or Friday before 4:00pm with each of the following Sections:
1. Defense,
2. EES
3. NRS
4. Indian Resources
5. Wildlife
Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).
We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.
Zina
Zina - sounds good. Thanks.

Sent from my iPhone

On Dec 14, 2016, at 2:03 PM, Zina Gelman Bash wrote:

Bruce, consistent with Jean's email, no need to send anything for number 4--we can discuss in person on Friday. Thanks.

---------- Forwarded message��--
From: Williams, Jean (ENRD) <Jean Williams@usdoj.gov>
Date: Wed, Dec 14, 2016 at 1:38 PM
Subject: RE: ENRD Meeting Requests
To: Zina Gelman Bash; Harvey, Judy (ENRD) <Judith Harvey@usdoj.gov>
Cc: "Gelber, Bruce (ENRD)" <Bruce Gelber@usdoj.gov>, "Ronald J Tenpas@ptt.gov" <Ronald J Tenpas@ptt.gov>, "Wardzinski, Karen (ENRD)" <Karen Wardzinski@usdoj.gov>

Hi, Zina, as to item 1. I believe John is sending you that information directly, but I will check.

For item 2, and sorry for any miscommunication: I thought that was one of the matters to be discussed during section meetings, and NRS has that on its list for the Friday briefing. May I suggest we have the briefing first, and then if you'd like the full one-pager, we will produce it?

For item 3: likewise, I thought that was a trigger for items to be addressed in the section meetings. I will talk with Judy about coming up with a list.

Bruce has jurisdiction over item 4, so I will let him address that.

Thanks, Jean

From: Zina Gelman Bash Sent: Wednesday, December 14, 2016 12:21 PM
To: Harvey, Judy (ENRD) <J Harvey ENRD USDOJ GOV>
Cc: ronald tenpas@morganlewis com; Williams, Jean (ENRD) <J Williams ENRD USDOJ GOV>; Gelber, Bruce (ENRD) <B Gelber ENRD USDOJ GOV>; Wardzinski, Karen (ENRD) <K Wardzinski ENRD USDOJ GOV>
Subject: Re: ENRD Meeting Requests

Judy, thank you very much. In my notes, I still have a few items outstanding from our initial meeting with the Division on November 29 that I don't believe we have received yet. They are:

1. A list of positions in each Section that will be open as of January 20;
2. A one-pager on the tri-state water dispute among Florida, Georgia, and Alabama (and in particular, where Alabama stands);
3. A list of recent/upcoming salient rulemakings (this overlaps with the request from last Friday for a list of rulemakings that, under the CRA structure are (even arguably) within the 60-legislative day window);
4. A one-pager on suits against municipalities relating to their sewage systems.

I know that you already have our requests from the Land Acquisition and LPS meetings, so the final request is the one from my email on Sunday for a list from the Appellate Section of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

Thanks a lot for all of your incredibly helpful assistance.

Zina

On Tue, Dec 13, 2016 at 4:32 PM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Ron and Zina,

Attached please find another batch of briefing papers. These will complete the initial materials you requested, with the exception of the list of task forces/workgroups, which is currently being revised to reflect additional information you asked for during the LPS meeting. Additional information requested during your meetings with Land Acquisition and LPS will follow once complete.

Thanks,

Judy

From: Harvey, Judy (ENRD)
Sent: Tuesday, December 13, 2016 1:58 PM
To: 'Zina Gelman Bash' Ex 6 - Zina Bash;
ronald.tenpas@morganlewis.com' <ronald.tenpas@morganlewis.com>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; Gelber, Bruce (ENRD) <BGELBER@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinski@ENRD.USDOJ.GOV>

Subject: RE: ENRD Meeting Requests

Ron and Zina,
Please see attached for three of the initial briefing papers you requested (US v. BPXP, US v. Volkswagen, and border fence/port of entry cases).

Additional papers will follow when completed.

Thanks,

Judy

---

From: Harvey, Judy (ENRD)  
Sent: Tuesday, December 13, 2016 10:01 AM  
To: 'Zina Gelman Bash' <Ex 6 - Zina Bash>  
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGELBER@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <Kwardzinsk@ENRD.USDOJ.GOV>  
Subject: RE: ENRD Meeting Requests

All,

I just sent out calendar invites for the meetings this week, but so that you can have all the information in one place, here it is:

---

Thursday, 12/15

9:30am – Meeting with Wildlife & Marine Resources Section (RFK 2333)

11:30am – Meeting with Environmental Defense Section (RFK 2333)

---

Friday, 12/16

10:30am – Meeting with Environmental Enforcement Section (Location TBD)

Noon – Meeting with Natural Resources Section (RFK 2333)

1:30pm – Meeting with Indian Resources Section (RFK 2333)

---

Thanks,

Judy
Judy, we are available at that time. Thank you.

On Mon, Dec 12, 2016 at 1:40 PM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Zina and Ron—

Are you available to start a meeting at 9:30am on Thursday 12/15?

Thanks,
Judy

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932

Begin forwarded message:

From: Ex 6 - Zina Bash
Date: December 11, 2016 at 10:19:07 PM EST
To: "Williams, Jean (ENRD)" <Jean_Williams@usdoj.gov>
Cc: "Gelber, Bruce (ENRD)" <Bruce_Gelber@usdoj.gov>, "Tenpas, Ronald J." <ronald.tenpas@morganlewis.com>
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3. NRS
4. Indian Resources
5. Wildlife

Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.

Zina
Thank you Judy.

On Tue, Dec 27, 2016 at 7:39 AM Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Ron, Zina—

Per your request, see attached for updated briefing paper on the Deepwater Horizon oil spill and ENRD’s current role.

Thanks,

Judy
Good morning Zina. I just confirmed that we are in 2143. See you there.

Sent from my iPhone

> On Dec 9, 2016, at 7:28 AM, Ex 6 - Zina Bash Ex 6 - Zina Bash wrote:
> Thank you! I have a meeting invite from earlier in the week and wanted to confirm that the room number is the same. Thanks again.
> Sent from my iPhone

>> On Dec 9, 2016, at 2:34 AM, Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov> wrote:
>> Zina - I believe so. I asked Shanedda to confirm. You and Ron should get a meeting invite tomorrow morning
>> Sent from my iPhone

>>> On Dec 8, 2016, at 9:42 PM, Ex 6 - Zina Bash Ex 6 - Zina Bash wrote:
>>> Bruce, will the LPS meeting tomorrow afternoon be in room 2143? Many thanks.
>>> Sent from my iPhone
Thank you very much, Jean.

On Mon, Dec 19, 2016 at 11:50 AM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Zina and Ron: here is a chart showing ENRD staffing numbers with vacancies anticipated as of 1/21/17.

Jean E. Williams
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0228

CONFIDENTIALITY NOTICE: This communication may contain law enforcement sensitive, privileged attorney/client communications or work product, and is not subject to disclosure. It is solely for the use of the intended recipients. Unauthorized interception, review, use or disclosure is prohibited. If you believe that you have received this e-mail in error, please notify the sender immediately, and permanently delete the email, any attachments, and all copies from your computer.
Zina and Ron: here is a chart showing ENRD staffing numbers with vacancies anticipated as of 1/21/17.

Jean E. Williams
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0228

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<table>
<thead>
<tr>
<th>Section</th>
<th>Beginning of FY 2016</th>
<th>Beginning of FY 2017</th>
<th>EST. STAFFING AT 1/21/2017</th>
<th>EST. &quot;VACANCIES&quot; AT 1/21/2017</th>
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<tbody>
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<td>Atty</td>
<td>Total</td>
<td>Atty</td>
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<td>190</td>
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<td>Indian Resources</td>
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<td>ENRD TOTAL</td>
<td>637</td>
<td>451</td>
<td>628</td>
<td>446</td>
</tr>
</tbody>
</table>

1 Estimated staffing levels are based on known/formalized pending arrivals and departures (i.e., selections made, or resignations submitted) as of 12/15/2016.

2 "Vacancies" are defined as positions for which there is an active recruitment underway, as of 12/15/2016, but no selection made; or positions for which a selection has been made, but where the selectee is not expected to on-board until after 1/21/2017.

3 The 6 attorney/6 total "vacancies" in OAAG shown above reflect positions that will be vacated by non-career SES and Schedule C staff at the end of the Obama Administration -- 1 AAG (PAS); 1 PDAAG (NC SES); 2 DAAGs (NC SES); 1 Counsel/Chief of Staff (Sch C); 1 Counsel/Special Assistant (Sch C).
Judy my calendar says that the 1:30 is in 2333. But it's been moved, right? Sorry for the confusion!

Sent from my iPhone
President-Elect Transition Team/Land Acquisition Section Meeting  
Zina Gelman Bash, Esq. & Ronald J. Tenpas, Esq.  
December 7, 2016, 2PM

I. Overview of the Land Acquisition Section  
   a. Litigation/Affirmative Condemnation  
   b. Title Review & Counseling  
   c. Appraisal Review & Counseling  

II. National Security Docket (DHS/GSA)  
    a. Border Fence and Infrastructure  
    b. Land Ports of Entry  

III. Military Defense & Training Docket  
     a. Nevada Testing & Training Range/Nellis AFB (Air Force)  
     b. Twentynine Palms, CA (Marines/Navy)  
     c. Outlying Landing Fields, AL & SC (Marines/Navy)  
     d. Fort Irwin, CA & Fort Polk, LA (Army)  

IV. Natural Resources Docket  
    a. Everglades National Park & Modified Waters, FL (DOI/Corps)  
    b. Flood Control Projects, LA, NJ, TX (Corps)  

V. Energy Docket  
    a. Salt Dome, LA (SPR)  
    b. Transmission Lines (DOE/WAPA/SWPA/BPA)  

VI. Government Facilities Docket  
    a. Air Traffic Control (FAA)  
    b. Courthouses, Office Space, Security Buffer (GSA)  
    c. Hospitals, Cemeteries (VA)
1. Nevada Test & Training Range/Nellis AFB (Air Force) (property acquired is surrounded by federal land and provides an unobstructed view of highly sensitive military flight and open-air testing operations at the facility; expert reports are widely divergent with the United States at $333,000 and the landowners’ values ranging from $21.1 million to $2 billion)

2. Twentynine Palms Marine Corps Air Combat Center, CA (Marines/Navy) (project to acquire 42,000 acres of privately-owned desert land, mostly vacant but for a few iron mines, for expansion of training facility; two active cases with 20 to 25 more expected)

3. Salt Dome, LA (DOE/SPR) (condemnation of land, including an improved salt dome cavern having the capacity to hold ten million barrels of crude oil; expert reports are widely divergent with the United States at $17.9 million and the landowners’ values ranging to as high as $106 million)

4. AZ Towers (DHS/CBP) (four cases consolidated for trial, slated for March 13, 2017, of lands acquired to install and operate two surveillance towers, as well as access roads and associated structures, to secure the United States/Mexico border; United States’ combined value is less than $20,000 and the landowners collectively are seeking about $2.5 million)
LPS List of Issues/Matters for Transition Meetings

1. Overview of the Section

2. Litigation Work
   - Amicus practice
   - Other litigation

3. Legislative Work
   - LRM process
   - Oversight for Division
   - Examples of recent involvement –
     - Water rights settlement/Bishop letter process
     - Wildlife trafficking legislation
     - Animal welfare legislation

4. Policy related work
   - Assistance to front office on priorities –
     - Recent examples – RESTORE Council, ICWA, Wildlife Trafficking
   - Crime Victims project
   - Representation on interagency committees/groups
     - E.g., FAST Act workgroup, IUU/Wildlife Task Forces

5. International work
   - Capacity building – wildlife, timber, judicial
   - Interagency work on international agreements/legislation
   - Trade agreements

6. Miscellaneous responsibilities
   - Ethics/professional responsibility
   - FOIA
   - Correspondence
Environmental Defense Section
Agenda for Meeting with the President-Elect Transition Team
December 15, 2016

I. Section organization, leadership, jurisdiction.

II. Defense of regulatory programs

a. EPA – primarily petitions for review

Clean Water Rule. Murray Energy Corp. v. EPA (6th Cir.).
Ron Tenpas recused: Clean Power Plan. West Virginia v. EPA (D.C. Cir.).
Utility NSPS. North Dakota v. EPA (D.C. Cir.).
Ozone NAAQS. Murray Energy Corp. v. EPA (D.C. Cir.).

b. Corps of Engineers’ CWA permitting program


III. CERCLA -- defense of federal PRPs

Gold King Mine Litigation. State of New Mexico v. United States (D.N.M.); New Mexico v. Colorado (S. Ct.).
Abandoned Uranium Mines on the Navajo Nation.
Boeing Company multi-site CERCLA claims.
Lockheed-Martin (Great Neck)

IV. Defense of federal agencies as regulated parties


V. Mandatory duty suits

VI. Civil enforcement under CWA section 404
ENRD/ WILDLIFE AND MARINE RESOURCES SECTION
PETT Meeting Agenda – December 15, 2016

I. OVERVIEW/ QUICK FACTS

Managers: Seth M. Barsky, Chief/ Jay Govindan, Meredith Flax, Assistant Chiefs

Total Staff: 34 (3 attorney managers, 25 trial attorneys, 6 support staff (currently 1 vacancy)

Staff Location: Washington DC – 3 managers, 18 attorneys, 5 support / Denver – 6 attorneys, 1 support / Portland OR (1 attorney co-located in USAO)

Work type: 99% civil defensive litigation in federal District Court

Primary Statutes: Endangered Species Act, Magnuson-Stevens Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Bald & Golden Eagle Protection Act, Wild Horses Act, Animal Welfare Act (civil enforcement only)

Primary Client Agencies: DOI (FWS, BLM, BOR, BOEM) / DOC (NOAA) / DOD (Corps, Navy, Army) / USDA (USFS, APHIS) / EPA

II. SIGNIFICANT CASES, MATTER, PRACTICE AREAS

A. National Security / Navy Sonar

B. Water Project Cases

C. Cases Potentially Affecting Oil and Gas Development: ESA Listing and Critical Habitat Designation, Offshore Activities

D. ESA Section 4 Listing Deadline Litigation

E. Pacific Salmon Litigation

F. U.S. Forest Service Docket

G. Significant Cases Involving Alabama or Indiana
ENRD - EES: AGENDA FOR MEETING WITH TRANSITION TEAM (Dec. 16, 2016)

1. EES Work: (a) Scope, (b) Sources, (c) Major Categories, (d) Agency Role, (e) Targeting, (f) EES Role
2. Transition Team Requests:
   a. BPXP et al., a/k/a Deepwater Horizon / Macondo Well (MDL 2179, E.D. La.) - CWA & OPA
   b. East Chicago, IN Site (Asarco, N.D. Ind.) – CERLCA cleanup
   c. Enforcement Initiative or Other Cluster of Cases:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
<th>Some Current Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power Plants</td>
<td>CAA-NSR: coal-fired, electric generating units, NOx &amp; SO2 emissions</td>
<td>Ameren, DTE</td>
</tr>
<tr>
<td>Energy Extraction</td>
<td>CAA: under-designed collection systems release material into ambient air</td>
<td>Slawson</td>
</tr>
<tr>
<td>Petroleum Refining</td>
<td>CAA: emissions reductions, benzene control, LDAR, flaring control</td>
<td>Marathon</td>
</tr>
<tr>
<td>Municipal Sewer Systems</td>
<td>CWA: initial cases, amendments, settlement approaches varying with muni’s stage of work on pollution control or collection</td>
<td>Baltimore (MD), Evansville (IN), Gary (IN), King County (WA), St. Louis (MO)</td>
</tr>
<tr>
<td>RIN</td>
<td>CAA: policing market aspects of renewable fuels program</td>
<td>NGL Crude &amp; Western Dubuque</td>
</tr>
</tbody>
</table>

3. Cost Recovery, Clean Up, & NRD (CERCLA & OPA) (Remains well over one-third of the work of the Section; flows from EPA, Coast Guard, Trustee Agencies, Military Departments)
FACT SHEET
PROPOSED CONSENT DECREE WITH BP FOR THE DEEPWATER HORIZON/MACONDO WELL OIL SPILL

Background

On December 15, 2010 the United States sued BP Exploration and Production Inc. ("BP"), as well as other defendants, for civil penalties under the Clean Water Act and sought a declaration that BP was liable for natural resource damages and response costs under the Oil Pollution Act for this tragic oil spill.

Since 2010, the United States has litigated against BP, among other defendants. So far there have been three phases of trial. The Court has ruled on phases I and II, and we are currently awaiting a ruling on phase III, which would determine a penalty amount for BP.

BP, the United States, and the five Gulf states have agreed to a settlement resolving claims for federal civil penalties and natural resource damages related to the Deepwater Horizon BP Spill. This settlement is set forth in the proposed Consent Decree. The Department of Justice is seeking public comment on the proposed settlement.

Terms of Proposed Consent Decree

Penalty Amounts

BP must pay $5.5 billion, plus interest, as a civil penalty under the Clean Water Act. (CD Paragraphs 10-14).

Under the RESTORE Act, which Congress enacted in 2012 in response to the spill, 80 percent of the penalty is allocated for environmental restoration, economic recovery projects, and tourism and seafood promotion in the five Gulf states (Alabama, Florida, Louisiana, Mississippi, and Texas).

Allocation of the Gulf Coast Restoration Trust Fund

- 35% Equally Distributed to Gulf States
- 30%* Gulf Coast Ecosystem Restoration Council for Ecosystem Restoration
- 30% Impact Based Distribution
- 2.5%* Centers of Excellence
- 2.5%* NOAA RESTORE ACT Science Program

*Supplemented by interest generated by the Trust Fund (50% to Gulf Coast Ecosystem Restoration Council, 25% to Science Program, 25% to Centers of Excellence)

In accordance with the Oil Pollution Act, the remaining civil penalties will be paid to the Oil Spill Liability Trust Fund, which is used to support responses to oil spills.

Damages

BP must pay $8.1 billion in natural resource damages, including $1 billion BP previously committed to pay for early restoration projects. (CD Paragraphs 15-17 and 19).

The designated federal and state trustee agencies will use these funds to restore Gulf of Mexico natural resources injured in the spill.

The federal and state trustees have agreed in the Consent Decree to an allocation of the $8.1 billion among five different restoration goals and 13 restoration categories designed to meet these goals. These are outlined in Table 1 below. Most of the $8.1 billion is also allocated geographically across the five Gulf states.

In addition, BP will pay up to $700 million to address natural resource conditions that are presently unknown but may come to light in the future and to monitor, adapt, supplement or replace earlier restoration projects as needed. This is comprised of $232 million combined with the accrued interest on the $8.1 billion. (CD Paragraph 21).
Additional Payments

BP must pay $250 million to reimburse the U.S. for costs responding to the spill, lost royalties, and to resolve a False Claims Act investigation. (CD Paragraphs 22-24).

BP must also pay $350 million to the governments for natural resource damage assessment costs.

BP's payments are scheduled over 16 years. (See Sections IV-VI of the Decree).

Injunctive Relief

The criminal guilty plea that BP entered into regarding the Deepwater Horizon incident imposed a comprehensive set of measures to improve the company's drilling procedures, safety protocols, and corporate ethics. Additional measures were imposed in an Administrative Agreement with EPA to resolve potential suspension and debarment claims. As part of the Decree, BP acknowledges that it is in compliance with these requirements. BP will post reports documenting its progress on a publicly available website, to increase transparency so that the public can better understand its performance. (CD Paragraphs 34-38).

Compliance Assurance

The Consent Decree contains a number of terms to assure payment.

Guarantees. Although the Consent Decree is with BP Exploration & Production, Inc., the company that owned the Macondo Well, BP's American and British parent companies—BP Corporation North America Inc. and BP p.l.c.—are guaranteeing that all payments will be made. (CD Paragraph 32 and Appendices 8 and 9).

Acceleration. Should BP p.l.c. file bankruptcy, become insolvent, or change ownership, the governments can require BP to make all payments immediately. (CD Paragraphs 9, 30 and 31).

Stipulated Penalties. If BP fails to meet the deadline for any payment or fails to comply with injunctive relief, the governments may seek additional stipulated penalties as a sanction. (CD Paragraphs 44-45).

Tax Deductions

In compliance with federal tax law, BP may not take a tax deduction for any portion of the civil penalty. (CD Paragraph 14).

### SUMMARY OF PAYMENTS

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<th>Description</th>
<th>Amount</th>
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<tr>
<td>CWA Civil Penalty</td>
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</tr>
<tr>
<td>Natural Resource Damages</td>
<td>$7.1 billion</td>
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<tr>
<td>Early Restoration BP previously committed (partially paid.)</td>
<td>$1 billion</td>
</tr>
<tr>
<td>NRD Assessment Costs (States and U.S.)</td>
<td>$350 million</td>
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<tr>
<td>Unknown Injury and Adaptive Management</td>
<td>Up to $700 million</td>
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<tr>
<td>False Claims Act; Royalties on oil; Response and other costs</td>
<td>$250 million</td>
</tr>
<tr>
<td>State and Local Economic Claims (Separate Agreement)</td>
<td>Up to $5.9 billion</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$20.8 billion</strong></td>
</tr>
</tbody>
</table>

Related - Parallel State Agreement

In connection with the settlement described in the Consent Decree, BP also has reached a separate agreement with the Gulf states resolving economic damages claims of state and local governments.

Under this agreement, BP will pay $4.9 billion, in total, to the five Gulf states, and up to $1 billion to local governments that presented such claims.

The U.S. is not a party to these economic damages agreements. Therefore, the U.S. is not taking comment on these agreements. However, this Consent Decree is conditioned on the agreement with the Gulf states also becoming final. (CD Paragraph 75).

Public Comment

The Consent Decree was lodged with the Court on October 5, 2015. The governments encourage — and will accept — comments on the Decree on or before December 4, 2015.

After considering the comments, the governments will determine whether to seek Court approval of the Consent Decree.

To view the proposed Consent Decree and comment visit http://www.justice.gov/enrd/deepwater-horizon
## PROPOSED CONSENT DEGREE

### RESTORATION GOALS AND CATEGORIES

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<tr>
<th>Restoration Goals and Restoration Types</th>
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<th>Open Ocean</th>
<th>Restoration in Alabama</th>
<th>Restoration in Florida</th>
<th>Restoration in Louisiana</th>
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<td>1. Restore and Conserve Habitat</td>
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<tr>
<td>Wetlands, Coastal and Nearshore Habitats</td>
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<td>Habitat projects on Federally Managed Lands</td>
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<tr>
<td>Early Restoration (through phase IV)</td>
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<td>2. Restore Water Quality</td>
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<td>Nutrient reduction (nonpoint sources)</td>
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<tr>
<td>Water Quality (e.g., stormwater treatments, hydrologic restoration, reduction of sedimentation, etc.)</td>
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<td>3. Replenish and Protect Living Coastal and Marine Resources</td>
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<td>Sturgeon</td>
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<td>Sea Turtles</td>
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<td>Marine Mammals</td>
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<td></td>
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<td>50,000,000</td>
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<td>Birds</td>
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<td>70,400,000</td>
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<td>4. Provide and Enhance Recreational Opportunities</td>
<td>Early Restoration of Recreational Loss</td>
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<td>5. Monitoring, Adaptive Management, Administrative Oversight</td>
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<td>Adaptive Management NRD Payment for Unknown Conditions</td>
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**TOTAL NRD FUNDING**
- $700,000,000
- $349,851,676
- $1,240,697,916
- $295,589,305
- $680,152,643
- $5,000,000,000
- $295,557,000
- $238,151,458
- $8,800,000,000

To view the proposed Consent Decree and comment visit [http://www.justice.gov/enrd/deepwater-horizon](http://www.justice.gov/enrd/deepwater-horizon)
Environment and Natural Resources Division
Natural Resources Section
Organization Chart

Lisa L. Russell
Chief
202-305-0438

James D. Gette
Principal Deputy Chief
202-305-1461

Edward J. Passarelli
Deputy Chief
202-305-0468

Administration and Training
Assistant Chief Samantha Frank
202-305-0474

Litigation Team 1
Assistant Chief Scott Bauer, 202-514-4133
Fifth Amendment Takings; NEPA and other natural resources litigation involving the Department of Defense (except U.S. Army Corps of Engineers) and the Department of Transportation.

Litigation Team 5
Assistant Chief Guillermo Montero, 202-305-0443
NEPA, FLPMA, and other natural resources litigation involving Department of the Interior Public Lands (BLM) or Mineral Resources (BOEM, BSEE, OSM); Quiet Title Act litigation (Utah) and trespass.

Litigation Team 2
Assistant Chief Stacey Boshardt, 202-514-2912
NEPA, NFMA, and other natural resources litigation involving the Department of Agriculture; NEPA litigation involving Department of Homeland Security, DOI, and the U.S. Postal Service; Quiet Title Act litigation and trespass.

Litigation Team 3
Assistant Chief Stephen Bartell, 202-305-0234
Water rights adjudication and water allocation; NEPA and other natural resources litigation involving the Bureau of Reclamation, the National Park Service; and the Department of Energy; Quiet Title Act litigation (N.D.) and trespass.

Litigation Team 4
Assistant Chief Michael Thorp, 202-305-0456
NEPA and other natural resources litigation involving the U.S. Army Corps of Engineers; Renewable Energy Project litigation; NEPA and natural resources litigation involving the Bureau of Indian Affairs; Indian Trust litigation; Indian Gaming; NHPA and Cultural Resources litigation.

Litigation Team 6
Assistant Chief David Harrington, 202-305-0244
Fifth Amendment Takings; NEPA litigation involving the Fish and Wildlife Service and NOAA; National Wildlife Refuge System Administration Act; NEPA claims involving wild, free-roaming horses and other species.

August 12, 2016
Environment and Natural Resources Section
Natural Resources Section
Transition Team Briefing
December 16, 2016 -- Noon

I. Introductions

II. Natural Resources Section Overview
   A. Introduction to Subject Areas
   B. Litigation Team Structure
   C. How We Get Our Cases

III. Overview of Key Cases and Dockets

IV. Questions
Tri-State Water Wars: River Basins in Dispute

ACT Basin:
Alabama, Coosa, Tallapoosa Rivers

ACF Basin:
Apalachicola, Chattahoochee, Flint Rivers
Natural Resources Section  
Priority Transition Cases  
December 12, 2016

1. **Juliana v. United States** (D. Ore.). Plaintiffs sue several agencies seeking a declaratory judgment that fossil fuel combustion has endangered a stable global climate, as well as injunctive relief directing the preparation of a national remedial climate change plan.


3. **Energy Litigation**
   
a. **DOI Hydraulic Fracturing Regulations.** (10th Cir.) Currently on appeal is the District of Wyoming’s final judgment setting aside the Bureau of Land Management’s (“BLM”) Rule regulating hydraulic fracturing on Federal and Indian lands.

b. **DOI’s Methane Waste Preventing Rule.** In two cases in the District of Wyoming, states and industry groups challenge the Bureau of Land Management’s Methane Waste Prevention Rule (known as the “Venting and Flaring Rule”) as exceeding the Bureau’s authority.

c. **Coal Programmatic Environmental Impact Statement Litigation.** In **Kane County, Utah et al. v. Jewell** (D. Utah), Utah counties and a non-profit organization challenge Secretarial Order 3338, issued in January 2016, which imposed a moratorium on new leasing of federal coal for an indefinite time period to allow for preparation of a programmatic EIS on Interior’s federal coal program.

d. **Western Energy Alliance v. Jewell.** (D.N.M.). The Western Energy Alliance has filed suit alleging that BLM has failed to offer quarterly oil and gas lease sales as required by the Mineral Leasing Act (MLA).

4. **Sage Grouse Land Management Planning Litigation.** In September 2015, the U.S. Bureau of Land Management and the U.S. Forest Service approved multiple land use plan amendments and revisions covering lands across ten western states that are designed to protect the Greater Sage-Grouse and its habitat. States, energy interests, and environmental groups challenge the amendments in the District of Idaho, Nevada, North Dakota, Wyoming, and Utah as well as the District of Columbia.

5. **Kane County et al. v. Department of Interior, et al.** (D. Utah) (BLM Land Use Planning Rule). BLM published a new final rule on December 12 that amends existing land use planning regulations that establish the procedures BLM uses to prepare, revise, or amend land use plans under FLMPA. This rulemaking was procedural only and does not effectuate any substantive changes to existing land use plans. Six counties and a water conservation district have filed suit alleging BLM violated FLMPA, NEPA and the APA because it failed to coordinate with local government, undermined the effective coordination and plan consistency review, improperly relied upon a categorical exclusion, and failed to conduct an environmental review of the Department of Interior’s 2012 Climate Change Policy and 2014 Climate Change Adaptation Plan.


7. **Alabama-Coosa-Tallapoosa (“ACT”) River Basin Litigation.** There are currently four cases pending in two separate forums that challenge the Army Corps of Engineers’ revisions and reissuance of the Master Water Control Manual for the Alabama-Coosa-Tallapoosa (“ACT”) River Basin, located in Georgia and Alabama.
   a. **Georgia Challenges** (N.D. Ga.). The State of Georgia and the Atlanta Regional Commission and Cobb County-Marietta Water Authority (collectively “the Georgia Plaintiffs”) have challenged the ACT Master Manual in the Northern District of Georgia.

8. **Florida v. Georgia.** No. 142 Original (S. Ct.). This is an interstate action in which Florida seeks equitable apportionment of Apalachicola-Chattahoochee-Flint- River (“ACF Basin”) system. Florida is seeking to equitably apportion the water of the system, and limit or reduced consumption in Georgia.
9. **Fifth Amendment Takings Litigation.**

   a. **St. Bernard Parish v. United States** (Fed. Cir.). The United States is appealing an adverse judgment by the Court of Federal Claims (CFC) holding the United States liable for a temporary taking of business, residential, and local-government real property due to flooding during Hurricane Katrina that the CFC found was exacerbated by the Army Corps of Engineers’ construction, operation, and failure to maintain the Mississippi River-Gulf Outlet.

   b. **National Trails System Act Cases.** In 1983, Congress enacted the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act) which established the Rails-to-Trails program. NRS is presently defending dozens of cases involving some 10,000 parcels of property brought under the Fifth Amendment by landowners who allege that the “conversion” of these corridors from railroad use to trail use under the Trails Act results in a taking of their rights to regain unencumbered fee title to the lands within the corridor upon the cessation of rail service.

10. **Utah Statewide R.S. 2477 Quiet Title Litigation** (D. Utah). Starting in November 2011 and continuing through June 2012, Plaintiff State of Utah and various Utah counties filed 26 new cases seeking to quiet title to more than 12,000 alleged rights-of-way claimed under R.S. 2477.

11. **Tribal Trust Litigation.** The Natural Resources Section is defending claims brought by 27 federally recognized Indian tribes and groups of Indian individuals in federal district court in the District of Columbia and in Oklahoma and in the United States Court of Federal Claims (“CFC”). In these cases, the plaintiffs claim that the government has breached its trust duties.

12. **United States v. South Florida Water Management District.** (S.D. Fla.). The parties continue to implement a consent decree entered in 1992 with the Florida Department of Environmental Protection (“FDEP”) and the South Florida Water Management District concerning phosphorus pollution from agricultural runoff in the Everglades.

13. **Forest Service Litigation.** NRS is defending dozens of challenges to Forest Service decisions relating to timber sales, travel management, and grazing.
CASE LIST FOR THE INDIAN RESOURCES SECTION

(1) Defensive Litigation

(a) Challenges to Acquisition of Trust Land—*Capay Valley Coalition v. Jewell* (2:15-CV-0274-MCE-KJN) (E.D. Cal.)

Description:
This is a challenge to the acquisition in trust for the Yocha Dehe Wintun Nation of 853 acres of land within the Nation’s ancestral territory in California. The proposed use is for agriculture, tribal housing, educational facilities, and a waste water treatment facility. This case, unlike many recent trust acquisition suits, does not raise a claim based on the recent Supreme Court decision in *Carcieri v. Salazar*, 555 U.S. 379 (2009). In *Carcieri*, the Supreme Court—interpreting the Indian Reorganization Act (IRA)—concluded that the Secretary’s authority to acquire land in trust was limited to those tribes that were “under Federal jurisdiction” in 1934, when the IRA was enacted.

Case Status and Upcoming Deadlines:
Briefing has concluded on cross-motions for summary judgment and the Court has said that it will decide the case on the briefs.

None of the identified entities are involved in the cases.

(b) Challenges to Agency Regulations/Guidance—*A.D. v. Washburn* (2:15-cv-01259-NVW) (D. Ariz.)

Description:

Case Status and Upcoming Deadlines:
The federal defendants’ motions to dismiss have been pending before the court since May 20, 2016. The intervening tribes’ (Navajo Nation and Gila River Indian Community) motions to dismiss were completed on November 21, 2016. There are no upcoming deadlines.

None of the identified entities are involved in the litigation.

(2) Water Rights Litigation

(a) Active Litigation
- *In Re: General Adjudication of Water Rights in the Coeur d’Alene River*, Civ. No. 49576 (Dist. Ct., Twin Falls County, Idaho)
Description:

Water rights adjudication involving federal reserved water rights claims for the benefit of the Coeur d’Alene Tribe in Northern Idaho. The parties are currently briefing the issue of whether the Coeur d’Alene Tribe is entitled to federal reserved water rights, and if so, for what uses.

Case Status and Upcoming Deadlines:

Summary judgment briefs were filed in October 2016. **Response Briefs are due February 16, 2017; Reply Briefs are due March 13, 2017.** Oral argument is scheduled for March 23, 2017.

None of the identified entities are involved in the cases.

- **In Re: The General Adjudication of All Rights of Water Use in the Little Colorado River System and Source,** Civ. No. 6417 (Ariz. Sup. Ct.)

Description:

Water rights adjudication involving claims for the benefit of the Navajo Nation and Hopi Tribe. Litigation of the Hopi claims will commence in 2017. Technical work to update claims on behalf of the Navajo Nation is also underway.

Case Status and Upcoming Deadlines:

The United States and Hopi Tribe will disclose multiple expert reports on January 23, 2017, in support of the past and present water rights for the Hopi Reservation. Expert reports in support of future claims for the Hopi Reservation are due on March 6, 2017. The schedule to update the claims on behalf of the Navajo Nation is expected soon.

None of the identified entities are involved in the cases.


Description:

This is a general stream adjudication of the Rio Jemez watershed in northern New Mexico.

Case Status and Upcoming Deadlines:

On December 16, 2016, the State of New Mexico and Jemez River Water Users must file responses to the United States’ Objections to the Magistrate Judge’s Proposed Findings and Recommended Disposition denying the U.S. claims to aboriginal water rights. **The United States’ reply is due January 13, 2017.**

(b) Tribal Water Rights Settlements — The House and Senate recently passed the Water Infrastructure Improvements for the Nation Act (WINN Act), which is the conference
version of the Water Resources Development Act (WRDA). The WINN Act ratified four tribal water rights settlements—Pechanga Band of Luiseno Mission Indians (Southern CA), Blackfeet (MT), Chickasaw-Choctaw Nations (OK), and San Luis Rey Bands (Southern CA). Several of these settlements are the product of decades of negotiations with tribes and states.

Upcoming Tasks—With Pechanga, Blackfeet, and Chickasaw-Choctaw, we will work with Interior to review whether the settlement agreements are consistent with the legislation. If not, we will negotiate with the parties regarding changes to the agreements. The Pechanga and Chickasaw-Choctaw settlement agreements will then be signed by the Interior Secretary. The Blackfeet settlement must be approved by the Tribe before the Secretary signs the settlement. After the Secretary’s signing, the parties will then move to enter the settlements in the relevant court adjudicating the water rights. Objectors will be given an opportunity to oppose the entry of settlement.

With regard to San Luis Rey, the settlement agreement has already been signed by all parties. **As soon as President Obama signs the WIIN Act, we plan to move the Southern District of California to enter the settlement and dismiss a suit that has been pending since the 1960s.**

None of the identified entities are involved in these cases.

(3) Affirmative Litigation

- **Tulalip Tribes v. State of Washington** (2:15-cv-00940-BJR) (W.D. Wash.)

**Description:**

Intervention by the United States in litigation challenging state and local taxation of businesses operating on leased tribal trust lands within the Tulalip Tribes’ Reservation in western Washington. The context presented in this case is unique; the Tribe has chartered a municipality that was financed, built by the Tribe, with assistance by the U.S., and the municipality is governed by the Tribe.

**Case Status and Upcoming Deadlines:**

Discovery is ongoing and consists almost entirely of documents and information about the development and construction of Quil Ceda Village, as well as the relevant governmental services provided within the Village by tribal, federal, state, and county governments. Discovery must be completed by the end of February 2017. **The parties are in the process of scheduling a total of 32 depositions to occur in January and February 2017. In addition, expert reports are due March 17, 2017.** Pending before the court are Defendants’ Motion for Summary Judgment and our Motion regarding the relevant scope of governmental services to be considered.

None of the identified entities are involved in the litigation.
Non-Responsive

From: Cruden, John (ENRD)
Sent: Thursday, December 15, 2016 4:30 PM
To: Tenpas, Ronald J. <ronald.tenpas@morganlewis.com>
Subject: FW: Updated Budget and Staffing Tables

Ron – hope all is well. When we met, you asked me for our best guess as to staffing levels and budget for 2017. Here is the information.

Let me know if you need anything else.

And, ENRD just received its Best Place rankings today. We were #1 in DoJ and #2 out of 300 in the federal government.

Best

John
### U.S. Department of Justice
### ENVIRONMENT AND NATURAL RESOURCES DIVISION
### ANTICIPATED FY 2017 Congressional Appropriation and Superfund Reimbursement

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<th>FY 2017</th>
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<td>Superfund Reimbursement from EPA</td>
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<td><strong>$130,657,000</strong></td>
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1. ENRD currently estimates that Superfund funding will decrease in FY 2017 at a rate similar to the decrease experienced in FY 2016 (6%).

2. ENRD also receives some money from DOJ for case-specific activities, and from client agencies for case-specific support. Additionally, ENRD receives a portion of the Department's Fees and Expenses of Witnesses (FEW) appropriation. These amounts vary considerably.
### U.S. Department of Justice

#### ENVIRONMENT AND NATURAL RESOURCES DIVISION

**ANTICIPATED Staffing Levels at January 21, 2017**

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<th>Section</th>
<th>Beginning of FY 2016</th>
<th>Beginning of FY 2017</th>
<th>ESTIMATED 1/21/2017</th>
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<td><strong>628</strong></td>
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1. Estimated staffing levels are based on known/formalized pending arrivals and departures (i.e., selections made, or resignations submitted) as of 12/1/2016.

2. The 5 attorney/5 total "vacancies" in OAAG shown above reflect positions that will be vacated by non-career SES and Schedule C staff at the end of the Obama Administration -- 1 AAG (PAS); 1 PDAAG (NC SES); 2 DAAGs (NC SES); 1 Counsel/Special Assistant (Sch C).
Ron, Zina,

Per your request for case lists, attached is an Excel document with two charts: 1) a list of significant ENRD filings and activity between December 1 and January 20; and 2) a list of significant ENRD filings and activity between January 20 and March 31. Filings for the Appellate Section were provided on a separate list; these two charts address the remaining ENRD sections. You can go back and forth between the two charts by clicking on the tabs at the bottom of the worksheet.

Let us know if you have any questions.

Thanks,
Judy

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932
Thank you Judy.

Ron
On Mon, Jan 9, 2017 at 5:19 PM Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Ron, Zina,

Per your request for case lists, attached is an Excel document with two charts: 1) a list of significant ENRD filings and activity between December 1 and January 20; and 2) a list of significant ENRD filings and activity between January 20 and March 31. Filings for the Appellate Section were provided on a separate list; these two charts address the remaining ENRD sections. You can go back and forth between the two charts by clicking on the tabs at the bottom of the worksheet.
Let us know if you have any questions.

Thanks,

Judy

U.S. Department of Justice

Environment and Natural Resources Division

Law and Policy Section

(202) 514-3932
Tom and Ron, attached are revised charts of matters pre and post January 20 with only public information. We will discuss the highlighted items on Monday, plus a few additional matters.

In other business, Tom, if you are at Main DOJ this coming Tuesday, would you like to stop by ENRD to say hello in late afternoon? (Bruce and I are tied up most of the day till then.) If so just drop me an email or call when you are headed our way. You can't miss us. Head for the 2100 corridor and look for the stuffed bear. No kidding! 2023050228 is my direct line.

And, I'd like to invite you to our Monday morning meeting on January 23rd. We meet at 10am every Monday with all our section Chiefs in the AAG conference room, 2143. If you have the time, this would be a good occasion to meet the section leaders.

Looking forward to speaking on Monday. Should you need to reach me before then just send me an email. I'm in town all weekend.

Jean
Ok. Thanks for letting us know.

Sent from my iPhone

On Jan 16, 2017, at 9:00 AM, Ronald Tenpas <ronald.j.tenpas@ptt.gov> wrote:

Jean/Bruce,

Apologies but we need to cancel today's call. We'll let you know about a rebooking. Have a good holiday.

Ron

On Sat, Jan 14, 2017 at 9:07 AM Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Tom and Ron, attached are revised charts of matters pre and post January 20 with only public information. We will discuss the highlighted items on Monday, plus a few additional matters.

In other business, Tom, if you are at Main DOJ this coming Tuesday, would you like to stop by ENRD to say hello in late afternoon?(Bruce and I are tied up most of the day till then.) If so just drop me an email or call when you are headed our way. You can't miss us. Head for the 2100 corridor and look for the stuffed bear. No kidding!

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Looking forward to speaking on Monday. Should you need to reach me before then just send me an email. I'm in town all weekend.

Jean
Ron and Zina,

Attached please find another batch of briefing papers. These will complete the initial materials you requested, with the exception of the list of task forces/workgroups, which is currently being revised to reflect additional information you asked for during the LPS meeting. Additional information requested during your meetings with Land Acquisition and LPS will follow once complete.

Thanks,
Judy

From: Harvey, Judy (ENRD)
Sent: Tuesday, December 13, 2016 1:58 PM
To: 'Zina Gelman Bash' <Ex 6 - Zina Bash> <ronald.tenpas@morganlewis.com>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; Gelber, Bruce (ENRD) <BGELBER@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>
Subject: RE: ENRD Meeting Requests

Ron and Zina,

Please see attached for three of the initial briefing papers you requested (US v. BPXP, US v. Volkswagen, and border fence/port of entry cases).

Additional papers will follow when completed.

Thanks,
Judy

From: Harvey, Judy (ENRD)
Sent: Tuesday, December 13, 2016 10:01 AM
To: Zina Gelman Bash <Ex 6 - Zina Bash>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGELBER@enrd.usdoj.gov>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>
Subject: RE: ENRD Meeting Requests

All,

I just sent out calendar invites for the meetings this week, but so that you can have all the information in one place, here it is:

Thursday, 12/15
9:30am – Meeting with Wildlife & Marine Resources Section (RFK 2333)
11:30am – Meeting with Environmental Defense Section (RFK 2333)
Friday, 12/16
10:30am – Meeting with Environmental Enforcement Section (Location TBD)
Noon – Meeting with Natural Resources Section (RFK 2333)
1:30pm – Meeting with Indian Resources Section (RFK 2333)

Thanks,
Judy

From: Zina Gelman Bash
Sent: Monday, December 12, 2016 2:35 PM
To: Harvey, Judy (ENRD) <JHarvey@ENRD.USDOJ.GOV>
Cc: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>; ronald.tenpas@morganlewis.com; Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinsk@ENRD.USDOJ.GOV>
Subject: Re: ENRD Meeting Requests

Judy, we are available at that time. Thank you.

On Mon, Dec 12, 2016 at 1:40 PM, Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:
Zina and Ron—

Are you available to start a meeting at 9:30am on Thursday 12/15?

Thanks,
Judy

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932

Begin forwarded message:

From: <Ex 6 - Zina Bash>
Date: December 11, 2016 at 10:19:07 PM EST
To: "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov>
Cc: "Gelber, Bruce (ENRD)" <Bruce.Gelber@usdoj.gov>, "Tenpas, Ronald J." <ronald.tenpas@morganlewis.com>
Subject: Re: ENRD Meeting Requests

Correct. Thank you!

Sent from my iPhone

On Dec 11, 2016, at 10:10 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Zina, I'm sure we can make this happen. To be clear, you are available anytime (let's say starting at 10) on Thursday and Friday as long as the meetings end at 4?

Sent from my iPhone

On Dec 11, 2016, at 9:39 PM, Zina Gelman Bash <Ex 6 - Zina Bash> wrote:

Jean and Bruce,
Would it be possible to schedule one-hour meetings this week on Thursday or Friday before 4:00pm with each of the following Sections:
1. Defense,
2. EES
3. NRS
4. Indian Resources
5. Wildlife
Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.
Zina
DEPARTMENT OF JUSTICE – LAW AND POLICY AND
ENVIRONMENTAL CRIMES SECTIONS

INTERNATIONAL TRAVEL IN INITIAL WEEKS OF NEW ADMINISTRATION

Summary: Attorneys working for the Environment and Natural Resources Division (ENRD) engage in international travel to support fundamental Division objectives. (We have prepared a separate transition memo describing ENRD’s international work.)

Deadlines/Relevant Dates: ENRD attorneys have commitments to engage in international travel for the following meetings and training programs in January and February, 2017:

1. From January 23-27, 2017, Deborah Harris and Joe Poux of the ENRD’s Environmental Crimes Section (ECS) will travel to Brussels, Belgium, for INTERPOL’s Environmental Compliance and Enforcement Committee Advisory Board meeting. Ms. Harris will travel in her capacity as a board member; Mr. Poux in his capacity as the head of INTERPOL’s Pollution Crimes Working Group. The purpose of the meeting is to plan the bi-annual meeting of member nations held in November 2017. Travel for Ms. Harris will be funded by the State Department’s Bureau of Oceans and Environmental and Scientific Affairs (State/OES) through an Inter-Agency Agreement (IAA) with ENRD on timber issues. Mr. Poux’s travel will be covered by ENRD.

2. From February 13-17, 2017, four ECS and LPS attorneys will travel to Togo, to conduct a follow-up workshop on combatting international illegal wildlife trafficking for prosecutors and magistrates from Togo, Ghana, Nigeria, Republic of Congo, and Gabon. In June, 2016 ENRD provided the first part of this training, which focused on practical evidentiary and advocacy skills. A second follow-up session was planned to work with initial participants on site-specific cases and more in-depth training on certain issues. All costs for this workshop will be paid from funds provided by the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (State/INL) under an Inter-Agency Agreement (IAA) with ENRD on wildlife issues.

3. From February 27 to March 3, 2017, an ECS attorney will travel to Kathmandu, Nepal, as an instructor at a workshop on international illegal wildlife trafficking, focusing on the trade of Bengal Tigers. The workshop attendees will be Nepalese judges and prosecutors. The workshop is being organized by the Resident Legal Adviser in the American Embassy in Kathmandu and funded by the DOJ’s Office of Overseas Prosecutorial Development, Assistance, and Training.

4. In late February, 2017, an LPS attorney will attend the meeting of the Asia Pacific Economic Cooperation forum (APEC) Experts Group on Illegal Logging and Associated Trade, in Nha Trang City, Vietnam. The LPS attorney has represented the United States at these APEC meetings for several years. The trip will be paid by State/OES under the IAA.

Action Required: The Assistant Attorney General of ENRD must approve international travel by ENRD personnel before the commencement of travel.
WILDLIFE TRAFFICKING TASK FORCE

Summary: The Department of Justice is one of three co-chairs of the Presidential Task Force on Wildlife Trafficking, which was established in 2013 in light of a worsening wildlife trafficking epidemic that posed both conservation and security concerns. The Division is DOJ’s representative on the Task Force. The Task Force developed and is implementing a National Strategy for Combating Wildlife Trafficking (“Strategy”), and has additional statutory authority and responsibilities set out in the recently enacted Eliminate, Neutralize, and Disrupt Wildlife Trafficking Act of 2016 (“END WT Act”).

Deadlines: The only formal deadlines are reporting requirements in the END WT Act: on October 6, 2017, and annually thereafter, the Task Force must submit to Congress a strategic assessment of its work; 90 days after the State Department issues a list of focus countries (due by October 6, 2017, and annually thereafter), the Task Force must issue a mission assessment for each; 180 days later, it must issue a strategic plan for each.

Action Required: No immediate action is required by the front office. The Assistant Attorney General ordinarily co-chairs the principal-level meetings of the Task Force, which are held twice a year, and participates in high-level international meetings.

Background: Wildlife trafficking has grown to crisis proportions, with a surge in recent years fueled in part by increasing wealth and concomitant demand in Asia and exacerbated by growing involvement of sophisticated transnational criminal networks. Estimates of the illegal wildlife trade range from $7-23 billion per year. This has devastating effects on the targeted species, threatening the extinction of iconic species like elephants and tigers as well as lesser-known species like pangolin and totoaba. It also destabilizes the countries involved, hinders economic development, fuels corruption and armed conflict (especially in Africa) and undermines the rule of law.

In response, President Obama issued Executive Order 13648 on Combating Wildlife Trafficking (July 1, 2013) (“EO”). The EO established a new, whole-of-government approach to tackling wildlife trafficking, creating a Task Force co-chaired by the Departments of Justice, State, and the Interior with representation from 14 additional federal departments and agencies, including the Departments of Defense, Commerce, Homeland Security, Treasury, and Agriculture, as well as USAID and the Office of the Director of National Intelligence. The Task Force developed the Strategy, issued in February 2014, as well as a detailed Implementation Plan, issued in February 2015.

The Division’s primary role in stopping wildlife trafficking is prosecuting traffickers. ENRD also works with other Task Force agencies to increase both domestic and global capacity to fight wildlife trafficking, including through an ongoing series of regional workshops for judges and prosecutors in Africa, scheduled to conclude in February 2017. ENRD also co-chairs an intelligence working group that the Task Force is establishing.

This past September, the General Accountability Office (GAO) issued a report praising federal efforts to combat wildlife trafficking in Africa, but noting a lack of performance targets for
assessing progress. The Task Force is addressing this by reviewing metrics and updating the implementation plan. GAO is now reviewing anti-trafficking efforts in Asia.
DEP'T OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
INDIAN RESOURCES SECTION

TULALIP TRIBES v. STATE OF WASHINGTON (W.D. Wash.)

Summary: The United States intervened in this litigation concerning state and local taxation of businesses operating on leased trust lands on the Tulalip Tribes’ Reservation, and within a tribally chartered municipality financed, built, and managed by the Tribe and the federal government. This action is to be decided under the “preemption” balancing test set forth in White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980), which has long-governed the validity of state and local taxes on reservations.

Background: The Tulalip Reservation is located in Snohomish County, Washington, 35 miles north of Seattle. Tulalip chartered its own municipality, the Consolidated Borough of Quil Ceda Village, on federal trust land within its Reservation adjacent to Interstate 5. The municipality was established pursuant to a federally-approved tribal ordinance and is governed by a Village Charter, a Village Council, and other federally-approved tribal ordinances. In 2001, the Village received approval from the United States to be treated as a political subdivision of the Tribe for certain tax purposes after review by the IRS and the Department of the Interior pursuant to federal statute. Tulalip is the only federally recognized tribe to date to have created its own municipality to promote economic activity.

The Tribe and the federal government worked in concert to develop the Village as a source of tribal economic development. With direct financial support and other assistance from the federal government, Tulalip built the infrastructure necessary to support an economic center at Quil Ceda Village. In addition, the Tribe and federal government exclusively provide all governmental services to the business tenants and visitors at the Village.

The State and County neither contributed to the development of Quil Ceda Village, nor do they provide significant governmental services at the Village. The State and County, however, impose over $40 million annually in sales, property, and business and occupation taxes on the businesses leasing trust lands at the Village. Even though Tulalip has its own applicable tribal tax laws, if the Tribe were to impose its own taxes it would drive away business investments due to double taxation.

Deadlines: Discovery is ongoing and consists almost entirely of documents and information about the development and construction of Quil Ceda Village, as well as the relevant governmental services provided within the Village by tribal, federal, state, and county governments. Discovery must be completed by the end of February. The parties are in the process of scheduling a total of 32 depositions to occur in January and February 2017. In addition, expert reports are due March 17, 2017; rebuttal reports are due April 28, 2017; and the deadline for expert related discovery is May 18, 2017.

Action Required: Over the next six months, we anticipate engaging in fact and expert witness discovery. We are also currently awaiting two decisions from the court: a ruling on Defendants
motion for summary judgment; and a ruling on the parties’ arguments regarding the relevant scope of government services to be considered under a Bracker analysis.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAW AND POLICY/ENVIRONMENTAL CRIMES SECTIONS

ENVIRONMENT DIVISION INTERNATIONAL ACTIVITIES

Summary: The Environment and Natural Resources Division implements a robust and diverse program of international activities to support fundamental Division objectives. First and foremost, the Division prosecutes environmental and natural resource crimes that involve foreign evidence regarding transnational movement of illegal goods, foreign targets, cooperation with foreign law enforcement officials, or that include a violation of underlying foreign law as a predicate offense. Division attorneys also train foreign law enforcement counterparts to be more effective enforcement partners, assist in the negotiation and implementation of trade and other international environmental agreements, and engage in other international activities to advance the Administration’s and the Division’s law enforcement priorities.

Deadlines: There are no deadlines for action in the near future related to the Division’s international work.

Action Required: No action is currently required with respect to the Division’s international work. However, before Division attorneys may engage in international travel, they are required to obtain the approval of the Assistant Attorney General.

Background: The Environment Division is involved in international matters in the following ways:

(1) Prosecution of Cases: Attorneys from the Environmental Crimes Section (ECS) prosecute environmental and natural resource crimes involving predicate acts and/or evidence located in other countries. For example, the Lacey Act, 16 U.S.C. § 3371-3378, prohibits importation of or trade in fish, wildlife, or plants taken in violation of the laws of a foreign country. ECS attorneys have in recent years prosecuted many cases involving trade in illegal wildlife parts such as rhinoceros horn and elephant ivory. Evidence of such crimes is found both in the country where the illegal hunt occurred and in the United States where the federal violation occurred. ECS also prosecutes cases involving ships that enter U.S. ports that conceal their illegal discharge of waste oil at sea in violation of the Act to Prevent Pollution from Ships, 33 U.S.C. § 1905-1915. Evidence, particularly witness testimony, may have to be obtained in the country where sea-faring witnesses reside.

(2) Capacity Building: With funding from the Department of State, other federal agencies, and international organizations, Division attorneys, primarily from ECS and the Law and Policy Section (LPS), train law enforcement counterparts in other countries to build their capacity for effective environmental enforcement. By sharing our expertise on environmental law enforcement with foreign counterparts, Division attorneys build relationships with important partners that support domestic prosecutions of transnational crimes in the United States. In recent years, Division attorneys have organized and implemented training programs each year for law enforcement officials in South and Central America, Africa, and Asia, and participated as instructors at training programs organized by other law enforcement partners.
(3) The Development of International Agreements and Implementing Legislation: LPS and ECS attorneys participate in the interagency processes for development and implementation of trade and investment agreements, international environmental agreements, and domestic implementing legislation, primarily to protect and promote effective environmental enforcement. Recent examples involve interagency review of the Port State Agreement implementing legislation (to reflect international commitments related to addressing international fisheries issues) and of revisions to the Montreal Protocol to address ozone depleting substances. LPS represents the Division in certain international groups such as the enforcement working group established through the Commission for Environmental Cooperation (CEC) among Canada, the U.S. and Mexico. We are also called upon to provide support to the State Department on litigation-related to treaty compliance or arbitration claims under NAFTA and CAFTA, and have provided significant expertise in the negotiation and implementation of environment and investment chapters of trade agreements. Under the Trade Act of 2002, free trade agreements must contain provisions that call on the parties to maintain high levels of environmental protection. Trade agreements may also establish arbitral remedies for foreign investors in the United States, but must comply with Congressional directives that such investors have “no greater rights” than domestic individuals and businesses do in U.S. courts.

(4) International Environmental Policy Matters and Law Enforcement Partnerships: Division attorneys from ECS and LPS participate in a number of international organizations or meetings that advance the Division’s environmental enforcement goals. For example, ECS Chief Deborah Harris was elected to serve on INTERPOL’s Environmental Compliance and Enforcement Committee Advisory Board and ECS attorneys participate in INTERPOL’s Wildlife Crimes and Pollution Crimes Working Groups. Division attorneys and front office personnel also represent the United States in a variety of international meetings related to our work on transnational environmental and natural resources law enforcement. For example, in recent years the Assistant Attorney General served as the U.S. head of delegation to international conferences on combating wildlife trafficking. Division attorneys have also been asked to participate (most often with State Department funding) in the U.S. delegation to international meetings relating to efforts to combat wildlife trafficking and illegal logging, such as the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Asia Pacific Economic Cooperation (APEC) Experts Group on Illegal Logging and Associated Trade, and the U.S.-China Strategic and Economic Dialogue.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION
LAW AND POLICY SECTION

CONGRESSIONAL REPORTING REQUIREMENTS

Summary: The Division is subject to certain Congressional reporting requirements, either by virtue of express requirements or as a matter of practice. The following is a summary of those requirements and applicable deadlines.

Deadlines: (1) The quarterly settlement report is submitted to the Office of the Associate Attorney General and is typically submitted shortly after the end of the calendar quarter; (2) a Wildlife Trafficking Task Force “Strategic Review” report is due October 6, 2017, and (3) “Bishop letters” are submitted when Congress considers new Indian water rights settlements.

Action Required: The substance of the required reports is described below.

Background: The following reporting requirements apply to the Division:

(1) Quarterly Settlement Reporting. Under section 202 of Pub. L. No. 107-273, the 21st Century Department of Justice Appropriations Authorization Act (2002), 28 U.S.C. 530D, the Department reports to Congress on a quarterly basis certain settlement agreements falling into two categories: (1) settlements in cases brought by a plaintiff against the United States where the settlement exceeds or is likely to exceed $2 million, excluding pre-judgment interest; and (2) settlements in cases in which the United States obtained an injunction or other non-monetary relief that exceeds or is likely to exceed three years’ duration. Each quarter, ENRD submits a memorandum describing its qualifying agreements, along with copies of the agreements, to the Associate’s Office, where submissions from various components are consolidated.

(2) Wildlife Trafficking Reporting. The Department is a co-chair of the Task Force on Wildlife Trafficking (“TF”) and in 2015 and 2016 submitted reports to Congress on its efforts to combat wildlife trafficking and implement the National Strategy. These reports satisfied requests for such reporting contained in report language to DOJ’s appropriations bills. Report language to this year’s Senate Appropriations Committee mark-up of the Commerce, Justice, Science, and Related Agencies Appropriations Act, requires the Department to continue such reporting, but Congress has not taken further action on the DOJ appropriations bills. Additionally, under the newly enacted Eliminate, Neutralize, and Disrupt (“END”) Wildlife Trafficking Act of 2016, the TF, of which DOJ is a co-chair, is required to submit three types of reports. Two of those reports are a “mission assessment” and a “mission strategic plan” with respect to “focus countries” identified by the State Department, which arguably will be submitted principally, if not solely, by State. But beginning on October 6, 2017, and annually thereafter, the full Task Force is required to submit to Congress a “Task Force Strategic Review,” which must contain an assessment of the TF’s implementation of the END Act, its annual priorities and objectives, and an accounting of total U.S. funding.

(3) Indian Water Rights Settlements: “Bishop” Letter Requirement. The Division works with the Department of the Interior to assert water rights claims for the benefit of Indian tribes, and both agencies typically seek to resolve such claims through negotiated settlements rather than the
protracted litigation otherwise required. Indian water rights claims generally involve assertion of “federally reserved” water rights associated with lands set aside for Tribes. Settlement of such claims generally requires authorizing legislation, since Indian water rights, like other Indian real property, are held in trust by the United States and, under the Indian Trade and Intercourse Act, 25 USC 177, may not be alienated without approval by Congress. In 1990, the first Bush Administration published the Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims, 55 Fed. Reg. 9223 (March 12, 1990), which provides a general framework for assessing these settlements. On February 26, 2015, House Natural Resource Committee Chair Rob Bishop sent a letter to DOJ and DOI stating that the Committee would not consider any new Indian water rights settlements unless both DOJ and DOI provided a letter supporting and conveying the settlement and the implementing legislation, as well as affirming that the settlement adheres to the Criteria and Procedures. The Departments responded, indicating we would do our best to accommodate the Committee’s requests. Although this letter does not create a legally binding obligation, we have worked with Interior and OMB to provide the requested letters of support on newly introduced water rights settlements that the Administration supports. This currently includes water rights settlements involving the San Luis Rey bands, Blackfeet Tribe, Pechanga Band of Luiseno Mission Indians, and, most recently, the Chickasaw Nation and Choctaw Nation of Oklahoma.
Ronald Tenpas
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW | Washington DC 20004
ronald.tenpas@morganlewis.com | www.morganlewis.com
Assistant: Linda J. Ramsburg | +1.202.739.5241 | linda.ramsburg@morganlewis.com

From: Cruden, John (ENRD) [mailto:John.Cruden@usdoj.gov]
Sent: Thursday, December 15, 2016 04:29 PM Eastern Standard Time
To: Tenpas, Ronald J.
Subject: FW: Updated Budget and Staffing Tables

Ron — hope all is well. When we met, you asked me for our best guess as to staffing levels and budget for 2017. Here is the information.

Let me know if you need anything else.

And, ENRD just received its Best Place rankings today. We were #1 in DoJ and #2 out of 300 in the federal government.

Best

John

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### Funding Type

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1 ENRD currently estimates that Superfund funding will decrease in FY 2017 at a rate similar to the decrease experienced in FY 2016 (6%).

2 ENRD also receives some money from DOJ for case-specific activities, and from client agencies for case-specific support. Additionally, ENRD receives a portion of the Department’s Fees and Expenses of Witnesses (FEW) appropriation. These amounts vary considerably.
## U.S. Department of Justice

### ENVIRONMENT AND NATURAL RESOURCES DIVISION

**ANTICIPATED Staffing Levels at January 21, 2017**

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1. Estimated staffing levels are based on known/formalized pending arrivals and departures (i.e., selections made, or resignations submitted) as of 12/1/2016.

2. The 5 attorney/5 total "vacancies" in OAAG shown above reflect positions that will be vacated by non-career SES and Schedule C staff at the end of the Obama Administration -- 1 AAG (PAS); 1 PDAAG (NC SES); 2 DAAGs (NC SES); 1 Counsel/Special Assistant (Sch C).
Thank you very much, Jean.

On Mon, Dec 19, 2016 at 11:50 AM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Zina and Ron: here is a chart showing ENRD staffing numbers with vacancies anticipated as of 1/21/17.

Jean E. Williams
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0228

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Ron and Zina,

In response to your previous requests, please find attached the following documents:

- Briefing on Clean Water Rule litigation (and spreadsheets reflecting status of (1) district court cases and (2) petitions for review)
  - List of interagency workgroups that ENRD participates in
  - Memo on significant appellate matters

Thanks,
Judy

U.S. Department of Justice
Environment and Natural Resources Division
Law and Policy Section
(202) 514-3932
December 20, 2016

MEMORANDUM

To:       Karen Wardzinski  
           Chief, Law & Policy Section  

From:     Jim Kilbourne  
           Chief, Appellate Section  

Re:       Significant Appellate Section cases for the new Administration

I. Court of Appeals Matters

A. Pending Recommendations to the SG

Murray Energy v. EPA (4th Cir.). In this citizen suit, coal companies allege that EPA failed to perform a nondiscretionary duty under Section 321(a) of the Clean Air Act to conduct “continuing evaluations” of the Act’s employment effects. The district court issued an adverse ruling on summary judgment on October 17, 2016, and requested further briefing on remedy, which concluded on November 14, 2016. The court held a status conference regarding remedy on December 15, 2016. We filed a protective notice of appeal from the summary-judgment order on December 16, 2016.

B. Significant Court of Appeals Briefs due December 19, 2016-February 28, 2017¹

Universal Welding & Fabrication, Inc. v. United States Army Corps of Engineers (9th Cir.). Our answering brief as appellee is was filed on December 19, 2016. Plaintiff applied for and was granted a permit to fill approximately 14-acres of wetlands on its property in order to expand its operations. Plaintiff, however, disliked some of the conditions on the permit, so it declined to accept the permit, and instead sued the Corps of Engineers arguing that the wetlands are not subject to federal regulation. The district court granted summary judgment to the Corps.

¹ The Appellate Section currently has approximately 30 briefs that are due to be filed in the federal courts of appeals in the next two months. Only the most significant of those are listed here. Briefs in ENRD cases to be filed in the Supreme Court are listed in a separate part of this memo.

Updated 12/20/16; Provided to PETT 12/21/16
**Herr v. United States Forest Service** (6th Cir.). Our brief as appellee is due to be filed on December 22, 2016. The Herrs own riparian property on a lake part that is partially within the Sylvania Wilderness, on the Ottawa National Forest in Michigan’s Upper Peninsula. The Forest Plan imposed a no-wake speed limit and prohibits the use of gasoline-powered motors within the Wilderness; electric motors up to 4 hp are allowed. The district court upheld the restrictions. On appeal, the Herrs contend those restrictions violate their riparian rights and are therefore contrary to the Michigan Wilderness Act, which directs the Forest Service to manage the Wilderness “subject to valid existing rights.”

**United States v. Black Elk Energy Offshore Operations, et al.** (5th Cir.). Our reply brief as appellant is due to be filed on December 30, 2016. This criminal prosecution arises from a welding accident and explosion that occurred on an offshore oil platform. The explosion killed three workers and injured others. We are prosecuting the owner and operator of the platform and five independent contractors on the platform. The district court dismissed all counts against the five contractor defendants under OCSLA, holding that the Interior Department regulations did not apply to these particular contractors. We appealed that ruling.

**United States v. Robertson** (9th Cir.). Our brief as appellee is due to be filed on December 30, 2016. Defendant Robertson was convicted of depositing fill material into stream beds (creating unpermitted impoundments) without a permit as required by CWA Section 404. After conviction, Robertson moved to have his conviction vacated on the grounds that the “Kennedy test” set out in *Rapanos v. United States* (S. Ct.) can no longer be used to establish CWA jurisdiction and thus the jury was erroneously instructed. The district court rejected this argument and Robertson appealed.

**Caquelin v. United States** (Fed. Cir.). Assuming the appellees file their responding brief on December 21, 2016, our reply brief in our appeal would be due on January 4, 2017. Plaintiffs in this Rails-to-Trails Act case allege that the United States effected a taking of their property when the Surface Transportation Board issued a Notice of Interim Trail Use (“NITU”) for a section of rail corridor crossing their land. The NITU was in effect for six months, expired on its own terms, and the railroad subsequently abandoned the line. The CFC found liability based on its 2010 decision in *Ladd v. United States*, which in turn relied on its 2004 decision in *Caldwell v. United States*. In our opening brief, we argued that both Caldwell and Ladd were wrongly decided, and suggested an initial hearing en banc.

**Penobscot Nation v. Mills** (1st Cir.). Our reply/response brief as appellant/cross-appellee is due to be filed on January 5, 2017. This case involves a dispute between the Penobscot Nation and the United States, on the one hand, and the State of Maine, on the other hand, over whether any portion of the bed of the Penobscot River is included within the Penobscot Reservation. The State argues that none is included. The district court issued a split decision, holding that none of the riverbed was within the reservation for purposes of determining ownership, but that the Tribe had a fishing right that extended from bank to bank. All parties filed appeals.

**United States v. Citgo Petroleum Corp.** (5th Cir.). Our brief as appellee/cross-appellant is due to be filed on January 19, 2017. This is a Clean Water Act civil penalty case arising from a major oil spill in 2006 at a Citgo refinery located in Louisiana. Initially, the district court found

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Updated 12/20/16; Provided to PETT 12/21/16
that the spill was caused by Citgo’s negligence and issued a civil penalty of $6 million (roughly the amount of one day’s profit for Citgo at this refinery). The government appealed, and the Fifth Circuit vacated and remanded for determination of a new penalty. On remand, the district court found that Citgo’s economic benefit (measured as the money it saved by delaying the installation of equipment that would have prevented the spill) was approximately $92 million, and that the spill was caused by Citgo’s gross negligence. However, without explanation, the court issued a civil penalty of $81 million, that is, an amount below Citgo’s economic benefit as found by the court itself. Both parties appealed.

**Sierra Club v. United States Dep’t of Energy (“Sabine Pass” and “Corpus Christi”)** (D.C. Cir.). In these two separate petition for review cases, our briefs as respondent are due to be filed on **January 30, 2017**. Sierra Club filed separate challenges under the Natural Gas Act seeking review of two Department of Energy (DOE) orders authorizing exports of liquefied natural gas (LNG) from facilities in Sabine Pass, Louisiana, and Corpus Christi, Texas. Sierra Club claims that DOE’s decision to authorize LNG exports was arbitrary and capricious because DOE’s environmental assessment did not analyze the indirect effects of the exports, including greenhouse gas emissions, higher domestic gas prices, increased natural gas production, and the replacement of gas consumption with coal. Sierra Club has also filed petitions for review challenging two other similar DOE orders.

**St. Bernard Parish v. United States** (Fed. Cir.). On December 9, 2016, the United States filed an opening brief in our appeal from an adverse Court of Federal Claims (CFC) judgment. If the appellees do not seek an extension on filing their brief, our reply brief could be due sometime in February 2017. The CFC held the United States liable for a temporary taking of a subset of business, residential, and local-government real properties in the New Orleans area damaged during Hurricane Katrina. The CFC found damage was caused by the Army Corps of Engineers’ construction, operation, and failure to maintain the Mississippi River-Gulf Outlet, a 76-mile navigation channel between New Orleans and the Gulf of Mexico.

**Detroit Int’l Bridge Co. v. Gov’t of Canada** (D.C. Cir.). Our brief as appellee is due to be filed on **February 8, 2017**. This case is the latest piece of litigation involving attempts by the plaintiff, the owner of the Ambassador Bridge between Detroit, MI and Windsor, ON, Canada, to prevent a competing bridge from being constructed. Plaintiffs sued the State Department, the Coast Guard, and the Department of Transportation, the Federal Highway Administration, their respective Secretaries, as well as Canada and the Ontario Department of Transportation, alleging a variety of claims arising under the Equal Protection Clause, the ‘Takings Clause, the APA, and the International Bridge Act. The district court granted Federal Defendants’ motion to dismiss with respect to all but one count.

**United States v. Walker River Irrigation District** (9th Cir.). The United States’ reply brief is due to be filed on **February 17, 2017**. This subproceeding seeks modification of a 1936 water-rights decree that adjudicated various parties’ rights in surface waters of the Walker River basin. The district court dismissed all of the claims of the United States and the Walker River Paiute Tribe. The Tribe sought to modify the decree to reflect its federal reserved right in reservoir storage and additional irrigation water for lands restored to the Reservation. Our claims included the rights the Tribe claimed as well as claims for groundwater rights and rights unrelated to the Walker River Paiute Reservation (including for a different Reservation, Indian allotments, a
National Forest, an Army base and a Marine base). We have appealed, seeking both reversal and recusal of the district judge.

C. Significant Oral Arguments during January and February 2017

*Wyoming v. United States Dep’t of the Interior* (10th Cir.). Oral argument is scheduled for January 17, 2017, in Denver, CO. Several states, a federally recognized Indian tribe, and two oil and gas industry associations filed petitions for review challenging a Bureau of Land Management revised rule governing hydraulic fracturing on federal and Indian lands. We appealed the district court’s judgment on the merits setting aside the rule for the same legal reasons articulated in the court’s preliminary injunction ruling.

*New Mexico Dep’t of Game and Fish v. United States Dep’t of the Interior* (10th Cir.). Oral argument is scheduled for January 18, 2017 in Denver, CO. In 2015, the state of New Mexico denied the U.S. Fish & Wildlife Service’s application for state permits to release endangered Mexican wolves on federal land, as needed to improve the health of the experimental wolf population in New Mexico and Arizona. The Service informed New Mexico that it would nonetheless proceed with planned releases for 2016 without a permit, because Interior regulations do not require the Service to comply with state permitting law before releasing animals if doing so will “prevent” the Service from “carrying out its statutory responsibilities.” 43 C.F.R. 24.4(f)(6). New Mexico sued Interior. The district court granted a preliminary injunction barring the Service from transporting or releasing any wolves in New Mexico without first obtaining state approval. We appealed, challenging the district court’s findings on all four injunction factors.

II. Supreme Court Matters

A. Pending Petitions for Certiorari and Responses

*United States v. Lost Tree Village Corp.* (S. Ct.). On March 22, 2016, the United States filed a petition for certiorari seeking review of a Federal Circuit decision affirming the Court of Federal Claims (CFC) decision holding the United States liable for a Fifth Amendment taking of property based on the Corps of Engineers’ denial of a Clean Water Act permit to fill portions of a five-acre wetland that was part of a much larger 1,300-acre luxury housing development. The question presented in the case is whether the parcel for considering whether a taking has occurred is only the five-acre parcel that was the subject of the wetland permit application, or the much larger 1,300-acre development. The Court has not acted on our petition yet.

*Citizens Against Reservation Shopping v. Jewell* (S. Ct.). Our response to the petition for certiorari is due to be filed on December 28, 2016. This is a challenge to a decision by the Department of the Interior to take land into trust for the Cowlitz Tribe of Washington and to declare the land eligible for gaming under the “initial reservation” exception, an exception to the prohibition on gaming on lands acquired after the 1988 Indian Gaming Regulatory Act.

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2 The Appellate Section currently has 18 oral arguments scheduled between December 20 and February 28. Only the most significant of those are listed here. Supreme Court arguments of ENRD cases are listed in a separate part of this memo.
("IGRA"). It is the first time since the Supreme Court’s 2009 decision in Carcieri v. Salazar that Interior has taken land into trust for a tribe that was not recognized until after enactment of the Indian Reorganization Act in 1934. Petitioners assert that not only must a tribe have been “under Federal jurisdiction” in 1934, it must also have been formally recognized by that time. The lower courts held to the contrary.

**Alaska Oil and Gas Ass’n v. Jewell** (S. Ct.). Our response to the petitions for certiorari in these cases is due to be filed January 6, 2017. The State of Alaska and the Alaska Oil and Gas Association each filed petitions seeking review of a Ninth Circuit decision upholding, contrary to the district court’s decision, the U.S. Fish and Wildlife Service’s designation under the Endangered Species Act of critical habitat for the polar bear. The State of Alabama, along with 17 other states, filed an amicus brief in support of the petitions. The Ninth Circuit held that the FWS had adequately explained why, in light of the challenges faced by the polar bear with potential loss of habitat, it designated as critical various units of land. The court also held that the Service’s notice to the State of Alaska, which cross-referenced various response to comments in the rulemaking, provided the State with adequate notice of the Service’s decision. Both the State of Alaska and the Alaska Oil and Gas Association have filed petitions for certiorari seeking review of the Ninth Circuit’s decision.

**Noble Energy v. Sally Jewell** (S. Ct.). Our response to the petition for certiorari is due to be filed on January 23, 2017. The question in the case is whether certain remedial obligations regarding offshore oil and gas development survive where the government has been held to have breached the lease. In 2009, the Federal Circuit held that, for reasons not critical here, the Interior Department had breached an offshore lease with Noble Energy. Noble was reimbursed the fees it had paid the Federal government for acquiring and developing the lease. Interior then ordered Noble Energy to permanently plug the well, as required by regulations. Litigation resulted, with the D.C. Circuit holding Interior Department obligations require Noble to permanently plug the well. In its cert petition, Noble asserts the government’s breach of the lease renders this regulatory obligation inapplicable.

**B. Oral Arguments**

**Lewis v. Clarke** (S. Ct.). The Supreme Court will hold argument on January 9, 2017, in this case in which the United States has filed an amicus brief urging reversal of the lower court judgment. The Supreme Court granted certiorari to review the Connecticut Supreme Court’s decision that the Mohegan Tribe’s sovereign immunity bars a suit for damages against a tribal employee in his personal capacity arising out of an off-reservation car accident that occurred while the employee, a driver for the Mohegan Sun Casino, was carrying out his duties. We filed an amicus brief arguing that tribal sovereign immunity is not a bar to the suit because Respondent was sued in his personal capacity. However, we argue that the matter should be remanded to the state court for it to determine whether Respondent could invoke official immunity.

**Murr v. Wisconsin** (S. Ct.). This case is fully briefed, but the Court has not yet set an argument date. The United States filed an amicus brief supporting affirmance of the lower state court decision. Petitioners are the owners of two adjoining lots on the Wisconsin side of the St. Croix River. A county ordinance, enacted prior to petitioners’ acquisition of the lots, prevents the
separate sale or development of commonly owned, contiguous lots that are deemed sub-standard because they do not meet minimum area and river-frontage requirements for independent development. The question presented in the case is whether the Wisconsin Court of Appeals erred in considering the two lots together as the relevant “parcel as a whole” in rejecting petitioners’ claim that the ordinance effected a regulatory taking.
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION

LITIGATION CHALLENGING THE CLEAN WATER RULE

Since publication, the rule has been the subject of a multitude of suits filed in district court (18) and petitions for review filed in circuit court (22). The entire first year of litigation concerned whether jurisdiction to review the Clean Water Rule lies in district courts or in the courts of appeals under section 509(b) of the CWA.

Petitions for Review Pursuant to CWA Section 509 (Consolidated in Sixth Circuit)

In July 2015, the 22 petitions for review of the rule, which had been filed in various circuit courts nationwide, were consolidated by the Judicial Panel on Multidistrict Litigation in the Sixth Circuit in In re: Environmental Protection Agency and the Department of Defense Final Rule: Clean Water Rule. In October 2015, the Sixth Circuit stayed the rule nationwide pending further action of the court. In February 2016, a three-judge panel in the Sixth Circuit denied all motions to dismiss the petitions for lack of jurisdiction and held that the Sixth Circuit has jurisdiction to review the rule. On April 21, 2016, the Sixth Circuit denied petitions for rehearing en banc of this decision. On September 2, 2016, the National Association of Manufacturers filed a petition for a writ of certiorari to review the Sixth Circuit’s jurisdictional decision in the U.S. Supreme Court. EPA’s opposition to the cert. petition was filed on December 7, 2016. Meanwhile, merits briefing has begun, and EPA’s consolidated response brief is due on January 18, 2017.

District Court APA Challenges and Associated Appeals

Eighteen district court complaints were filed across the United States. The only district court to find it had jurisdiction to review the rule was the District of North Dakota, which had initially entered a limited stay of the rule pending judicial review, but later stayed the entire case following the Sixth Circuit’s assertion of jurisdiction and grant of a stay pending review. All of the other cases also have now either been dismissed or effectively stayed. There were three associated appeals, only one of which is still active. The appeals are summarized below.

Eleventh Circuit: Plaintiff states appealed the District of Georgia’s denial of a preliminary injunction to halt the rule. After various proceedings, in August 2016, the Eleventh Circuit in Georgia v. McCarthy declined to proceed with the case in the interest of wise judicial administration and ordered that the appeal be held in abeyance pending a decision of the Sixth Circuit on the validity of the Clean Water Rule or further order of the court. It also directed the district court to stay all further proceedings.

Tenth Circuit: In Chamber of Commerce v. EPA, Oklahoma and various industry groups appealed the decision of the Northern District of Oklahoma to dismiss the case for lack of jurisdiction. The appeal was argued on November 17, 2016, and is pending a decision.

Sixth Circuit: The State of Ohio, The Michigan Attorney General, and the State of Tennessee filed a challenge to the rule in the Southern District of Ohio, which was dismissed by the district court in light of the Sixth Circuit’s decision that it had jurisdiction under CWA Section 509. The
Sixth Circuit then proceeded to hold that appeal in abeyance pending a decision on the merits in the consolidated petition for review action (or further order of the court).
DEPT OF JUSTICE – ENVIRONMENT & NATURAL RESOURCES DIVISION

INTERAGENCY TASK FORCES, COMMITTEES AND WORKGROUPS

Summary: Below is a list of Task Forces and interagency workgroups that ENRD participates in, often on behalf of the Department of Justice (DOJ). Some of these groups are long-standing and meet regularly while other groups are ad hoc or episodic in nature. Some involve participation by the AAG or a Deputy AAG, but for many others attorneys from the Law and Policy Section (LPS) represent ENRD, sometimes in partnership with other sections.

Deadlines: We are aware of no imminent deadlines related to these task forces or workgroups.

Action Required: No specific action required.

List of Task Forces, Committees and Workgroups:

I. Committees with OAAG Involvement
   • Task Force on Combating Wildlife Trafficking
   • Task Force on Illegal, Unreported, and Unregulated Fishing and Seafood Fraud
   • Arctic Executive Steering Committee
   • National Ocean Council
   • Coral Reef Task Force
   • Interagency Committee on Trade in Timber Products under the Peru Trade Promotion Agreement
   • Council on Climate Preparedness and Resilience
   • Federal Interagency Working Group on Environmental Justice
   • Trade Policy Review Group
   • White House Council on Native American Affairs Subgroups
   • RESTORE Act Council

II. Committees primarily involving staff level involvement
   • National Response Team Workgroup
   • Lacey Act Interagency Implementation Group
   • Federal Electronic Discovery Work Group
   • Interagency NEPA Contacts
   • Interagency Workgroup for FAST Act Infrastructure Permitting Implementation
   • ICWA Interagency Workgroup
   • NAGPRA/ARPA Interagency Working Group
   • Underwater Cultural Heritage Interagency Work Group
   • Lake Ontario-St. Lawrence River Working Group
   • Interagency Marine Debris Coordinating Committee
   • Task Force on Environmental Health Risks and Safety Risks to Children
   • Baseline Committee
I. Groups with OAAG Involvement

- **Task Force on Combatting Wildlife Trafficking.** This Task Force (TF) was established in 2013 by Executive Order 13648 and was codified in the recently passed Eliminate, Neutralize, and Destroy Wildlife Trafficking Act (or “END Act”). It is co-chaired by the Attorney General and the Secretaries of State and the Interior and includes senior-level representatives from an additional fourteen federal agencies or offices, including the United States Agency for International Development, the Departments of Commerce, Agriculture, Homeland Security, and Defense, and the Office of the Director of National Intelligence. ENRD represents the Department of Justice on this Task Force. The TF was established in recognition of the fact that wildlife trafficking, once viewed primarily as a conservation issue, is now an escalating international crisis, with armed and organized transnational criminal networks increasingly involved in this highly profitable activity. The Law & Policy Section (LPS) and the Environmental Crimes Section (ECS) jointly staff ENRD’s participation in working-level groups under the TF; the AAG is a very active participant in principal-level meetings of the TF as well as numerous other activities related to the work of the TF.

- **Task Force on Illegal, Unreported, and Unregulated (IUU) Fishing & Seafood Fraud.** On June 17, 2014, the President issued a Memorandum entitled “Establishing a Comprehensive Framework to Combat Illegal, Unreported, and Unregulated Fishing and Seafood Fraud” and established a Task Force (TF) on IUU Fishing and Seafood Fraud. The Task Force is co-chaired by the Departments of State and Commerce with nine other Federal agency members, including DOJ. The TF has made recommendations to the National Ocean Council on numerous actions, including the development of a risk-based seafood traceability program and the strengthening of enforcement tools both domestically and through international capacity-building efforts. LPS and ECS jointly staff ENRD’s participation in the TF; the AAG or a DAAG attends principal-level meetings of the group.

- **Arctic Executive Steering Committee (AESC).** On January 21, 2015, the President issued an Executive Order on “Enhancing Coordination of National Efforts in the Arctic,” which established the Arctic Executive Steering Committee (AESC). The AESC includes the heads of OSTP, CEQ, the Domestic Policy Council, and the National Security Council, among whom the Chairmanship rotates, and Deputy Secretary or equivalent officer from multiple federal agencies and offices. The AESC was established to better coordinate federal actions in and related to the Arctic. ENRD represents DOJ at the AESC on environmental issues and otherwise coordinates with other DOJ components, including FBI, CRM, NSD, and OTJ, depending on the issues. LPS staffs ENRD’s participation in the TF; the AAG or a DAAG attends principal-level meetings of the group. There have been various working groups dating back to the Bush Administration on Arctic issues. This was an effort to consolidate the work of many of those.
• **National Ocean Council (NOC).** Created pursuant to a June 12, 2009 Memorandum from President Obama to Department and Agency Heads “Concerning the Development of an Ocean Policy for the Oceans, Coasts and Great Lakes,” the NOC is a dual cabinet and subcabinet-level interagency committee established to advise the president and implement a National Ocean Policy. The NOC is comprised of 24 senior policy-level officials from executive departments, agencies, and offices across the federal government, including the Department of Justice. The NOC is co-chaired by the Chair of CEQ, the Director of the White House Office of Science and Technology Policy (OSTP), and the Administrator of NOAA. In addition to being responsible for the implementation of ocean policies, the NOC was established to serve as a forum for dispute resolution of interagency disputes. The NOC occasionally calls deputy-level meetings, but more regularly operates through several lower-level committees. LPS monitors meetings of the various subgroups (several of which are very technical in nature). Prior to the NOC there was a Committee on Ocean Policy established in the Bush Administration to similarly coordinate interagency action to develop and implement ocean policies.

• **Coral Reef Task Force (CRTF).** In June 1998, the CRTF was established by Executive Order 13089 to “lead, coordinate, and strengthen U.S. government actions to better preserve and protect coral reef ecosystems.” The CRTF is co-chaired by NOAA and Interior, and includes representatives of 12 federal agencies (including DOJ), seven U.S. states and territories, and three freely associated states. The CRTF meets twice a year—in the spring in Washington D.C. and in the fall in one of the member jurisdictions. There is also a Steering Committee of lower-level staff representatives of the member agencies that convenes monthly by phone to implement the various resolutions adopted by the CRTF during its biannual meetings and otherwise conduct the business of the CRTF. LPS represents DOJ on the Steering Committee; the AAG or a DAAG attends principal-level meetings of the group.

• **Interagency Committee on Trade in Timber Products under the Peru Trade Promotion Agreement.** As required by section 501 of the United States-Peru Trade Promotion Agreement Implementation Act, Pub. L. No. 110-138, 121 Stat. 1455 (2007), an Interagency Committee was established by President Obama in 2009 to oversee implementation of the Forestry Governance Annex to the Environment Chapter of the Peru TPA. The Committee is responsible for ensuring that timber exporters are complying with applicable Peru laws regarding timber products. The Departments of State, Justice, Agriculture, and Interior, and the U.S. Trade Representative are designated members of the Interagency Committee. The AG designated the AAG of ENRD to serve as DOJ’s representative. In the last several years the Committee has taken action in response to a citizen’s petition to ask Peru to audit aspects of its timber industry practices and report on results.

• **Council on Climate Preparedness and Resilience.** This is an interagency workgroup of senior agency officials led by the Council on Environmental Quality (CEQ) and the National Security Council (NSC), as established under Executive Order 13653, “Preparing the United States for the Impacts of Climate Change”
(November 6, 2013). The Council generally has met at a senior level on a quarterly basis. Among other tasks over the last several years, it has managed or assisted in the management of the development of significant documents regarding the new Federal Flood Risk Management Standard, International Screening for Climate Resilience, Climate Data Initiative and Resilience Toolkit, agency-specific climate change adaptation planning documents updated on a regular basis, and resilience planning for climate-related hazards. ENRD was delegated the responsibility to represent DOJ on the group. LPS staffs ENRD’s participation in the workgroup; the AAG or a DAAG attends principal-level meetings of the group.

- **White House Council on Native American Affairs Subgroups.** The White House Council on Native American Affairs was formed by Executive Order 13647 (June 2013). DOJ is primarily represented on the Council by other DOJ offices (i.e., the Office of Tribal Justice) but ENRD periodically is involved in staff-level subgroups and ENRD is generally represented in higher level meetings by the DAAG supervising the Indian Resources Section.

- **Federal Interagency Working Group on Environmental Justice.** This Interagency Working Group (IWG) was created by Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”) issued by President Clinton in 1994 to facilitate coordination among federal agencies in the area of environmental justice. The IWG is chaired by the EPA Administrator and includes 17 Federal agencies and White House offices with standing committees and committees established as necessary to carry out responsibilities outlined by EO 12898. The group meets 2-3 times per year. Division involvement is primarily handled by DAAG Gelber and Cynthia Ferguson, the Division’s EJ Coordinator, who coordinates with representatives from interested sections of the Division.

- **Trade Policy Review Group (TPRG).** Established in 1975 by Executive Order 11846 and USTR regulations, 15 C.F.R. 2002.1, this group coordinates all U.S. trade policy, including negotiation and implementation of trade and investment agreements and handling of trade and investment. The TPRG meets as issues arise and is chaired by Deputies at the Office of the U.S. Trade Representative. The Antitrust Division has the lead for DOJ, but ENRD is often asked to participate as appropriate. The TPRG meets only at the Assistant Secretary level when there is an issue that requires resolution at that level; other interagency work is handled at the staff level, with meetings chaired by USTR on particular negotiations or other ongoing processes or activities.

- **RESTORE Act Council.** In July 2012, the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act (RESTORE Act) established the Gulf Coast Ecosystem Restoration Council (Council), which is comprised of governors from the five affected Gulf States, the Secretaries from the U.S. Departments of the Interior, Commerce, Agriculture, and Homeland Security and the Secretary of the Army and the Administrator of EPA. The Council has responsibilities under the Act to determine
how certain of the funds obtained through settlement of the Deepwater Horizon case are spent. DOJ is not a member of the Council, but from its inception ENRD staff have played a role in advising the members of the Council and continue to participate in staff-level calls and meetings of the steering committee for the Council. On occasion, the AAG or DAAG is invited to participate in principal-level meetings of the federal members of the Council.

II. Committees with Staff-Level Involvement

- **National Response Team Workgroup (NRT).** Required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (also known as Superfund) and its regulations, this Team facilitates interagency coordination in preparing to respond to emergencies caused by releases of chemicals and other hazardous substances. The Team meets monthly at a staff level and has been increasingly focusing on preparation for intentional releases caused by terrorists. LPS represents ENRD. The Civil Division also represents the Department on NRT issues.

- **Lacey Act Interagency Implementation Group.** This is an interagency staff-level group established in 2008 that meets periodically to discuss ongoing issues related to implementation of the provisions added to the Lacey Act in 2008 prohibiting trade in illegally harvested timber and other plant products. LPS and ECS jointly participate in this group.

- **Interagency Marine Debris Coordinating Committee (IMDCC).** This is an interagency committee chaired by EPA and NOAA, with staff-level members from NMFS, Coast Guard, Navy, Army, MMS, and DOJ. The Committee was established in 2006 by the Marine Debris Research, Prevention, and Reduction Act, and submits biennial reports to Congress with updates on activities, achievements, and recommendations. The group served during the Bush Administration to advance that Administration’s Ocean Action Plan; currently it convenes regularly at a staff-level. It meets four times yearly to develop and recommend a comprehensive, multi-disciplinary approach to reduce the sources and impacts of marine debris on the nation’s marine environment and natural resources. An LPS staff attorney represents ENRD.

- **Underwater Cultural Heritage Interagency Work Group (UCH IWG).** This workgroup has convened at a staff level for over 10 years to address legislation regarding the Titanic and other shipwrecks and to otherwise coordinate on shipwreck issues that arise from time-to-time. It was first established by ENRD lawyers, later run by staff in the State Department, and is currently run by NOAA staff. It includes staff-level members from the Advisory Council for Historic Preservation (ACHP), State, EPA, DOI-NPS, Coast Guard, Navy, NSF and DOJ (ENRD, Civil-Admiralty and EOUSA). LPS and NRS attorneys represent ENRD at the group’s quarterly meetings.

- **ICWA Interagency Workgroup.** Workgroup members include the Departments of the Interior, Health and Human Services, and Justice; multiple components from
each agency are represented on the workgroup. This workgroup was formed in 2014 to address issues related to implementation of and compliance with the Indian Child Welfare Act. The workgroup meets every 4-6 weeks, and is chaired at a staff level by LPS. The workgroup facilitates coordination on a variety of projects, including data collection, new regulations by both DOI and HHS, amicus and other litigation, and training.

- **NAGPRA/ARPA Interagency Working Group.** This is a staff-level interagency work group established in 2015 to discuss issues related to the protection of Native American cultural resources. It meets monthly. In addition to ENRD, several other DOJ components participate including OTJ, Criminal Division, FBI and the Executive Office for U.S. Attorneys, as well as DOI, the Department of State and the Department of Homeland Security.

- **Task Force on Environmental Health Risks and Safety Risks to Children.** Originally established in 1997 by Executive Order 13045, the most recent iteration of this Task Force was established in 2010 by Presidential memorandum. This Task Force is currently chaired by EPA and HHS Administrators; its mission is to identify priority issues concerning environmental health and safety risks to children and develop interagency strategies to protect children’s environmental health and safety. DOJ is an identified member of the TF; LPS monitors its activities on behalf of ENRD.

- **Federal Electronic Discovery Work Group (FEDWG).** The FEDWG was formed by DOJ and other agencies as an interagency workgroup to share best practices and conduct training on e-discovery for federal agencies. This group meets periodically and conducts training annually. EES represents ENRD on the group.

- **Interagency NEPA Contacts.** The “NEPA Contacts” workgroup is an interagency workgroup convened by CEQ to facilitate the dissemination of information regarding, and coordination with respect to, NEPA-related matters. The workgroup is comprised of representatives from a broad range of federal agencies, including DOJ. In addition to ENRD, the workgroup consists of representatives from JMD and various Department of Justice bureaus that are required to perform NEPA analyses in connection with construction projects or awards of federal grants.

- **Interagency Workgroup for FAST Act Infrastructure Permitting Implementation.** A Federal Permitting Improvement Steering Council (Council) was created by Title 41 of the Fixing America’s Surface Transportation (FAST) Act of 2015 and tasked with modernizing large federal infrastructure permitting to create efficient project delivery and improved outcomes. The interagency workgroup was recently convened by OMB for the purpose of providing assistance to the Council. DOJ is not a member of the Council but does assist in the work of the workgroup. Covered by the work of the Council and workgroup are infrastructure construction projects in the areas of aviation, energy development, pipelines, electricity transmission, and manufacturing. Excluded from coverage are federally funded transportation projects and water resources development projects,
which are covered by somewhat similar statutory frameworks enacted by Congress in the last several years. LPS attorneys represent ENRD on the workgroup.

- **Lake Ontario-St. Lawrence River Working Group.** The International Joint Commission (IJC) was established in 1909 by the Boundary Waters Treaty to help manage and resolve disputes that arise with respect to water sharing on the boundary of the United States and Canada. This working group was convened and has been meeting for a number of years to assist the IJC in its evaluation of a proposal that would incorporate ecosystem considerations into the order of approval for the Moses Saunders Dam, which controls the water levels of Lake Ontario and the St. Lawrence River. ENRD has been working as part of an interagency group led by the State Department and CEQ to review the IJC’s proposal for revising the order pursuant to the IJC’s Lake Ontario-St. Lawrence River (LOSLR) Plan 2014. The IJC recently issued its decision with respect to this Plan so we believe the work of this workgroup is now complete.

- **Baseline Committee.** This is a long-standing staff-level committee established in 1970 for the purpose of providing an interagency forum to discuss and make recommendations on all questions and issues relating to the delimitation of the coastline of the United States (e.g., where is the coast, so that you can draw 3-mile limits and 200-mile limits). It meets only when needed. LPS staff’s ENRD’s involvement, with assistance from NRS on certain issues.
<table>
<thead>
<tr>
<th>Case Name</th>
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<th>Petitioners</th>
<th>Date Filed</th>
<th>Status/ Deadlines</th>
<th>Pending Appeals</th>
<th>Intervenors</th>
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<tr>
<td>Murray Energy Corp. v. EPA (lead case)</td>
<td>15-3751</td>
<td>Murray Energy Corp.</td>
<td>7/13/15</td>
<td>petitioners' merits briefs filed 11/1/2016; respondents' brief due 1/18/2017; intervenor-respondents' briefs due 2/8/2017; replies due 3/8/2017; joint appendix due 3/22/2017; final-form briefs due 3/29/2017</td>
<td>National Ass'n of Mfrs. v. Dep't of Defense, No. 16-299 filed 9/2/2017; opp filed 12/7/2016 (petition for cert of court's order finding jurisdiction under CWA 509(b)(1))</td>
<td>National Ass'n of Mfrs did not petition for review; it intervened as a respondent to challenge jurisdiction; environmental petitioners are intervenors in support of respondents in state/industry cases; industry groups are intervenors in support of respondents in environmental group cases; NY, CT, HI, MA, OR, VT, WA, and DC intervened in support of the federal government</td>
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<tr>
<td>Ohio v. EPA</td>
<td>15-3799</td>
<td>Ohio; Michigan; Tennessee</td>
<td>7/24/15</td>
<td>consolidated with 15-3751</td>
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<tr>
<td>NRDC v. EPA</td>
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<tr>
<td>Oklahoma v. EPA</td>
<td>15-3822</td>
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<td>Chamber of Commerce v. EPA</td>
<td>15-3823</td>
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<tr>
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<td>Water Keeper Alliance v. EPA</td>
<td>15-3837</td>
<td>Waterkeeper Alliance; Center for Biological Diversity; Center for Food Safety; Humboldt Baykeeper; Russian Riverkeeper; Monterey Coastkeeper; Snake River Waterkeeper; Upper Missouri Waterkeeper, Inc.; Turtle Island Restoration Network, Inc.</td>
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<td>Puget Soundkeeper Alliance v. EPA</td>
<td>15-3839</td>
<td>Sierra Club, Puget Soundkeeper Alliance</td>
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<td>AFBF</td>
<td>15-3850</td>
<td>American Farm Bureau Fed'n; American Forest &amp; Paper Inst.; American Petroleum Institute; American Road and Transportation Builders Ass'n; Greater Houston Builders Ass'n; Leading Builders of America; Matagorda County Farm Bureau; National Alliance of Forest Owners; National Ass'n of Homebuilders; National Ass'n of Realtors; National Cattlemen's Beef Ass'n; National Corn Growers Ass'n; National Mining Ass'n; National Pork Producers Council; National Stone Sand and Gravel Ass'n; Public Lands Council; Texas Farm Bureau; U.S Poultry &amp; Egg Ass'n</td>
<td>8/6/15</td>
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<td>15-3853</td>
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<td>Southeastern Legal Found., Inc. v. EPA</td>
<td>15-3885</td>
<td>Southeastern Legal Foundation, Inc.; Georgia Agribusiness Council, Inc.; Greater Atlanta Homebuilders Ass'n, Inc.</td>
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<td>Georgia v. EPA</td>
<td>15-3887</td>
<td>Georgia; West Virginia; Alabama; Florida; Indiana; Kansas; Kentucky; North Carolina Dept. of Envtl. Resources; South Carolina; Utah; Wisconsin</td>
<td>7/20/15</td>
<td>consolidated with 15-3751</td>
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<td>One Hundred Miles v. EPA</td>
<td>15-3948</td>
<td>One Hundred Miles; The South Carolina Coastal Conservation League</td>
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<td>consolidated with 15-3751</td>
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<td>15-4159</td>
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<td>10/26/15</td>
<td>consolidated with 15-3751</td>
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<td>Washington Cattlemen's Association v. EPA</td>
<td>15-4188</td>
<td>Washington Cattlemen’s Association; California Cattlemen’s Association; Oregon Cattlemen’s Association; New Mexico Cattle Growers Association; New Mexico Wool Growers, Inc.; New Mexico Federal Lands Council; Coalition of Arizona/New Mexico Counties for Stable Economic Growth; Duarte Nursery, Inc.; Pierce Investment Company; LPF Properties, LLC; Hawkes Company, Inc.</td>
<td>10/26/15</td>
<td>consolidated with 15-3751</td>
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<td>Association of Am. Railroads v. EPA</td>
<td>15-4211</td>
<td>Association of Am. Railroads; Port Terminal Railroad Ass’n</td>
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<td>15-4404</td>
<td>Arizona Mining Association; Arizona Farm Bureau; Association of Commerce and Industry; New Mexico Mining Association; Arizona Chamber of Commerce &amp; Industry; Arizona Rock Products Association; and New Mexico Farm &amp; Livestock Bureau</td>
<td>11/4/15</td>
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<td>Texas v. EPA</td>
<td>S.D. Tex. Galveston</td>
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<td>Texas, Texas Department of Agriculture, Texas Commission on Environmental Quality, Texas Department of Transportation, Texas General Land Office, Railroad Commission of Texas, Texas Water Development Board, Mississippi, Louisiana</td>
<td>6/29/15</td>
<td>motion to dismiss pending</td>
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<td>North Dakota v. EPA</td>
<td>N. Dak.</td>
<td>3:15-cv-59</td>
<td>North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico (through the Environment Department and State Engineer), South Dakota, and Wyoming</td>
<td>6/29/15</td>
<td>stayed</td>
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<td>Ohio v. Corps</td>
<td>S.D. Oh.</td>
<td>2:15-cv-2467</td>
<td>The State of Ohio; Attorney General Bill Schuette on Behalf of the People of Michigan; and The State of Tennessee,</td>
<td>6/29/15, amended 7/23/15</td>
<td>dismissed, appeal pending</td>
<td>No. 16-3564 (8th Cir.) (held in abeyance pending issuance of the mandate in the 6th Cir. consolidated petitions for review)</td>
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<td>Georgia v. EPA</td>
<td>S.D. Ga.</td>
<td>2:15-CV-0079</td>
<td>Georgia, West Virginia, Alabama, Florida, Indiana, Kansas, Kentucky, North Carolina Dept. of Envtl. Resources, South Carolina, Utah, Wisconsin</td>
<td>4/30/15; amended complaint 7/20/15</td>
<td>stayed</td>
<td>No. 15-14035-EE (11th Cir) (held in abeyance pending 6th Cir. decision on merits or pending further order of the court)</td>
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<td>American Farm Bureau Fed’n v. EPA</td>
<td>S.D. Tex. Galveston</td>
<td>3:15-cv-165</td>
<td>American Farm Bureau Fed’n, American Petroleum Institute, American Road and Transportation Builders Ass’n, Leading Builders of America, Matagorda County Farm Bureau, National Alliance of Forest Owners, National Ass’n of Homebuilders, National Ass’n of Manufacturers, National Cattlemen’s Beef Ass’n, National Corn Growers Ass’n, National Mining Ass’n, National Pork Producers Council, Public Lands Council, and Texas Farm Bureau</td>
<td>7/2/15</td>
<td>motion to dismiss pending</td>
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<td>N.D. Ok.</td>
<td>4:15-cv-381</td>
<td>Oklahoma, ex rel. E. Scott Pruitt</td>
<td>7/8/15; amended 7/10/15</td>
<td>dismissed; appeal pending</td>
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<td>Chamber of Commerce v. EPA</td>
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<td>4:15-cv-386</td>
<td>Chamber of Commerce, NFIB, State Chamber of Oklahoma, Tulsa Regional Chamber, Portland Cement Ass’n</td>
<td>7/10/15</td>
<td>dismissed; appeal pending</td>
<td>No. 16-5038 (10th Cir.)</td>
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<td>Southeastern Legal Found., Inc. v. EPA</td>
<td>N.D. Ga.</td>
<td>0:00</td>
<td>Southeastern Legal Foundation, Inc., Georgia Agribusiness Council, Inc., and Greater Atlanta Homebuilders Ass’n, Inc.</td>
<td>7/13/15 stayed</td>
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<td>Washington Cattlemen’s Ass’n v. EPA</td>
<td>D. Minn.</td>
<td>0:15-cv-3058</td>
<td>Washington Cattlemen’s Ass’n, California Cattlemen’s Ass’n, New Mexico Cattle Growers Ass’n, New Mexico Wool Growers, Inc., Federal Lands Council, Duarte Nuersery, Inc., Pierce Investment Co., LPF Properties LLC, Hawkes Co., Inc.</td>
<td>7/15/15 dismissed; appeal deadline runs on 1/7/2017</td>
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<tr>
<td>Puget Soundskeeper Alliance, Sierra Club v. EPA</td>
<td>W.D. Wa.</td>
<td>2:15-cv-01342</td>
<td>Puget Soundkeeper Alliance, Sierra Club</td>
<td>8/20/15 administratively closed</td>
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<td>NRDC v. EPA</td>
<td>D.D.C.</td>
<td>1:15-cv-01324</td>
<td>Natural Resources Defense Council, INC., National Wildlife Federation, One Hundred Miles, South Carolina Coastal Conservation League</td>
<td>8/14/15 voluntarily dismissed</td>
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<td>Arizona Mining Ass’n v. EPA</td>
<td>D. Az.</td>
<td>2:15-cv-1752</td>
<td>Arizona Mining Ass’n, Arizona Farm Bureau, Ass’n of Commerce and Industry, New Mexico Mining Ass’n, Arizona Chamber of Commerce &amp; Industry, Arizona Rock Products Ass’n, and New Mexico Farm &amp; Livestock Bureau</td>
<td>9/1/15 voluntarily dismissed</td>
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<td>Texas Alliance for Responsible Growth, Environmental &amp; Transportation v. EPA</td>
<td>S.D. Tex. Galveston</td>
<td>3:15-cv-00322</td>
<td>Texas Alliance for Responsible Growth, Environment, and Transportation</td>
<td>11/13/15 dismissed</td>
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<td>Southeast Stormwater Association v. EPA</td>
<td>N.D. Fl.</td>
<td>4:14-cv-579</td>
<td>Southeast Stormwater Association, Inc.; Florida Stormwater Association, Inc.; Florida Rural Water Association, Inc.; and Florida League of Cities, Inc.</td>
<td>11/30/15 stayed</td>
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<tr>
<td>Am. Exploration &amp; Mining Ass’n v. EPA</td>
<td>D.D.C.</td>
<td>1:16cv1279</td>
<td>American Exploration &amp; Mining Ass’n</td>
<td>6/23/16 stayed pending 6th Cir. proceedings</td>
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</tbody>
</table>
Thank you Judy.

Ron

On Mon, Jan 9, 2017 at 5:19 PM Harvey, Judy (ENRD) <Judith.Harvey@usdoj.gov> wrote:

Per your request for case lists, attached is an Excel document with two charts: 1) a list of significant ENRD filings and activity between December 1 and January 20; and 2) a list of significant ENRD filings and activity between January 20 and March 31. Filings for the Appellate Section were provided on a separate list; these two charts address the remaining ENRD sections. You can go back and forth between the two charts by clicking on the tabs at the bottom of the worksheet.
Let us know if you have any questions.

Thanks,

Judy

U.S. Department of Justice

Environment and Natural Resources Division

Law and Policy Section

(202) 514-3932
Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

Jean E. Williams  
Deputy Assistant Attorney General  
Environment and Natural Resources Division  
U.S. Department of Justice  
(202) 305-0228

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From: Jessie Liu
To: Williams, Jean (ENRD)
CC: Gelber, Bruce (ENRD)
Sent: 1/10/2017 3:58:24 PM
Subject: Re: Transition non-public information disclosure

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at Ex 6

Thanks.

Jessie

On Jan 10, 2017 3:56 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

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Sure how about 5? Are you in the building today? We could come to your office.

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at [Ex 6]

Thanks.

Jessie

On Jan 10, 2017 3:56 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:
Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

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Unfortunately, I am not in the building today. But if I leave now I can likely get there by 5. Or we can do by phone as you prefer. Either is fine by me. Just let me know!

On Jan 10, 2017 4:38 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

Sure how about 5? Are you in the building today? We could come to your office.

From: Jessie Liu [mailto:jessie.k.liu@ytt.gov]
Sent: Tuesday, January 10, 2017 3:58 PM
To: Williams, Jean (ENRD) <JWilliams@ENRD.USDOJ.GOV>
Cc: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Subject: Re: Transition non-public information disclosure

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at Ex 6

Thanks.

Jessie

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Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

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intended recipients. Unauthorized interception, review, use or disclosure is prohibited. If you believe that you have received this e-mail in error, please notify the sender immediately, and permanently delete the email, any attachments, and all copies from your computer.
From: Williams, Jean (ENRD)
To: 'Jessie Liu'
Sent: 1/10/2017 5:32:31 PM
Subject: RE: Transition non-public information disclosure

Just so you know, this arrived to me just now at 5:30. Apparently it takes quite a while for email delivery to go through.

From: Jessie Liu [mailto:jessie.k.liu@pt.gov]
Sent: Tuesday, January 10, 2017 4:40 PM
To: Williams, Jean (ENRD) <JWILLIAMS@ENRD.USDOJ.GOV>
Subject: RE: Transition non-public information disclosure

Undoubtedly, I am not in the building today. But if I leave now I can likely get there by 5. Or we can do by phone as you prefer. Either is fine by me. Just let me know!

On Jan 10, 2017 4:38 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:
Sure how about 5? Are you in the building today? We could come to your office.

From: Jessie Liu [mailto:jessie.k.liu@pt.gov]
Sent: Tuesday, January 10, 2017 3:58 PM
To: Williams, Jean (ENRD) <JWILLIAMS@ENRD.USDOJ.GOV>
Cc: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>
Subject: Re: Transition non-public information disclosure

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at  

Ex 6

Thanks.

Jessie

On Jan 10, 2017 3:56 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:
Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

Jean E. Williams
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0228

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Dear Ms. Williams,

I think my call is wrapping early. Let me know if you still would like to do 4.30.

Jessie

On Jan 10, 2017 3:58 PM, "Jessie Liu" <jessie.k.liu@ptt.gov> wrote:

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at [Ex 6]

Thanks.

Jessie

On Jan 10, 2017 3:56 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

Ms. Liu, Ron Tenpas gave me your name to discuss a matter which we in ENRD would like to disclose to the transition team today. Are you available at 4:30? I would be joined by Bruce Gelber who, like me, is a career DAAG in ENRD. We would be disclosing both public and non-public information. Please let me know by reply email or feel free to call the below number, which is my direct line. Thanks

Jean E. Williams
Deputy Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
(202) 305-0228

CONFIDENTIALITY NOTICE: This communication may contain law enforcement sensitive, privileged attorney/client communications or work product, and is not subject to disclosure. It is solely for the use of the intended recipients. Unauthorized interception, review, use or disclosure is prohibited. If you believe that you have received this e-mail in error, please notify the sender immediately, and permanently delete the email, any attachments, and all copies from your computer.
Yes, I have had that issue with other DOJ emails too.

On Jan 10, 2017 5:33 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

Just so you know, this arrived to me just now at 5:30. Apparently it takes quite a while for email delivery to go through.

Undoubtedly, I am not in the building today. But if I leave now I can likely get there by 5. Or we can do by phone as you prefer. Either is fine by me. Just let me know!

On Jan 10, 2017 4:38 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

Sure how about 5? Are you in the building today? We could come to your office.

Dear Ms. Williams,

I have another call at 4. Any chance you can do 4.45 or 5?

I am at Ex 6

Thanks.

Jessie

On Jan 10, 2017 3:56 PM, "Williams, Jean (ENRD)" <Jean.Williams@usdoj.gov> wrote:

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Tom and Ron, attached are revised charts of matters pre and post January 20 with only public information. We will discuss the highlighted items on Monday, plus a few additional matters.

In other business, Tom, if you are at Main DOJ this coming Tuesday, would you like to stop by ENRD to say hello in late afternoon? (Bruce and I are tied up most of the day till then.) If so just drop me an email or call when you are headed our way. You can't miss us. Head for the 2100 corridor and look for the stuffed bear. No kidding! 2023050228 is my direct line.

And, I'd like to invite you to our Monday morning meeting on January 23rd. We meet at 10am every Monday with all our section Chiefs in the AAG conference room, 2143. If you have the time, this would be a good occasion to meet the section leaders.

Looking forward to speaking on Monday. Should you need to reach me before then just send me an email. I'm in town all weekend.

Jean
Jean/Bruce,

Apologies but we need to cancel today's call. We'll let you know about a rebooking. Have a good holiday.

Ron
On Sat, Jan 14, 2017 at 9:07 AM Williams, Jean (ENRD) <<Jean.Williams@usdoj.gov>> wrote:
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Jean
Ok. Thanks for letting us know.

Sent from my iPhone

On Jan 16, 2017, at 9:00 AM, Ronald Tenpas <ronald.j.tenpas@ptt.gov> wrote:

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Apologies but we need to cancel today's call. We'll let you know about a rebooking. Have a good holiday.

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Jean
Ron it would be a good idea if we could reschedule for tomorrow for at least one of my items. If nothing else perhaps you and I could have a quick call.

Sent from my iPhone

On Jan 16, 2017, at 9:00 AM, Ronald Tenpas <ronald.j.tenpas@tt.gov> wrote:

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Jean
Jean, thank you for your e-mail. We will be in touch about proposed meetings next week, but in the meantime, if possible, could we schedule meetings with the Land Acquisition Section and the Law and Policy Section for this coming Friday, December 9, ideally in the 2:00 - 4:00 window (one hour for each would be ideal).

Many thanks.

Zina

On Mon, Dec 5, 2016 at 1:39 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Yes, that’s right. 5-10 cases/matters or categories of cases/matters. We’ll stand by for your email. And, as you may have noted, we’ve looped Karen Wardzinski, now our LPS section chief. LPS will help coordinate transition matters, and Karen will probably assign Judy Harvey, one of her most excellent staff attorneys, to help out. So, you may see either Karen or Judy on future emails.

Jean,

This seems about right to me. One observation -- the "case" might be a collection of cases also (e.g. Rails to trails or fence condemnations).

You haven’t missed any e-mails. Zina and I are working on some scheduling ideas to send. Hope to have some or all of that to you today or tomorrow.

Ron

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ronald.tenpas@morganlewis.com | www.morganlewis.com
Assistant: Linda J. Ramsburg | +1.202.739.5241 | linda.ramsburg@morganlewis.com
Hi, Ron. Quick question: in asking the section chiefs to put together a list of cases/matters for your initial meeting with each section, we have recommended the chiefs limit their respective lists to 5-10 items, with the larger sections likely having closer to 10. Does that sound right to you?

And, I am just checking that you have not yet sent me any emails regarding scheduling the meetings. I wanted to be sure nothing to me was lost in PETT email issues.

Thanks

Jean E. Williams
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Thank you, Jean. If Andy is available at 2:00 on Wednesday, that would also work. Thanks again.

On Mon, Dec 5, 2016 at 6:30 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:
Hi Zina. We can do LPS at 3 on Friday. Unfortunately, the Land Acq Chief, Andy Goldfrank, is out of the office on Friday. He could meet earlier in the week or any day next week. Do you want to try for a third choice for the 2pm slot on Friday?

Sent from my iPhone

On Dec 5, 2016, at 4:34 PM, Zina Gelman Bash wrote:

Jean, thank you for your e-mail. We will be in touch about proposed meetings next week, but in the meantime, if possible, could we schedule meetings with the Land Acquisition Section and the Law and Policy Section for this coming Friday, December 9, ideally in the 2:00 - 4:00 window (one hour for each would be ideal).
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From: Tenpas, Ronald J. [mailto:ronald.tenpas@morganlewis.com] Sent: Monday, December 05, 2016 1:02 PM

To: Williams, Jean (ENRD) <Jean.Williams@USDOJ.GOV>
Cc: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV>; Wardzinski, Karen (ENRD) <KWardzinski@ENRD.USDOJ.GOV>
Subject: Re: Transition matter - Public information only

Jean,

This seems about right to me. One observation -- the "case" might be a collection of cases also (e.g. Rails to trails or fence condemnations).

You haven't missed any e-mails. Zina and I are working on some scheduling ideas to send. Hope to have some or all of that to you today or tomorrow.

Ron
Ronald Tenpas
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW | Washington DC 20004
Hi, Ron. Quick question: in asking the section chiefs to put together a list of cases/matters for your initial meeting with each section, we have recommended the chiefs limit their respective lists to 5-10 items, with the larger sections likely having closer to 10. Does that sound right to you?

And, I am just checking that you have not yet sent me any emails regarding scheduling the meetings. I wanted to be sure nothing to me was lost in PETT email issues.

Thanks

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Ooops. Sorry Bruce -- not sure how I dropped you off the chain. My apologies.

Ronald J. Tenpas
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ronald.tenpas@morganlewis.com | www.morganlewis.com
Assistant: Linda J. Ramsburg | +1.202.739.5241 | linda.ramsburg@morganlewis.com

-----Original Message-----
From: Williams, Jean (ENRD) [mailto:Jean.Williams@usdoj.gov]
Sent: Wednesday, December 07, 2016 12:16 PM
To: Tenpas, Ronald J.
Cc: Zina Gelman Bash; Wardzinski, Karen (ENRD); Gelber, Bruce (ENRD)
Subject: Re: Transition matter - Public information only

Ok thanks for letting us know. Also looping Gelber

Sent from my iPhone

On Dec 7, 2016, at 12:14 PM, Tenpas, Ronald J. <ronald.tenpas@morganlewis.com> wrote:

Zina/Jean,

I am trying to join the LAS meeting today but may run behind. Please don't wait for me as I may not make it at all.

Jean: you are in good hands with Zina, much better than if I was there mucking things up with my limited and wrong understanding of the law.

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From: Zina Gelman Bash Ex 6 - Zina Bash
Sent: Monday, December 05, 2016 6:53 PM
To: Williams, Jean (ENRD)
Cc: Tenpas, Ronald J.; Gelber, Bruce (ENRD); Wardzinski, Karen (ENRD)
Subject: Re: Transition matter - Public information only

Thank you, Jean. If Andy is available at 2:00 on Wednesday, that would also work. Thanks again.

On Mon, Dec 5, 2016 at 6:30 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:
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From: Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> Sent: Monday, December 05, 2016 12:15 PM Eastern Standard Time
To: Tenpas, Ronald J.
Cc: Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov>; Wardzinski, Karen (ENRD) <Karen.Wardzinski@usdoj.gov>
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And, I am just checking that you have not yet sent me any emails regarding scheduling the meetings. I wanted to be sure nothing to me was lost in PETT email issues.

Thanks
No apologies needed.

We'll miss you, but hopefully will keep Zina both informed and entertained.

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From: Tenpas, Ronald J. [mailto:ronald.tenpas@morganlewis.com]
Sent: Wednesday, December 07, 2016 12:21 PM
To: Williams, Jean (ENRD) <JWILLIAMS@ENRD.USDOJ.GOV>
Cc: Zina Gelman Bash; Wardzinski, Karen (ENRD) <KWARDZINSK@ENRD.USDOJ.GOV>; Gelber, Bruce (ENRD) <BGELBER@ENRD.USDOJ.GOV>
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Ex 6 - Zina BashEx 6 - Zina BashEx 6 - Zina Bash

Cc: Gelber, Bruce (ENRD) <BGelber@ENRD.USDOJ.GOV<mailto:BGelber@ENRD.USDOJ.GOV>>
<mailto:BGelber@ENRD.USDOJ.GOV><mailto:BGelber@ENRD.USDOJ.GOV>>;
Wardzinski, Karen (ENRD) <KWardzinski@ENRD.USDOJ.GOV<mailto:KWardzinski@ENRD.USDOJ.GOV>>
<mailto:KWardzinski@ENRD.USDOJ.GOV><mailto:KWardzinski@ENRD.USDOJ.GOV>>

Subject: Re: Transition matter - Public information only

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Bruce, will the LPS meeting tomorrow afternoon be in room 2143? Many thanks.

Sent from my iPhone
Zina - I believe so. I asked Shanedda to confirm. You and Ron should get a meeting invite tomorrow morning

Sent from my iPhone

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Bruce, will the LPS meeting tomorrow afternoon be in room 2143? Many thanks.

Sent from my iPhone
Thank you! I have a meeting invite from earlier in the week and wanted to confirm that the room number is the same. Thanks again.

Sent from my iPhone

> On Dec 9, 2016, at 2:34 AM, Gelber, Bruce (ENRD) <Bruce.Gelber@usdoj.gov> wrote:
> Zina - I believe so. I asked Shanedda to confirm. You and Ron should get a meeting invite tomorrow morning
> Sent from my iPhone
> >> On Dec 8, 2016, at 9:42 PM, Ex 6 - Zina Bash wrote:
> >> Bruce, will the LPS meeting tomorrow afternoon be in room 2143? Many thanks.
> >> Sent from my iPhone
> >>
From: Gelber, Bruce (ENRD)
To: Ex 6 - Zina Bash
CC: Harvey, Judy (ENRD); Wardzinski, Karen (ENRD)
Sent: 12/9/2016 9:21:26 AM
Subject: Re: LPS meeting location?

Good morning Zina. I just confirmed that we are in 2143. See you there.

Sent from my iPhone

> On Dec 9, 2016, at 7:28 AM, Ex 6 - Zina Bash wrote:

> Thank you! I have a meeting invite from earlier in the week and wanted to confirm that the room number is the same. Thanks again.
>
> Sent from my iPhone

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>
Jean and Bruce,

Would it be possible to schedule one-hour meetings this week on Thursday or Friday before 4:00pm with each of the following Sections:
1. Defense,
2. EES
3. NRS
4. Indian Resources
5. Wildlife
Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.
Zina
Correct. Thank you!

Sent from my iPhone

> On Dec 11, 2016, at 10:10 PM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:
> Zina, I'm sure we can make this happen. To be clear, you are available anytime (let's say starting at 10) on Thursday and Friday as long as the meetings end at 4?
> Sent from my iPhone
>
> On Dec 11, 2016, at 9:39 PM, Zina Gelman Bash wrote:
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U.S. Department of Justice
Environment and Natural Resources Division
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(202) 514-3932

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Judy (and others),

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Ronald.J.tenpas@ptt.gov.

Thanks.

Ronald J. Tenpas
Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW | Washington, DC 20004-2541
Direct: +1 202.739.5435 | Main: +1 202.739.3000 | Mobile: +1 202.316.8347 | Fax: +1 202.739.3001
ronald.tenpas@morganlewis.com | www.morganlewis.com
Assistant: Linda J. Ramsburg | +1 202.739.5241 | linda.ramsburg@morganlewis.com

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DISCLAIMER
This e-mail message is intended only for the personal use of the recipient(s) named above. This message may be an attorney-client communication and as such privileged and confidential and/or it may include attorney work product. If you are not an intended recipient, you may not review, copy or distribute this message. If you have received this communication in error, please notify us immediately by e-mail and delete the original message.
From: Zina Gelman Bash
To: Gelber, Bruce (ENRD)
Sent: 12/14/2016 2:03:35 PM
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5. Wildlife

Additionally, we'd like to request from the Appellate Section a list of all major briefs due within 30 days of January 20 (i.e., major briefs due 30 days before or after January 20).

We will be in touch about potential meetings with ECS and Appellate in the future.

Many thanks for all of your help.

Zina
Thank you very much, Jean.

On Mon, Dec 19, 2016 at 11:50 AM, Williams, Jean (ENRD) <Jean.Williams@usdoj.gov> wrote:

Zina and Ron: here is a chart showing ENRD staffing numbers with vacancies anticipated as of 1/21/17.

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