

2015 Explanatory Notes
Office of the General Counsel

Contents

	<u>Page</u>
Purpose Statement	15-1
Statement of Available Funds and Staff Years	15-3
Permanent Positions by Grade and Staff Year Summary	15-4
Salaries and Expenses	
Appropriations Language	15-5
Lead-off Tabular Statement	15-5
Project Statement	15-6
Justifications.....	15-7
Geographic Breakdown of Obligations and Staff Years	15-11
Classification by Objects.....	15-12
Shared Funding Proejcts	15-13
Status of Programs	15-15
Summary of Budget and Performance	
Statement of Goals and Objectives	15-31
Key Performance Outcomes and Measures.....	15-33
Full Cost by Strategic Objective	15-34

OFFICE OF THE GENERAL COUNSEL

Purpose Statement

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

Description of Programs:

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

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

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

Legislation and Document Preparation. OGC prepares draft legislation, patent applications arising out of inventions by USDA employees, contracts, agreements, mortgages, leases, deeds and any other legal documents required by USDA agencies.

Administrative Proceedings. OGC represents USDA in administrative proceedings for the enforcement of rules having the force and effect of law and in quasi-judicial hearings held in connection with the administration of various USDA programs.

Federal and State Court Litigation. OGC works with the Department of Justice (DOJ) in all Departmental civil litigation. The bulk of this litigation involves the defense of claims brought against the USDA. OGC serves as USDA's liaison with DOJ and assists in the preparation of all aspects of the government's case. OGC refers matters involving allegations of criminal conduct and assists DOJ in preparation and prosecution of criminal cases. In some instances, OGC attorneys represent USDA as Special Assistant United States Attorneys, both in civil and criminal matters. By delegation, the Associate General Counsel for General Law and Research represents USDA in certain classes of cases before the United States Courts of Appeals.

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

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

Eastern Region:

Atlanta, Georgia
Harrisburg, Pennsylvania
Milwaukee, Wisconsin

Central Region:

Kansas City, Missouri
Little Rock, Arkansas
Temple, Texas

Mountain Region:

Denver, Colorado
Albuquerque, New Mexico
Missoula, Montana

Pacific Region:

San Francisco, California
Juneau, Alaska
Portland, Oregon

As of September 30, 2013, the Office of the General Counsel had 257 permanent full-time employees of which 121 were located in Washington, D.C. and 136 in the field.

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

OFFICE OF THE GENERAL COUNSEL

Available Funds and Staff Years (SYs)

(Dollars in thousands)

Item	2012 Actual		2013 Actual		2014 Estimate		2015 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Salaries and Expenses:								
Discretionary Appropriations.....	\$39,345	253	\$45,074	244	\$41,202	241	\$47,567	272
Sequestration.....	-	-	-1,979	-	-	-	-	-
Rescission.....	-	-	-1,221	-	-	-	-	-
Transfer Out.....	-	-	-875	-	-	-	-	-
Total Available.....	39,345	253	40,999	244	41,202	241	47,567	272
Lapsing Balances.....	-86	-	-173	-	-	-	-	-
Obligations.....	39,259	253	40,826	244	41,202	241	47,567	272
Obligations under other USDA appropriations:								
Hazardous Materials Management								
Program.....	1,350	8	1,280	8	1,350	8	1,350	8
FS Non-Litigation Travel.....	25	-	30	-	30	-	30	-
CCC/Farm Bill.....	1,243	7	585	5	418	4	418	4
OCFO WCF	-	-	16	-	-	-	-	-
Civil Rights Reimbursable.....	897	6	665	5	656	5	656	5
AMS User Fees.....	774	6	663	5	725	6	725	6
APHIS User Fees.....	291	1	238	1	238	1	238	1
GIPSA User Fees.....	7	-	5	-	8	-	8	-
FSA User Fees.....	15	-	-	-	2	-	2	-
FSIS User Fees.....	21	-	21	-	21	-	21	-
Total, Agriculture Appropriations..	4,623	28	3,503	24	3,448	24	3,448	24
Total, OGC.....	43,882	281	44,329	268	44,650	265	51,015	296

OFFICE OF THE GENERAL COUNSEL

Permanent Positions by Grade and Staff Year Summary

Item	2012 Actual			2013 Actual			2014 Estimate			2015 Estimate		
	Wash.			Wash.			Wash.			Wash.		
	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total	D.C.	Field	Total
ES.....	1	-	1	1	-	1	1	-	1	1	-	1
SES.....	16	4	20	14	4	18	14	4	18	14	4	18
GS-15.....	41	29	70	35	24	59	32	22	54	32	23	55
GS-14.....	63	64	127	63	61	124	62	62	124	63	62	125
GS-13.....	5	3	8	6	1	7	5	-	5	7	-	7
GS-12.....	4	-	4	3	-	3	3	-	3	10	3	13
GS-11.....	14	19	33	5	13	18	7	13	20	7	23	30
GS-10.....	2	-	2	2	-	2	2	-	2	2	-	2
GS-9.....	6	9	15	5	9	14	5	9	14	8	10	18
GS-8.....	12	17	29	7	16	23	7	7	14	9	8	17
GS-7.....	2	14	16	1	11	12	1	7	8	1	7	8
GS-6.....	1	-	1	1	-	1	1	-	1	1	-	1
GS-5.....	1	-	1	1	-	1	1	-	1	1	-	1
Total Perm. Positions.....	168	159	327	144	139	283	141	124	265	156	140	296
Unfilled, EOY.....	38	17	55	-23	-2	-25	-	-	-	-	-	-
Total, Perm. Full-Time Employment, EOY.....	130	142	272	121	137	258	141	124	265	156	140	296
Staff Year Est.....	146	135	281	131	137	268	141	124	265	156	140	296

OFFICE OF THE GENERAL COUNSEL

estimates include appropriation language for this item as follows (new Language underscored; deleted matter enclosed in brackets):

Salaries and Expenses:

For necessary expenses of the Office of the General Counsel, [~~\$41,202,000~~]\$47,567,000.

Lead-Off Tabular Statement

Current Law

Budget Estimate, 2015.....	\$47,567,000
2014 Enacted.....	<u>41,202,000</u>
Change in Appropriation.....	<u>+ 6,365,000</u>

Summary of Increases and Decreases

(Dollars in thousands)

	<u>2012</u> <u>Actual</u>	<u>2013</u> <u>Change</u>	<u>2014</u> <u>Change</u>	<u>2015</u> <u>Change</u>	<u>2015</u> <u>Estimate</u>
Discretionary Appropriations:					
Office of the General Counsel.....	\$39,345	+\$2,529	-\$672	+\$6,365	\$47,567

OFFICE OF THE GENERAL COUNSEL

Project Statement

Appropriations Detail and Staff Years (SYs)

(Dollars in thousands)

Program	2012 Actual		2013 Actual		2014 Estimate		Inc. or Dec.		2015 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Appropriations:											
Legal Services.....	\$39,345	253	\$45,074	244	\$41,202	241	+\$6,365	(1)	+31	\$47,567	272
Total Appropriation.....	39,345	253	45,074	244	41,202	241	+6,365		+31	47,567	272
Rescission.....	-		-1,221	-	-		-			-	
Sequestration.....	-		-1,979	-	-		-			-	
Total Available.....	39,345	253	41,874	244	41,202	241	6,365		+31	47,567	272
Transfer Out: WCF.....	-		-875		-		-			-	
Lapsing Balances.....	-86	-	-173	-	-	-	-	-	-	-	-
Total Obligations.....	39,259	253	40,826	244	41,202	241	+6,365		+31	47,567	272

Project Statement

Obligation Detail and Staff Years (SYs)

(Dollars in thousands)

Program	2012 Actual		2013 Actual		2014 Estimate		Inc. or Dec.		2015 Estimate		
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs	
Discretionary Obligations:											
Legal Services.....	\$39,259	253	\$40,826	244	\$41,202	241	+\$6,365		+31	\$47,567	272
Total Obligations.....	39,259	253	40,826	244	41,202	241	+6,365		+31	47,567	272
Lapsing Balances.....	86	-	173	-	-	-	-	-	-	-	-
Total Available.....	39,345	253	40,999	244	41,202	241	+6,365		+31	47,567	272
Transfer Out.....	-		875		-		-			-	
Rescission.....	-		1,221		-		-			-	
Sequestration.....	-		1,979		-		-			-	
Total Appropriation.....	39,345	253	45,074	244	41,202	241	+6,365		+31	47,567	272

Justification of Increases and Decreases

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

(1) An increase of \$6,365,000 and 31 staff years (\$41,202,000 and 241 staff years available in 2014) for the Office of the General Counsel consisting of:

- (a) An increase of \$387,000 for pay costs (\$96,000 for annualization of the fiscal year 2014 pay raise and \$291,000 for the anticipated fiscal year 2015 pay increase.) Approximately 94 percent of OGC's budget is expended on personnel salaries and benefits, which leaves no flexibility for absorbing increased costs for pay.
- (b) (b) An increase of \$2,191,000 for Decentralized GSA and Security Payments.
In FY 2015, USDA proposes to decentralize GSA Rental Payments and DHS payments for the Department. The amount is OGC share of the current GSA Rent and DHS central appropriations, based upon OGC's current space occupancy across the continental United States. The appropriations request for the central GSA rent account and the DHS payment account have been reduced accordingly.
- (c) An increase of \$2,797,000 and 31 staff years for increased legal services.
OGC currently lacks sufficient personnel to provide proactive services, and needs more attorneys both to handle routine matters and the increased workload associated with implementation of the Agricultural Act of 2014. The 2015 budget request will help direct resources to this need and includes sufficient resources to permit OGC to backfill vacancies left by some of the 55 attorneys and 41 support employees who retired or resigned over the last four years, and to respond to critical needs that OGC has been unable to address. The amount would cover salary and benefit costs to add 23 attorneys, three paralegals, one legal technician, one information technology and electronic matter management specialist, and three administrative support positions. The additional personnel are needed in the following areas:

Immediate Office (1 staff year): The Immediate Office seeks to add one attorney to serve on the Professional Responsibility and Development Counsel. The new attorney would provide professional responsibility (legal ethics) advice to all OGC attorneys, conduct training needs assessments, and develop and implement training programs for the legal staff. Representative activities for this attorney would include research and counseling of attorneys on legal ethics issues arising under the applicable rules of professional conduct, creating training course content, designing presentations, creating practice manuals and conducting mock trials.

Administration and Resource Management (1 staff year): The Administration and Resource Management Office requests funding to fill an IT Specialist position. The position is needed to assist with the refinement and implementation of a new case tracking system and electronic document repository that OGC rolled out in FY 2013, to assist in the development and implementation of a SharePoint® based document management and collaboration tool, and to support OGC's knowledge management needs.

Civil Rights, Labor and Employment Law Division (3 staff years): This Division seeks to add one attorney and one paralegal to its Litigation Section and one attorney to its Policy Section. The Litigation Section needs an attorney with significant experience in Merit Systems Protection Board cases such as prohibited personnel practice and whistleblower cases, given the recent enactment of the Whistleblower Protection Enhancement Act. The paralegal would assist attorneys with legal research, cite-checking, and preparation of documents, with a special emphasis on ensuring that USDA meets its discovery obligations by coordinating and following-up on litigation hold (document retention) memoranda. The Policy Section needs an additional attorney to respond to increased demand for preventive services such as training and best practice development, and to assist the Department in settlement negotiations, to review equal employment opportunity settlements, and to review Final Agency Decisions generated by the Office of the Assistant Secretary for Civil Rights (ASCR).

General Law and Research Division (3 staff years): This Division seeks to add two attorneys and one administrative specialist. The attorneys are needed to assist in responding to increased demands in suspension and debarment matters, contractor compliance requirements, FOIA and e-discovery matters, and procurement litigation before GAO and the Federal courts, as well as the burgeoning intellectual property and security demands facing the Department. The two attorney positions will take account of necessary succession planning required for the Division to keep pace in the area of intellectual property and FOIA. The administrative support specialist will assist attorneys by copying and assembling filings, maintaining files, and handling other similar tasks.

International Affairs, Food Assistance, and Farm and Rural Programs Division (2 staff years): This Division seeks to add one attorney and one administrative position to support the Department's international programs, food assistance programs, farm programs and crop insurance, and rural utilities programs. Specific programs include: export credit guarantee program; international grants and cooperative agreements; Supplemental Nutrition Assistance Program (SNAP); the Special Supplemental Nutrition Program for Women, Infants and Children (WIC); the School Lunch Program; grants related to disaster assistance; disaster assistance programs; crop insurance; Rural Business Cooperative Service programs; Rural Utilities Service electric program; and the expansion of the broadband and water program loan portfolios. All of these programs involve complicated legal issues with significant fiscal implications for the Department and taxpayers.

Marketing, Regulatory, and Food Safety Programs Division (3 staff years): The MRFSP Division is seeking two additional attorneys and one paralegal. The Division has experienced significant increases in its rulemaking dockets and anticipates similar demands in the future. It experienced an increase of 100% in its rulemaking dockets in the third quarter of FY 2013, as compared to the first six months of FY 2013. The Division also maintains a large litigation workload that has continued to increase over the last several fiscal years. As an example, in 2012 OGC witnessed a 25% increase in referrals of Horse Protection Act enforcement actions. Recent changes to FSIS regulations and the APHIS' streamlined process regarding deregulation of genetically engineered (GE) crops are generating significant new demands for legal support. Additionally, the Agricultural Marketing Service supports approximately 30 Marketing Orders and Agreements and 20 Research and Promotion Programs that generates regular rulemaking activities. The Division's limited resources require augmentation to ensure timely and effective legal support.

Natural Resources and Environment Division (2 staff years): This Division seeks to add one attorney and one administrative support position to provide legal services to the Forest Service (FS) and the Natural Resources Conservation Service (NRCS). OGC is currently short-staffed to provide the needed legal support for FS programs. In addition, the Division is currently unprepared to meet any increases in NRCS regulatory workload, including efforts associated with the adoption of new legislation such as the Agricultural Act of 2014.

Eastern Region

Harrisburg (1 staff year): The Harrisburg office seeks to add one attorney in order to handle additional work and to assume some of the duties previously handled by one attorney who retired and one who transferred to another OGC office. The Harrisburg office handles legal matters for all USDA mission areas and agencies operating in Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, West Virginia, and the District of Columbia, excluding the Forest Service. Due to the recent OGC reorganization, the Harrisburg office has added matters arising in Ohio to its portfolio. The work is heavily weighted in commercial transactions and the office averages over 2,000 new matters each year. Adding an attorney to handle loan servicing activities, Farm Service Agency and Rural Development transactional matters, as well as Forest Service work and NRCS easement acquisition work, would help ensure the continued ability to provide the necessary legal services.

Milwaukee (2 staff years): The Milwaukee office seeks to add two attorneys, to replace an attorney who retired and to handle anticipated additional work. The Milwaukee office provides legal services to the Forest Service's Eastern Region and covers all NRCS matters in Illinois, Michigan and Wisconsin. The office has historically performed mostly environmental litigation, which has increased significantly in recent years due to an increase in oil and gas mineral development in the region. In addition, in FY 2015 the Milwaukee office will begin to handle the legal aspects of commercial transactions for all USDA client agencies in Michigan and Wisconsin, which had previously been handled by OGC's Chicago office that closed at the end of FY 2013.

Central Region

Kansas City (5 staff years): As compared to its current staffing level, the Kansas City office needs one additional managing attorney (Deputy Regional Attorney), three staff attorneys and one paralegal. Due to the reorganization of its field structure, the Kansas City office added three States to its service area and these requested positions are to back-fill some of the currently vacant positions. These additions are needed to meet increased demands for legal service from the three States and will replace some unfilled vacancies.

With seven States now in its service area, the Kansas City office is experiencing an increase in demand for legal service in all its areas. This includes all Rural Development areas: housing, water and environmental, utilities and business development programs; NRCS conservation programs related to an increase in enforcement actions; an increase in Supplemental Nutritional Assistance Program litigation to combat programmatic abuses; and loan servicing demands in its loan programs such as bankruptcy and foreclosures. Lastly, the Kansas City office handles a significant amount of employment litigation arising from the large installations of USDA employees in its service area at facilities in St. Louis and Kansas City.

Little Rock (1 staff year): The Little Rock office is seeking one additional attorney. In FY 2014, the Little Rock office added the State of Tennessee to its geographic region. NRCS work that the Little Rock office performs for Louisiana is growing as NRCS is continuing to award contracts for coastal rehabilitation work, due to the devastating effects (natural and economic) of the BP Oil spill and gulf hurricanes in recent years (Isaac, Katrina, Gustav, Ike, Rita). These events had devastating impacts on coastal shorelines in Louisiana and Mississippi, as well as to barrier islands, bayous and wetlands, aquaculture, oyster beds, farmland and public utilities, homes, businesses and the economy in general. Related aid awarded by the USDA and contracts funded by the USDA have led to increasing numbers of complex and demanding matters involving NRCS and other agencies.

Temple (2 staff years): The Temple office seeks to add two attorneys. This office serves USDA agencies in Texas and Oklahoma, a vast area of land and diverse agricultural demands. The new attorneys would provide necessary additional legal support for USDA's conservation programs, disaster relief programs, loan programs (which includes loan making and loan servicing activities such as collections, bankruptcy actions and foreclosures), the SNAP program, and the management of National Forests. Legal work associated with Farm Service Agency loan servicing activities is expected to increase, while other agencies are anticipated to make steady demands on legal resources. The Temple office experienced the retirement of an attorney in FY 2011 and that position was not filled, while two other staff departed in FY 2013.

Mountain Region

Denver Office (2 staff years): The Denver office seeks to add one attorney and one legal technician. The Denver office handles most legal work for the Forest Service in Colorado, Wyoming, Kansas, Nebraska, North Dakota, South Dakota, Utah, Nevada, and southern Idaho, as well as virtually all legal work for Rural Development, the Farm Service Agency, the Natural Resources Conservation Service, and other USDA agencies in Colorado, Wyoming, Utah, New Mexico, and Arizona. As a result of OGC's recent field reorganization, the Denver office expanded its responsibilities for Forest Service legal work in Utah, Nevada, and southern Idaho. During the past three years, OGC has been unable to fill several vacancies due to budgetary constraints, and backlogs have developed in several areas.

Albuquerque Office (2 staff years): The Albuquerque office needs to add two attorneys to assume new responsibilities under OGC's recent field office reorganization to provide legal services to Rural Development, the Farm Service Agency, the Natural Resources Conservation Service, and other USDA agencies in Arizona and New Mexico. The Albuquerque Office already handles virtually all of the legal work for the Forest Service in Arizona and New Mexico, as well as for the Farm Service Agency in New Mexico.

Pacific Region

Portland Office (1 staff year): The Portland office seeks to add one staff attorney. The Portland Office handles legal matters for all USDA agencies in Oregon and Washington and for all agencies in Idaho except the Forest Service. Among other responsibilities, the new attorney will help the Portland office respond to increased demands for legal services related to agricultural programs and natural resource management. For example, the attorney will provide legal services that will allow the Rural Development mission area and the Farm Service Agency to issue loans and/or grants that will help fund critical housing and community facility projects in rural areas. The attorney will also provide legal services that will help the Forest Service and the Natural Resources Conservation Service further their missions by obtaining easements and other interests in real property.

- (d) An increase of \$798,000 to maintain and improve effectiveness of current staff.
This increase will enable OGC to increase funding for litigation travel, law library purchases, computerized legal research, training, and contractual support. OGC attorneys are faced with litigation in Federal courts and before administrative bodies. Travel to conduct depositions and to interview witnesses is often critical for OGC to provide effective legal service. OGC's Law library must invest in legal periodicals, legal encyclopedias, State codes, State court decisions, the United States Code, Federal regulations, court decisions and computerized legal research services. These services allow OGC attorneys to stay abreast of new developments in their respective areas of expertise. Computerized legal research tools (Westlaw) have provided OGC attorneys electronic access to legal materials that are not affordable to purchase or maintain in hard copy. Additionally, over the past several years OGC has had practically no resources to fund a training program for its legal staff. In our view, without such a program, OGC professionals cannot be expected to develop and maintain, in the long term, the skills and expertise required to ensure that all USDA programs are conducted in compliance with all applicable law and regulations.
- (e) An increase of \$405,000 for information technology and telecommunications technology improvements.
Additional funding is needed to enhance and refine the matter tracking system OGC developed in FY 2012 and rolled out in FY 2013 using the Enterprise Content Management System (ECM) platform. The enhancements will provide OGC with greater reporting capabilities and litigation management tools. In addition, OGC requires funding to finalize the development of OGC's SharePoint site to allow greater information sharing and collaboration among OGC offices and employees nationwide and to acquire videoconference technology for select field offices. These technological improvements will increase OGC's efficiency and responsiveness to its clients; help OGC assist the Department in keeping pace with its electronic discovery obligations and increase transparency through more accurate aggregate reports.
- (f) A savings of \$213,000 from field office restructuring.
In order to achieve operational efficiencies, economies of scale and savings in rental payments, OGC reduced its field office presence from 17 to 12 offices by closing its offices in Ogden Utah; Montgomery Alabama; Columbus, Ohio; Chicago, Illinois; and St. Paul, Minnesota in FY 2013. This consolidation also reduced OGC's "footprint" by eliminating the need to maintain leased office space in five cities.

OFFICE OF THE GENERAL COUNSEL

Geographic Breakdown of Obligations and Staff Years
(Dollars in thousands and Staff Years (SYs))

State/Territory	2012 Actual		2013 Actual		2014 Estimate		2015 Estimate	
	Amount	SYs	Amount	SYs	Amount	SYs	Amount	SYs
Alabama.....	\$463	4	\$509	3	-	-	-	-
Alaska.....	513	4	588	4	\$520	4	\$584	4
Arkansas.....	1,061	7	799	7	989	8	1,203	9
California.....	2,421	15	2,293	15	2,993	17	3,425	17
Colorado.....	1,865	9	1,655	9	2,420	11	2,757	13
Georgia.....	2,197	16	2,179	17	2,627	18	2,802	18
Illinois.....	889	6	1,070	6	-	-	-	-
Minnesota.....	736	6	670	5	-	-	-	-
Missouri.....	993	8	910	7	1,429	10	2,099	15
Montana.....	936	7	1,006	7	1,046	8	1,134	8
New Mexico.....	659	6	712	6	804	7	1,047	9
Ohio.....	442	4	363	3	-	-	-	-
Oregon.....	1,648	12	1,629	12	1,712	10	2,007	10
Pennsylvania.....	1,170	10	1,117	10	1,089	8	1,281	10
Texas.....	914	8	850	8	814	7	1,088	9
Utah.....	537	4	705	4	-	-	-	-
Wisconsin.....	962	7	915	7	1,212	9	1,464	11
District of Columbia.....	20,789	119	22,785	113	23,547	124	26,676	139
Puerto Rico.....	64	1	71	1	-	-	-	-
Obligations.....	39,259	253	40,826	244	41,202	241	47,567	272
Lapsing Balances.....	86	-	173	-	-	-	-	-
Total, Available.....	39,345	253	40,999	244	41,202	241	47,567	272

OFFICE OF THE GENERAL COUNSEL

Classification by Objects

(Dollars in thousands)

	2012	2013	2014	2015
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
Personnel Compensation:				
Washington D.C.....	\$14,372	\$14,830	\$15,584	\$17,058
Field.....	13,812	14,248	13,819	15,126
11 Total personnel compensation.....	28,184	29,078	29,403	32,184
12 Personnel benefits.....	7,905	8,097	9,005	9,865
13.0 Benefits for former personnel.....	14	14	14	14
Total, personnel comp. and benefits.....	36,103	37,189	38,422	42,063
Other Objects:				
21.0 Travel and transportation of persons.....	85	628	111	223
22.0 Transportation of things.....	4	5	5	5
23.1 Rental payments to GSA.....	-	-	-	2,191
23.3 Communications, utilities, and misc. charges...	605	492	495	577
24.0 Printing and reproduction.....	47	49	43	43
25.2 Other services	1,310	1,561	1,343	1,252
26.0 Supplies and materials.....	825	694	695	822
31.0 Equipment.....	280	208	88	391
Total, Other Objects.....	3,156	3,637	2,780	5,504
99.9 Total, new obligations.....	39,259	40,826	41,202	47,567
Position Data:				
Average Salary (dollars), ES Position.....	\$167,696	\$165,599	\$166,690	\$167,676
Average Salary (dollars), GS Position.....	\$107,860	\$111,564	\$105,446	\$113,346
Average Grade, GS Position.....	14.2	14.3	14.1	14.3

OFFICE OF THE GENERAL COUNSEL

Shared Funding Projects

(Dollars in thousands)

	2012	2013	2014	2015
	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
Working Capital Fund:				
Administration:				
Beltsville Service Center.....	\$50	\$31	\$35	\$36
Mail and Reproduction Management.....	142	165	163	134
Integrated Procurement System.....	4	5	5	5
Subtotal.....	196	201	203	175
Communications:				
Creative Media & Broadcast Center.....	35	18	55	15
Finance and Management:				
NFC/USDA.....	52	63	73	76
Controller Operations.....	111	106	59	59
Financial Systems.....	102	104	99	98
Subtotal.....	265	273	231	233
Information Technology:				
NITC/USDA.....	69	39	42	43
International Technology Services.....	2	13	-	-
Telecommunications Services.....	131	188	135	161
Subtotal.....	202	240	177	203
Correspondence Management.....	18	16	14	17
Total, Working Capital Fund.....	716	748	680	643
Department-Wide Reimbursable Programs:				
1890's USDA Initiatives.....	9	9	8	8
Continuity of Operations Planning.....	5	6	6	6
E-GOV Initiatives HSPD-12.....	19	19	19	19
Emergency Operations Center.....	7	7	7	7
Facility and Infrastructure Review and Assessment.....	1	1	1	1
Faith-Based Initiatives and Neighborhood Partnerships.....	1	1	1	1
Federal Biobased Products Preferred Procurement Program.....	1	1	1	1
Hispanic-Serving Institutions National Program.....	6	6	6	6
Human Resources Transformation (inc. Diversity Council).....	5	5	5	5
Intertribal Technical Assistance Network.....	6	-	-	-
Medical Services.....	4	6	6	6
Personnel and Document Security.....	2	4	4	4
Pre-authorizing Funding.....	10	10	11	11
Retirement Processor/Web Application.....	2	2	2	2
Sign Language Interpreter Services.....	11	16	17	17
TARGET Center.....	3	3	3	3
USDA 1994 Program.....	2	2	2	2
Virtual University.....	6	6	6	6
Visitor Information Center.....	2	2	3	3
Total, Department-Wide Reimbursable Programs.....	102	106	108	108

OFFICE OF THE GENERAL COUNSEL
Shared Funding Projects
(Dollars in thousands)

	<u>Actual</u>	<u>Actual</u>	<u>Estimate</u>	<u>Estimate</u>
E-Gov:				
Enterprise Human Resources Intigration.....	9	7	6	6
E-Rulemaking.....	-	-	3	3
E-Training.....	7	6	8	8
Financial Management Line of Business.....	-	1	1	1
Human Resources Line of Business.....	1	1	1	1
Integrated Acquisition Environment - Loans and Grants.....	4	4	5	5
Integrated Acquisition Environment.....	2	2	2	2
Total, E-Gov.....	<u>23</u>	<u>21</u>	<u>26</u>	<u>26</u>
Agency Total.....	<u>841</u>	<u>875</u>	<u>814</u>	<u>777</u>

OFFICE OF THE GENERAL COUNSEL

STATUS OF PROGRAM

Current Activities: The Office of the General Counsel (OGC) provides legal services and oversight required by the Secretary and USDA to achieve the Department's mission and deliver programs and services to the American People. OGC supports USDA's efforts to help rural America thrive, reduce hunger in the U.S. and abroad, promote agricultural production, and preserve our Nation's natural resources by providing proactive, accurate, creative and prompt legal services. OGC is committed to developing its employees and to serving its clients in a way that is inclusive, collaborative, transparent, innovative, knowledge-driven and technology-enabled.

USDA's lawyers are involved in almost every Departmental activity. They provide day-to-day advice on a broad range of legal issues, including personnel, procurement, fiscal, cyber and physical security, and privacy matters. On the programmatic side, they do everything from assisting in the development of complex regulations, to serving as counsel for high-value business transactions such as those funded by the Rural Utilities Service. OGC attorneys also provide extensive drafting and technical assistance to the Department and Congress on legislative proposals, assists the Department in briefing Congress in response to inquiries, and assists the Department in the development of both internal and external policies. OGC's practice is also litigation intensive. OGC represents or assists in the representation of USDA in disputes in every conceivable tribunal, including administrative bodies, the Federal and state courts and the World Trade Organization.

OGC's services also include responding to legal inquiries and preparing formal legal opinions on a broad range of issues relating to the Department's authorizing statutes, as well as laws of general applicability such as the Freedom of Information Act (FOIA), the Federal Advisory Committee Act (FACA), the Administrative Procedures Act (APA), the Economy Act (EA), the Defense Procurement Act (DPA), and constitutional and fiscal law matters. OGC prepares or interprets contracts, mortgages, leases, deeds, and other legal documents and prepares briefs and collaborates with the Department of Justice (DOJ) in trial and appellate litigation. Other examples of OGC's work include representing Departmental agencies in non-litigation debt collection programs, preparing or reviewing patent applications and other documents required to protect the Department's intellectual property rights, and evaluating and prosecuting claims by the United States arising out of the Department's activities.

Selected Examples of Recent Progress: . As part of OGC's commitment to improve processes and enhance client services in 2012 OGC restructured its headquarters staff to allow for cross-training and more effective use of existing personnel, reduced the size of its management team, and, in some cases, curtailed the types of services OGC provides to its client agencies. In 2013, OGC continued similar efforts by reorganizing its field structure. It closed five field offices to reduce OGC's "footprint", be more efficient in use of administrative resources, serve multiple clients by all field offices, and redirect savings to fill critical attorney positions. OGC also reduced support staff employees in four other field offices, relocating or securing retirement incentives for a total of 36 affected employees. This field consolidation resulted in additional annual savings for OGC of over \$1.5 million in salaries and over \$300,000 in rent savings for the USDA.

ADMINISTRATION AND RESOURCES MANAGEMENT

To enable knowledge transfer and management, OGC implemented *SharePoint*®, a document management system accessible by all employees that allows users to collaborate, analyze and exchange information and documents inside OGC and with other USDA agencies. OGC purchased laptop computers, printers and scanners to replace obsolete equipment. In addition, OGC has made additional enhancements to the Electronic Case Management system (ECM) that was developed in 2012. OGC also implemented the use of *LincPass*™ for login to comply with Presidential Directive HSPD-12. This directive provides a secure way of accessing USDA network resources by utilizing secure two-factor authentication.

MARKETING, REGULATORY AND FOOD SAFETY PROGRAMS

Marketing Agreements and Orders and Research and Promotion Programs: OGC works with the Agricultural Marketing Service (AMS) to provide legal support to marketing orders and research and promotion programs. OGC

reviewed 32 rulemaking actions as well as many other documents and provided daily legal advice to the client agency related to these programs. OGC provided assistance in connection with formal and informal rulemaking actions, and with the enforcement and defense of the programs. In 2013, OGC attorneys also assisted the DOJ's Office of the Solicitor General with a case before the Supreme Court involving jurisdictional challenges related to a marketing order.

Perishable Agricultural Commodities Act (PACA): OGC supports AMS in its enforcement of PACA. These efforts can result in the assessment of civil penalties or suspension or revocation of licenses, and the termination of employment with any PACA licensee or individuals found to be responsibly connected to a violating entity. OGC received 35 new referrals and filed 38 new administrative enforcement complaints alleging violations of the fair trade requirements of PACA. OGC helped AMS investigate whether several responsibly connected individuals were affiliated with PACA licensees in violation of their employment sanctions and filed administrative complaints against the individuals and licensees. OGC resolved and closed 32 PACA enforcement actions. PACA also provides an administrative forum for USDA's Judicial Officer to resolve disputes among private parties relating to produce transactions in reparation cases. In the role of presiding officers, OGC attorneys drafted numerous orders and reviewed drafts prepared by AMS staff. In total, OGC drafted or reviewed 176 orders in PACA reparation cases that resulted in awards of almost \$5.3 million.

Animal and Plant Health Laws and Wildlife Services: OGC drafted, reviewed, and approved for legal sufficiency 39 proposed rules, final rules, or notices for publication in the Federal Register and Federal quarantine orders for the different program areas of the Animal and Plant Health Inspection Service (APHIS). OGC assisted APHIS in the development, drafting, and issuance of regulations regarding the development of a forfeiture rule for further enforcement of the Lacey Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) as implemented through the Endangered Species Act) regulations, a BSE (Mad Cow Disease) comprehensive final rule and a proposed rule for Agricultural and Quarantine Inspection user fees. OGC provided significant legal advice and services to APHIS regarding its biotechnology regulatory program activities, including its preparation of environmental documents, investigations, remediation orders and responses to petitions; and reviewed and provided comments on a major proposed revision to the biotechnology regulations. OGC also assisted DOJ in connection with the genetically engineered (GE) alfalfa case, challenging APHIS's biotechnology activities and environmental review documents, which resulted in a favorable decision in District Court and on appeal. In addition, OGC provided assistance to DOJ in connection with three cases challenging Wildlife Services' animal damage control activities, two in district court and one on appeal. The two district court cases were successfully dismissed, one voluntarily and one on the merits.

Animal Welfare Act and Horse Protection Act: OGC supports APHIS in its administrative enforcement actions under the Animal Welfare Act (AWA) and the Horse Protection Act (HPA). In 2013, OGC attorneys helped APHIS secure \$925,932 in civil penalties under those statutes; filed administrative complaints against 109 alleged violators of the statutes; and obtained decisions and orders involving 71 respondents in ongoing enforcement cases. In three egregious cases, OGC obtained orders assessing six-figure civil penalties against unlicensed dealers and exhibitors of animals regulated under the AWA. OGC secured orders revoking eight AWA licenses and suspending seven licenses. APHIS also issued final decisions in non-penal AWA license denial and termination cases, with four licenses terminated. OGC also assisted DOJ in successfully defending the HPA minimum penalty protocol rule and in defending ten separate challenges under the AWA in Federal district court.

Packers and Stockyards Act (P&S Act): OGC works with the Grain Inspection Packers and Stockyards Administration to enforce the P&S Act. In 2013, the Packers and Stockyards Program referred a total of 131 cases to OGC to file administrative complaints to enforce the requirements of the P&S Act and impose civil penalties; for legal review of agency action; or for review and assistance with P&S Act violations for referral to DOJ. OGC filed 99 administrative complaints under the P&S Act, closed 129 cases, and secured assessments of nearly \$3 million in civil penalties. OGC also referred 12 P&S Act cases to DOJ for violations of a Secretary's order or failure to file annual reports that were closed and resulted in the assessment of over \$84,000 in penalties.

Food Safety: OGC reviewed and cleared over 47 proposed rules, final rules and notices for publication in the Federal Register. OGC assisted the Food Safety and Inspection Service (FSIS) with the development of a final rule to modernize poultry slaughter inspection, a proposed rule to require the use of the descriptive designation

“mechanically tenderized” on the labels of raw or partially cooked needle- or blade-tenderized beef products, a final rule that amends the meat and poultry products inspection regulations to expand the circumstances in which FSIS will generically approve labels, and a final rule regarding the common or usual name for raw meat and poultry products with added solutions. Other significant dockets included a notice announcing the updated guidance for Hazard Analysis and Critical Control Point (HACCP) systems validation, a notice regarding changes to FSIS’s sampling program for raw beef products, and a notice requiring establishments producing not-ready-to-eat ground or otherwise comminuted chicken and turkey products to reassess their HACCP plans. During the year, OGC initiated four administrative cases to withdraw inspection services from establishments based on violations of FSIS regulations and prepared 11 cases for referral to DOJ for the initiation of criminal or civil action. OGC attorneys also provided substantial assistance to DOJ in connection with litigation defending FSIS’ determination not to consider foie gras an adulterated poultry product, defended FSIS action on applications to grant inspection to horse slaughter establishments, defended FSIS employees in a *Bivens* case, defended a tort case against an FSIS inspector resulting in a dismissal, and attained a felony conviction against an establishment owner indicted for selling misbranded meat.

INTERNATIONAL AFFAIRS, FOOD ASSISTANCE, AND FARM AND RURAL PROGRAMS

Commodity Credit Corporation (CCC), Farm Service Agency (FSA), and Domestic Commodity-Related Activities: Food, Conservation and Energy Act of 2008 (2008 Farm Bill). OGC provided extensive advice to all mission areas within Farm and Foreign Agricultural Services with respect to authorized activity upon expiry on October 1, 2012, of myriad provisions of the 2008 Farm Bill and how to interpret and apply the various extensions of authority conferred by the American Taxpayer Relief Act of 2012 (ATRA). . In addition, OGC provided advice in connection with the following matters:

Sugar. OGC assisted in the development, promulgation, and implementation of the Feedstock Flexibility Program, as well as the purchase and sale of sugar under the Cost Reduction Options of the Food Security Act of 1985, saving the U.S. Government tens of millions of dollars associated with potential forfeitures of sugar under non-recourse loans. In addition, OGC assisted in the planning and operation of measures to dispose of forfeited sugar, further saving millions of dollars;

Sequester. OGC provided extensive advice on the extremely complicated and novel issues presented by the application of the statutory sequester provisions to numerous programs of the CCC, minimizing disruption to thousands of agricultural producers;

Permanent Law. OGC attorneys counseled senior officials in the Department on the implications of the application of “Permanent Law” in the event of the failure of Congress to enact successor legislation to the 2008 Farm Bill. This was particularly important in the development of plan for the administration of dairy price support and the potential for significant increases in dairy prices, which received national press attention; and

Microloan Rule. Under significant time constraints, OGC played a lead role in the development of the high-priority microloan rule, which FSA employs to serve the unique financial operating needs of beginning, niche and the smallest of family farm operations by modifying its operating loan application, eligibility and security requirements and providing more flexible and attractive financing options for small and non-traditional farms.

Foreign Agricultural Service (FAS): OGC drafted submissions for the Appellate Body of the World Trade Organization (WTO) in the Country of Origin Labeling (COOL) dispute with Canada and Mexico and prepared memoranda for both the Secretary and the U.S. Trade Representative on options to comply with WTO rulings. OGC coordinated compliance by the United States and led the effort on promulgation of revised labelling regulations accordingly.

Risk Management Agency (RMA) and the Federal Crop Insurance Corporation (FCIC): In a matter with stakes potentially rising to \$300 million, OGC led the effort in opposing an appeal brought by the approved insurance

providers before the Civilian Board of Contract Appeals. The providers challenged the premium rate methodology and premium rate changes made for the 2012 and 2013 crop years.

Food, Nutrition and Consumer Services: OGC provided assistance to the Food and Nutrition Service (FNS) in issuing and implementing regulations for nutrition standards for snacks sold in schools. OGC provided technical assistance regarding the Nutrition provisions of the 2008 Farm Bill. OGC provided assistance to FNS in refining its program integrity activities for the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). OGC provided litigation assistance in the case of *Deron School of New Jersey, Inc. v. United States Department of Agriculture* in Federal district court. In this case, the United States prevailed with the court finding that a private, for profit, school does not have the right to participate in the National School Lunch Program.

Rural Development (RD): OGC worked RD Mission Area agencies on debt collection, credit questions under direct and guaranteed loan programs, grants/cooperative agreements, and environmental issues. OGC provided assistance to RD in publishing high priority rules, such as the Energy Efficiency and Conservation Loan Program final rule. OGC helped RD obtain a successful Federal circuit court ruling in two lawsuits challenging the Single Family Housing Guaranteed Program loan servicing and appeal procedures, and respond to 180 new Multifamily Housing imminent prepayment claims. OGC attorneys provided substantial legal assistance addressing funding shortfalls due to sequestration and rescissions under the 2013 Appropriations Act, procedural changes needed to implement the Dodd-Frank Wall Street Reform and Consumer Protection Act, and closing a \$424 million guarantee under Section 313A of the Rural Electrification Act.

NATURAL RESOURCES AND ENVIRONMENT

Forest Service: OGC advised the Forest Service on compliance with Federal environmental and administrative laws governing management of the 193 million-acre National Forest System (NFS). OGC counsels the Forest Service on legal issues arising under laws such as the Administrative Procedures Act (APA), the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), and the Endangered Species Act (ESA) and assists in the defense of regulations, policies, plans and projects. In addition, OGC provided advice in connection with the following matters:

Planning. OGC assisted DOJ in litigation challenging the new Forest Service planning rule, and is advising the Forest Service in its development of the proposed and final directives for that rule.

Administrative appeals. OGC provided substantial assistance in the development of proposed regulations reforming the project level appeal/objection system, while continuing to advise the Forest Service regarding the application of the agency's administrative appeal regulations.

Litigation. OGC significantly assisted with litigation involving APA, NEPA, NFMA, and ESA, including cases concerning timber salvage, fuels reduction projects, Roadless Area management, range management, Sierra Nevada forest plan amendments, travel management, minerals, hydraulic fracturing, and energy corridors.

Forest Management Program. OGC helped to defend against lawsuits collectively seeking over \$12 million for alleged takings of private property related to wildfires and tens of millions relating to timber sales. OGC represents the Forest Service in various administrative forums, including suspension and debarment proceedings, bid protests, and export sourcing area proceedings. OGC assisted with implementation of long-term stewardship contract projects and the draft contract governing the sale of timber to oil and gas mineral property rights owners. OGC also assisted the Forest Service regarding its efforts to provide relief to the timber industry in light of severely declining timber market conditions. OGC provided advice on implementing the Secure Rural Schools and Community Self-Determination Act of 2000, including sequestration of payments made under the Act. OGC represented the Forest Service in three U.S. Court of Federal Claims suits, collectively seeking \$15 million in compensation.

Forest Service Lands and Recreation Programs. OGC drafted numerous notices, directives, policies such as: 1) a paper on visitor capacity policy for the Forest Service, National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management for Wild and Scenic Rivers, National Scenic and National Historic Trails, commercial use in wilderness areas, and National Park Service General Management Plans in coordination with Department of the Interior's Solicitor's Office; 2) a *Federal Register* notice, regulations, and directives implementing four-season operations at ski areas on National Forest System lands; and 3) a *Federal Register* notice and directives for water facilities and water rights clauses in permits for ski areas on National Forest System lands. OGC advised the Forest Service on fully implementing the Cabin User Fee Fairness Act of 2000.

OGC continues to provide substantial legal assistance and litigation support regarding Federal laws, such as those concerning American Indian treaty rights and religious freedom, and historic and archaeological resource protection. OGC provided assistance to the Forest Service and other USDA offices in drafting legislation, reviewed a significant amount of pending legislation; and reviewed and assisted in drafting legislative reports, and reviewed testimony for congressional hearings. OGC provided assistance to the Forest Service regarding hydroelectric licensing projects on NFS land and has continued to work with an interagency group concerning the regulations governing trial-type hearings and alternative licensing conditions. OGC provided assistance in drafting a new international agreement with Australia for mutual assistance for firefighting. OGC has worked closely with the Forest Service Law Enforcement staff to negotiate a memorandum of understanding with western sheriffs relating to the enforcement of traffic prohibitions on roads that traverse national forests. In the minerals area, OGC provided extensive advice regarding the rights conveyed by U.S. mining laws, the Forest Service's authority to regulate locatable mineral operations, and oil and gas leasing issues.

NRCS: OGC provided support for natural resource conservation on private or non-Federal lands, including programs authorized by the Food Security Act of 1985. OGC assisted in the administration of numerous programs, including the Conservation Stewardship Program, the Environmental Quality Incentives Program, the Farm and Ranch Lands Protection Program, the Grassland Reserve Program, the Wetland Reserve Program, the Wildlife Habitat Incentives Program, and the Healthy Forest Reserve Program. In addition, OGC provided services to NRCS related to programs under the Soil Conservation and Domestic Allotment Act of 1936, the Watershed Protection and Flood Prevention Act and the Flood Control Act of 1944.

Examples of work for NRCS include: 1) preparing title opinions for conservation easement acquisitions related to NRCS conservation programs exceeding 5 million acres; 2) successfully defending NRCS in litigation before the *en banc* Eighth Circuit Court of Appeals on a claim for injury to cattle by alleged negligence in advising a landowner under the Environmental Quality Incentives Program; 3) providing assistance to NRCS in addressing violation of deed terms on easements held in the name of the United States under the Wetland Reserve and Grassland Reserve Programs; 4) advising NRCS regarding the acquisition, disposal, and management of lands related to the Plant Materials Centers; 5) working with DOJ's Office of the Solicitor General and various Federal agencies regarding the Supreme Court case *Koontz v. St. Johns River Water Management District*; 6) advising NRCS on easement acquisitions related to outstanding mineral rights, limitations on access, flowage easements and undefined, blanket right of ways; 7) providing drafting assistance for regulations allowing NRCS to engage in international soil survey activities; 8) defending NRCS against breach of contract claims related to contracts awarded under the Environmental Quality Incentive Program, the Conservation Stewardship Program, and the Conservation Security Program; 9) advising NRCS on issues relating to expiration of the 2008 Farm Bill and of disaster assistance under the Emergency Watershed Protection Program; and 10) advising NRCS on matters related to open government and information security, including compliance with the Freedom of Information Act and the Privacy Act.

Pollution Control: The OGC Pollution Control Team (PCT), in support of the Hazardous Materials Management Program, provided legal services for all USDA agency matters related to the Resource Conservation and Recovery Act and Comprehensive Environment Response, Compensation, and Liability Act (CERCLA). In 2013, the PCT recovered money or equivalent work for cleanup costs of nearly \$11 million. OGC also provided advice on compliance with pollution control standards concerning USDA programs and facilities, and provided advice on hazardous materials liability in real property transactions as agencies divest themselves of surplus properties.

Examples of the PCT's accomplishments include: 1) representing the Forest Service at the Meyers Landfill site near Lake Tahoe, where OGC zealously contested a ruling by a District Court that sought to relieve El Dorado County from cleanup obligations under a Consent Decree due to cost overruns. The U.S. Court of Appeals for the Ninth Circuit dismissed the appeal as untimely as the District Court's evidentiary hearing had not yet occurred on the complaint seeking \$10 million in damages. OGC is working with DOJ to resolve the matter through mediation. 2) Working closely with the Tribal representatives of the Leech Lake Band of the Ojibwe, at the St. Regis Paper Company Superfund Site, an EPA-led cleanup in Cass Lake, Minnesota, where EPA has spent over \$70 million on response actions to address contaminated soil and groundwater. The Forest Service and Tribe are Natural Resource Trustees that have cooperated closely for over a decade to assess natural resource damages at this site. The Trustee Council is close to a cooperative agreement to conduct a natural resource damage assessment that will result in a natural resource restoration plan that could cost millions of dollars to implement. 3) Concluding an agreement for a group of mining companies to characterize contamination and evaluate cleanup alternatives to address hazardous substance releases caused by their operations at the Viburnum Trend Mining Area, which consists of National Forest System land on the Mark Twain National Forest in Missouri. 4) Defending the Forest Service in litigation involving attempts to ban the use of lead ammunition on NFS lands under Federal hazardous waste laws.

Deepwater Horizon Oil Spill: OGC has provided legal advice and services to the Department and NRCS in connection with the 2010 Deepwater Horizon Oil Spill, the largest offshore oil spill in U.S. history. With OGC's assistance, USDA is playing a significant role in working with other Federal agencies and the Gulf Coast states to develop and implement natural resource restoration projects intended to restore the Gulf of Mexico ecosystem.

Real Property Matters: OGC worked closely with USDA agencies that manage real property assets on a variety of legal issues relating to landownership transactions and stewardship responsibilities, including the Forest Service, NRCS, and the Agricultural Research Service. OGC provides legal services regarding access and rights of way to public lands, title claims and disputes, treaty rights, land appraisal and survey, and other issues incident to the ownership and management of real property assets of the government.

2008 Farm Bill: OGC provided assistance to NRCS, the Forest Service, and USDA officials on issues related to the House and Senate versions of proposed legislation, the U.S. Senate's Agriculture Reform, Food and Jobs Act of 2013 and its counterpart in the House proposed to replace the 2008 Farm Bill. In addition, OGC advised NRCS and the Forest Service on the legal effect of various 2008 Farm Bill provisions and related amendments and program expirations. Similarly, OGC worked closely with NRCS and the Forest Service to help ensure that both agencies will be able to rapidly implement any new or modified program.

GENERAL LAW AND RESEARCH

Appellate Litigation: In coordination with DOJ, OGC presented USDA's legal position in cases on appeal. OGC handled approximately 150 such appellate matters, including 47 new matters. OGC's responsibilities included reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court, Federal circuit courts, and State appellate courts. OGC assisted DOJ to prepare the amicus brief filed on behalf of the United States, and prepare for oral argument, in *Bowman v. Monsanto*, in which the Supreme Court considered whether the authorized sale of one generation of a patented seed (in this case, Roundup Ready soybeans) exhausts a patentee's right to control subsequent generations of that seed. OGC also assisted DOJ to prepare the brief and for oral argument in *Marvin D. Horne and Laura R. Horne, et al. v. USDA*, in which the Supreme Court reversed a decision of the Court of Appeals for the Ninth Circuit and held that the Agricultural Marketing Agreement Act of 1937 affords raisin handlers an avenue to bring a takings claim against the USDA by providing a comprehensive remedial scheme that withdraws Tucker Act jurisdiction. OGC also assisted DOJ to prepare the United States' brief in *Marvin M. Brandt Revocable Trust v. United States*, in which the Supreme Court has granted certiorari to address a technical legal question concerning various Federal statutory provisions relating to ownership of abandoned railroad rights of way.

OGC recommended that the U.S. petition the Court of Appeals for the Eighth Circuit for *en banc* review, and assisted DOJ in preparing oral argument when the Circuit Court granted the petition in *Herden v. U.S.* The *en banc* court reversed the panel's adverse decision and held that technical determinations regarding seeding mixtures made

by NRCS grazing specialists are protected by the discretionary function exception to the FTCA. OGC also assisted DOJ in preparing oral argument before the Eighth Circuit in *Argus Leader v. USDA*, in which the court is considering USDA's withholding under FOIA of redemption data from stores authorized to participate in SNAP.

In addition, DOJ and USDA successfully opposed certiorari in a number of Supreme Court cases, including *The Estate of E. Wayne Hage v. United States*, in which the Federal Circuit reversed the Court of Federal Claims' finding of regulatory and physical takings of water rights and its award of \$14 million against the Forest Service; and in *New 49'ers, Inc. v. Karuk Tribe of Calif.*, in which the *en banc* Ninth Circuit had held that the Forest Service's receipt of certain notices of intent to engage in suction dredge mining in critical habitat for coho salmon on National Forest System land amounted to agency action within the meaning of Section 7 of the Endangered Species Act, thereby triggering the duty to consult with the Fish and Wildlife Service or the NOAA Fisheries Service regarding effects on the salmon species.

OGC defends all USDA Judicial Officer decisions that enforce P&S Act, PACA, AWA, and HPA, and that are appealed to the Federal Courts of Appeals. OGC briefs and argues these cases before the Courts of Appeals. During 2013, OGC handled three such cases, obtaining a favorable result on the merits in one. In *Meza Sierra Enterprises, Inc. v. USDA*, the Court of Appeals for the Fifth Circuit affirmed the Secretary's jurisdiction over PACA disciplinary cases; and two cases are pending. OGC prepared USDA's official recommendations to DOJ in 33 cases on whether to appeal adverse decisions of various lower courts or to participate as amicus in Supreme Court or other appellate cases.

Fiscal/Contract and Research: OGC counseled the Department on many significant issues ranging from obesity prevention to intangible property rights, and from the Federal Register to the 2008 Farm Bill. For example, OGC reviewed and advised the Department on agreements with the National Football League, Dairy Management, the Department of Education, and the Department of Health and Human Services to promote *My Plate* and the National Dietary Guidelines by the NFL's *Fuel Up to Play 60* program. OGC played a critical role in protecting Agricultural Research Service (ARS) intellectual property rights by bringing suit against a nursery that violated an ARS material transfer agreement (MTA) by propagating varieties of crape myrtles that had not yet been publicly released by ARS. This unique case of affirmative litigation by the Government resulted in a favorable settlement for ARS, protecting ARS research and use of MTAs to share plant material. OGC supported the Department's efforts to strengthen its financial controls and undertook efforts to help the Department streamline its rule-making process. OGC advised the Research, Extension, and Education mission area on Farm Bill issues, and drafted conforming amendments and provided technical assistance necessary to implement 2008 Farm Bill-related requests.

OGC defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals (CBCA), the Court of Appeals for the Federal Circuit (CAFC), the Court of Federal Claims (COFC), District Courts, and the Government Accountability Office (GAO). OGC helped secure a favorable ruling at CAFC for the Forest Service. Croman Corporation, a helicopter company, protested the Forest Service's awards of exclusive-use helicopter contracts for firefighting, in part, arguing that the computer program ("Optimization Model") that the Forest Service used to recommend and document multiple awards simultaneously did not constitute a proper trade-off analysis. CAFC rejected Croman's arguments and affirmed the decision of the Court of Federal Claims in favor of the Forest Service; and, the CAFC decision supported the use of the Forest Service Optimization Model. OGC also shepherded an important IT services contract from initial award, through corrective action based on reviewed errors, to re-award. Following a protest of the second award decision, OGC secured a denial of this protest on the merits at the Government Accountability Office, and then a ruling from COFC that it lacked jurisdiction over the protest. Moreover, COFC specifically noted that it would have found for the Government on the merits as well.

Importantly, given the Administration's goals of transparency and connectivity, OGC reviewed amended terms of service agreements for the Department's social media tools, including *Google+*[®] and *GitHub*[™] and development of NASS's and ERS's Application Programming Interface terms of service.

FTCA/FOIA and eDiscovery: OGC also handles on behalf of the Department's agencies and offices the legal work and litigation that arises under the Federal Tort Claims Act (FTCA), FOIA, the Privacy Act (PA) and FACA. Significant legal resources continue to be expended on the defense of the tort claims and suits that have been filed

against the Forest Service as a result of the June 2010 flash flood at the Albert Pike Recreation Area in Arkansas, in addition to other major claims and suits against the Department under the FTCA. OGC handled a large number of FOIA cases, some of which involved tens of thousands of pages or were complicated because they were FOIA/Administrative Procedure Act “Reverse FOIA” actions such as *Humane Society v. APHIS*, *Jurewicz v. APHIS*, which was argued on appeal before the Federal Circuit on November 15, 2013, and *Physicians Committee on Responsible Medicine v. USDA (AMS)*, complicated by the unique structure of Dairy Programs, which is staffed with independent contractors that challenge the applicability of FOIA to their records.

OGC spent significant time and effort coordinating and leading the review of a large number of documents responsive to e-discovery requests in litigation, such as the *Westland Hallmark* case and the *Joseph Sedillo, et al. v. Vilsack* Class Action. OGC worked with agency personnel regarding collection and preservation of digital information related to investigations and litigation. OGC provided legal oversight in the development of the Department’s cybersecurity, defensive counterintelligence, and insider threat detection initiatives, in order to bring these programs in line with the intelligence community’s standards. In addition, OGC provided input and guidance on implementing an Executive Order requiring conversion of Department records to electronic format for Archives.

Intellectual Property Practice: OGC provided intellectual property advice in regard to Administration and Department programs, including: trademark and copyright advice in the name change of the *MyPyramid®* nutrition program to *ChooseMyPlate®* and related *Online Tools v. Vilsack* litigation; and patent advice in the regulatory approval of the *Al-Flex* patented fumigation technique. GLRD assisted DOJ on the Federal Government’s involvement in: *Delano Farms v. California Table Grape Comm’n* (misappropriation of unreleased ARS table grape varieties); *U.S. v. Capstone Plants* (misappropriation of ARS crape myrtle plants); *Association for Molecular Technology v. Myriad Genetics* (whether isolated DNA is subject matter eligible for patenting); and *Bowman v. Monsanto* (patent rights exhaustion in connection with the sale of self-replicating technology, e.g., seeds).

CIVIL RIGHTS, LABOR AND EMPLOYMENT LAW

OGC represents the USDA’s interests in issues involving civil rights and employment, human resources, labor relations, and employee relations, including litigation and policy work. OGC defends USDA in individual cases and class actions filed pursuant to equal employment opportunity laws, the Equal Credit Opportunity Act, and other Federal statutory and regulatory authorities. OGC defends the Secretary’s interests before the Federal Labor Relations Authority, the U.S. Office of Special Counsel, and numerous administrative tribunals referenced earlier and Federal district and appellate courts. OGC provides a national practice for civil rights and employment litigation by providing standards and best practices for other litigators throughout the Department. OGC also provides comprehensive training on issues involving best practices and litigation techniques.

OGC was responsible for handling over 150 complaints of employment and program discrimination, and complaints related to labor and employee relations, and the following are noteworthy cases and matters:

Employment Discrimination Class Actions: OGC addressed extensive pre-certification class action discovery and certification issues in *Elaine Vercruysse, et al. v. Vilsack* (female non-managerial current and former employees of Forest Service Region 5 who have been denied career-enhancing details, training and assignments; have been non-selected for other positions within Region 5; and/or have been denied promotions into other positions in Region 5). The Equal Employment Opportunity Commission (EEOC) Administrative Judge denied certification of case, resulting in a savings of potentially millions of dollars on behalf of the Forest Service. OGC also successfully sought the dismissal of the nationwide employment discrimination class action of *Maria Leon, et al. v. Vilsack* (allegations that class agent and others were discriminated against on the basis of age when APHIS implemented a schedule and location rotation for all GS-11 Plant Health Safeguarding Specialists in its Puerto Rico office). The Administrative Judge determined there was no basis for class certification because the Class Agent failed to establish numerosity, typicality or adequacy of representation. OGC successfully precluded class certification in *Dominique Morant, et al. v. USDA* (allegations that African American and female employees of RD’s Contract Operations Branch were denied equal opportunities and were subjected to a hostile work environment). OGC continued its defense of the pending employment discrimination class action of *Joseph Sedillo, et al. v. Vilsack* (an allegation that the Forest Service discriminated against employees nation-wide on the basis of Hispanic national origin in selections and promotions, and the existence of a hostile work environment).

Decisions in USDA's Favor in Two Program Discrimination Federal District Court Cases: OGC worked with DOJ attorneys and potential witnesses from FNS to defend the government in a trial in the Federal district court case of *The Deron Schools v. Vilsack*. This private for-profit school alleged violations of the Administrative Procedure Act, Individuals with Disabilities Education Act, and the Rehabilitation Act with regard to whether students with special needs who were moved from New Jersey public schools to the private for-profit school should receive free or reduced price meals under the National School Lunch Program. After a trial in early 2013, the District Court ruled in the government's favor, finding that plaintiffs did not have standing and that the Rehabilitation Act does not provide a legal basis to provide a Federal benefit that would not otherwise be authorized under the National School Lunch Program. Also, OGC successfully defended the government in *Toney-Dick, et al. v. Doar/USDA*. This program discrimination class complaint alleged that USDA, New York City and the State of New York discriminated against disabled individuals in setting up a Disaster-Supplemental Nutrition Assistance Program following Hurricane Sandy. OGC was instrumental in identifying specific factual arguments and legal authority that led to the dismissal of USDA as a defendant by showing that the Rehabilitation Act did not create a private right of action against a Federal funding agency under the Rehabilitation Act.

Program Discrimination Group and Class Action Cases: OGC worked daily on implementation issues involved in two former class action complaints and two group complaints of program discrimination:

1. *Garcia, et al. v. Vilsack, and Love, et al. v. Vilsack* - Cases alleged discrimination by FSA against Hispanic and Women farmers and ranchers in loan making and loan servicing, respectively. The U.S. Supreme Court denied the petitions for writ of certiorari challenging the D.C. Circuit Court of Appeals and the District Court decisions regarding the denial of class certification. USDA established a voluntary non-judicial adjudicative claims process to address the decades old allegations of discrimination against women and Hispanics as an alternative for individual plaintiffs to litigate their cases in Federal court. In 2013, the Claims Process closed, with over 47,000 claims submitted. The Litigation Section continues to monitor all aspects of this voluntary claims process, including responses to Congressional and other stakeholder inquiries;
2. *Keepseagle et al. v. Vilsack* - In November 1999, Native American farmers and ranchers filed a class action suit alleging discriminatory treatment in USDA loan programs and a systematic failure to investigate civil rights complaints. In *Keepseagle*, the district court certified the case as a class action for injunctive relief purposes. After many years of litigation, plaintiffs and the United States achieved a comprehensive and historic settlement which the court approved on April 28, 2011. The claims period for the non-judicial adjudication process ended on December 24, 2011. All Track B payments have been made and all debt relief provided to prevailing class members. OGC continues to monitor the implementation of the settlement agreement, including difficult decisions concerning the *cy pres* fund, delivery of programmatic relief, and responses to Congressional and other stakeholder inquiries;
3. *Pigford I* – OGC is completing implementation of the April 14, 1999, consent decree in *Pigford/Brewington, et al.*, the class action filed on behalf of African American farmers alleging race discrimination in farm loan and benefits programs. The parties are dealing with several cases with disputed debt relief and finalizing a wind down stipulation and archiving plans. As of November 10, 2011, no additional decisions were implemented in favor of Track A claimants. To date, the Government paid \$1,016,328,416 to prevailing Track A claimants, including \$44,598,941 in debt relief and related expenses. In addition, it paid \$34,739,783 for 162 Track B claims that were adjudicated or settled; and
4. *Pigford II* - The settlement agreement in *In Re Black Farmers Litigation (Pigford II)*, a consolidation of lawsuits with approximately 35,000 plaintiffs, was approved by the court on October 27, 2011. The lawsuits were in response to the 2008 Farm Bill which authorizes individuals who were not allowed to file claims under the *Pigford* Consent Decree because of untimeliness and have not had decisions on the merits to seek relief in Federal court. All prevailing claimants were paid, and OGC ensured that funds dedicated to payments, the Ombudsperson, and administration are transferred timely.

Training and National Practice: OGC continued quarterly employment law calls and coordination of meetings with agency representatives and OGC field and regional attorneys on best practices for employment discrimination litigation. OGC continued to provide a well-received quarterly newsletter to USDA civil rights and human resources personnel on changes in the law, recent relevant case law decisions, and practical advice and counsel on

civil rights, labor and employment law issues. OGC also continued quarterly meetings with USDA's Civil Rights Directors' Council and met with agency heads and human resources personnel to offer services and collaborate on practice areas. OGC stressed the Secretary's civil rights vision in all of its training to ensure consistency in representation and the adherence to the highest standards in litigation and treatment of employees.

OGC provided advice and counsel prior to the request for a hearing in employment matters before EEOC. OGC provided legal sufficiency reviews of Final Agency Decisions (FAD) issued by the Assistant Secretary for Civil Rights (ASCR) in program civil rights complaints, including decisions rendered in the farm and housing loan programs under the Equal Credit Opportunity Act (ECOA). OGC also prepared formal legal opinions on a wide variety of civil rights matters and has the primary responsibility for working with ASCR's Office of Adjudication (OA) to ensure compliance with Title VI of the Civil Rights Act and related statutes covering federally assisted programs. OGC also functioned as a proactive civil rights office providing training on a variety of civil rights and employment issues, suggesting changes to agency practices in order to reduce discrimination complaint activity, developing action plans in response to compliance reviews, and anticipating areas in which civil rights issues may arise. OGC provided extensive EEO training for a variety of agencies including FSA, FS, NRCS, AMS, ASCR, and RD. Other accomplishments include the successful resolution of several informal EEO complaints, resulting in savings of hundreds of thousands of dollars in litigation costs and judgments against USDA.

REGIONAL OFFICES

Attorneys in OGC's field offices play a critical role in the Department, advising the USDA agencies and officials charged with implementing programs at the regional, state and local levels. At the beginning of 2013, OGC had four regional and thirteen branch offices. As explained above, in 2013, OGC reorganized its field structure. In order to assure both a continuity of knowledge and promote maximum flexibility amongst lawyers within its field offices, OGC determined that each individual field office should have a minimum critical mass of attorneys who are able to service all the clients in its area. To assure that critical mass while living within a confined budget, OGC closed five field offices and moved attorneys from the closing offices to the remaining field offices. This enabled OGC to reduce its footprint and overhead expenses while retaining critical skills and client service. Additionally, in order to create a sustainable ratio of attorneys-to-support staff, OGC reduced the number of support staff employees in four other field offices. OGC secured VERA and VSIP opportunities for eligible employees and negotiated with its union over directed reassignments and relocation expenses for displaced attorneys. In all, OGC relocated or secured retirement incentives for 36 affected employees. This field consolidation will result in annual savings for OGC.

Attorneys in all of the Regional Offices handled a wide variety of matters critical to the Department's programs and goals, including:

Civil Rights, Employment Law, and Contract Law. OGC's field offices successfully defended USDA agencies in employment and program-related discrimination litigations before the EEOC, Merit System Protection Board, and the United States District Courts within their respective regions. OGC attorneys also provided USDA agencies with training, legal advice, case assessments, and settlement recommendations designed to minimize the risk of liability in employment-related matters.

SNAP Integrity. OGC field offices have been actively involved in ensuring SNAP program integrity by assisting in the agency's debarment of store owners who have engaged in illegally trafficking program benefits.

RD. OGC provided legal advice and litigation support to all RD offices, including assisting with loans worth hundreds of millions of dollars (including making, servicing, restructuring, and collecting loans, and, where necessary, foreclosing on collateral), grants, and tribal issues.

Natural Resources Conservation Service. OGC continues to see a large number of requests from NRCS for review of easement acquisitions under the Wetlands Reserve Program, Grassland Reserve Program, and Farm and Ranch Lands Protection Program. Many of these acquisitions involved parcels where the value exceeded \$1 million or involved significant conservation projects.

NRCS is transitioning to more monitoring that will result in additional enforcement actions requiring OGC legal review. In addition, the varied resources and needs of the clients in each of OGC's field regions require OGC to provide a host of legal services to its client agencies and officers, specific to each region of the country.

Eastern Region

OGC's Eastern Region provides legal support and advice to USDA agencies in 23 eastern States along with the U.S. Territories of Puerto Rico and the U.S. Virgin Islands.

ARS. OGC assisted with the ARS Disposal Project, which transfers ARS facilities to eligible universities. Among the most notable accomplishments was the transfer of a 1,159 acre site with numerous buildings. This required a Phase I and Phase II Environmental Site Assessment because of its heavy use for cattle research. OGC drafted the deed which included a provision that required the receiving university, the University of Georgia, to be solely responsible for all future costs that may be associated with bringing the property up to conformance with the applicable standards related to asbestos, lead and Phytoremediation of polychlorinated biphenyl (PCB). This transfer closed on September 19, 2013. OGC similarly assisted ARS in a variety of actions necessary to properly convey a tract to Clemson University.

Forest Service. OGC assisted the Forest Service in upholding its forest plans in numerous litigation matters. For example, in *American Whitewater et al. v. USFS*, after over a decade support, assistance, and litigation, Federal District Court upheld the Forest Service's decisions regarding management of recreational uses on the upper portion of the Chattooga Wild and Scenic River. The Court found that the Forest Service's 2012 Plan for Management of the Chattooga Wild and Scenic River complies with Federal law, an important result in this longstanding battle. Additionally, OGC provided advice on some unique but impactful projects such as the Deerfield Wind Project, the first proposed wind energy development on National Forest lands. This project, widely reviewed as a model for environmental analysis of wind energy proposals on National Forest System lands, and included on the President's list of priority renewable energy projects, was in jeopardy when a group of plaintiffs challenged the agency's analysis of visual and noise impact of the wind turbines on adjacent wilderness areas under the Wilderness Act (*Vermonters for Clean Energy v. Madrid*). OGC assisted to successfully defend this litigation, helping the Forest Service balance the tensions between renewable energy development and protection National Forest lands. Additionally, OGC recently did the title work on the acquisition of Wolf Island on the Superior National Forest in northern Minnesota. Wolf Island is a 60 acre island with over 10,500 feet of lakeshore on Lake Vermilion, one of the largest lakes in Minnesota and one of the most scenic lakes in the country, according to the National Geographic Society. The island itself provides habitat for bald eagles, ospreys and loons, as well as a historic cabin built by Minneapolis "prairie school" architect John Jager. This acquisition will prevent additional developmental impacts to the island and will preserve the significant historic and cultural sites.

NRCS. OGC worked closely with NRCS in West Virginia to establish a streamlined process to implement the first sign up for the "Dunloup Creek Voluntary Floodplain Buyout" project. OGC provided extensive assistance to NRCS in developing contract documents, providing preliminary title opinions, as well as providing guidance to NRCS in responding to landowner disputes and/or appeals for this ongoing acquisition project which protects residents from the dangers of repeat flooding. With OGC's assistance, NRCS provided funding to local municipalities for their purchase of 90 threatened residential properties located within the 100-year floodplain of Dunloup Creek. In return for its funding to the project, NRCS acquired permanent watershed easements pursuant to the Emergency Watersheds Protection Program over all of the purchased properties. A second sign up is now open.

OGC assisted DOJ in handling a FSA program discrimination case, *Corey Lea Inc. v. USDA*. In August, the Court of Appeals for the Sixth Circuit affirmed the granting of USDA's motion for summary judgment.

FSA. OGC provided legal advice to FSA with loan issues and bankruptcies in hundreds of matters during the past year. OGC helped FSA provide millions of dollars in loans to family farmers and small farming operations, and also assisted DOJ in defending FSA in cases brought challenging its implementation of program funds.

CCC. OGC continues to advise both FSA and CCC on issues involving the Tobacco Transition Assessment Program. For example, in *In re Renegade Holdings/Alternative Brands*, the debtor, a tobacco company subject to quarterly assessments by CCC under the Tobacco Transition Assessment Program, filed a Chapter 11 Bankruptcy petition. OGC assisted CCC to assert its claim in the bankruptcy court as an excise tax entitling CCC to priority resulting in CCC being paid over \$1 million.

Central Region

OGC's Central Region provides legal support and advice to USDA agencies in 13 states in the American heartland.

RD. With vast rural areas in the Central Region, the RD mission area agencies provided significant assistance to individuals and communities with direct and guaranteed loans and grants. Within the Central Region, there are almost 120,000 outstanding direct housing loans totaling \$8 billion and almost 10,000 outstanding community program direct loans totaling \$5.2 billion. USDA agencies obligated over \$1 billion in 2013. A loan portfolio of this size requires significant legal assistance from OGC to assist with the origination, servicing, restructuring and collection of the direct loans and to handle a large volume of related litigation, such as bankruptcies and foreclosures which arise out such a large loan portfolio. OGC also provided assistance for RD's guaranteed loan and grant programs. For example, Rural Business Cooperative Service guaranteed a Business and Industry loan for \$5 million for the Arbuckle Wilderness, requiring OGC assistance in a complicated security liquidation (land, exotic animals, etc.) involving the Federal Deposit Insurance Corporation, the borrowers, banks and receivers and spanning several years. In another matter, OGC provided assistance to Rural Housing Service in a delicate liquidation of a \$5 million Community Facility loan for a nursing home and contents, required by the facility's sudden closure, which required disposition of patient records and personal property. In another matter, OGC represented RD in resolving a protracted bankruptcy involving the asset liquidation and disposition of a rural hospital and recovered \$2.5 million. In another bankruptcy case, OGC defended a \$2 million claim against the efforts by another creditor to levy execution on the agency's security property. For the Rural Utilities Service, OGC defended a water system's franchise water rights and successfully protected the customer base against an encroachment of a city water system.

Forest Service. OGC assisted the Forest Service with a wide variety of matters including land exchanges and acquisitions, closure orders, law enforcement issues, timber sale contract disputes, access issues, hunting and recreation issues, and title claims. OGC represented the Forest Service in an administrative proceeding before the Texas Commission on Environmental Quality regarding a ground water quality challenge. In another matter, OGC represented the Forest Service in a title claim lawsuit regarding land located in the Davy Crockett National Forest. OGC is providing significant pre-litigation consultation on an accretion and avulsion issue along the Homochitto River in the Homochitto National Forest in Mississippi, where a private landowner claims ownership of National Forest land.

FNS. Notable matters in the Central region included a challenge by *Rotarius International Market*, where the retailer dismissed its challenge once the obvious nature of the violations was disclosed, and *Olive Cafe*, where OGC successfully litigated the judicial review of a permanent disqualification.

Contract Litigation. OGC continues to provide services to NRCS on contract claims on restoration projects along the Louisiana Gulf Coast. The latest filing before the Civilian Board of Contract Appeals involves a canal restoration claim for \$300,000. OGC is also providing pre-litigation advice on an anticipated restoration claim for \$3 million.

NRCS. NRCS has acquired over 8,225 easements covering more than 1.6 million acres within the OGC Central Region. During 2013, OGC assisted NRCS with a complicated acquisition for \$6 million, ensuring that the required access was included in the conveyance. OGC also assisted NRCS in modifying easements for a pipeline highway expansion. In Oklahoma, OGC provided assistance to a quiet title action by a neighboring landowner claiming ownership of the easement. In Arkansas, OGC is providing advice to NRCS with a major WRP violation, where the restricted land was subdivided and sold to individuals who then placed permanent structures on the land. There were thirteen separate encroachments on six different tracts.

FSA. There are over 900,000 farms and \$3.3 billion in outstanding FSA loans in the Central Region, requiring significant legal resources for the loan and commodity programs. In one high-publicity case, OGC defended an environmental challenge to a FSA guaranteed loan to a concentrated animal feeding operation in Arkansas, where plaintiffs alleged that a large hog farm will adversely impact the Buffalo River Valley and the Buffalo National River. OGC also provided representation to the program area authorized by the United States Warehouse Act, and its Federal license and examination of grain warehouses. During 2013, two warehouses became insolvent requiring advice due to asset distribution demands made by competing claimants under the program. During 2013, OGC also successfully defended the Secretary's implementation of the Supplemental Revenue Assistance Payments program against a challenge by 38 farmers who claimed that the program as implemented did not follow the authorizing statute. The successful outcome saved the agency several million dollars. In litigation involving producers who violated program guidelines, OGC assisted DOJ in collecting \$5.4 million, primarily for the CCC.

RMA. OGC assisted RMA in litigation filed by tomato farmers in Arkansas to challenge the application of three Final Agency Determinations of RMA regarding fungicides and soil testing that were the basis for denial of crop insurance coverage for plaintiffs' crops. In another case, OGC is in the final stages of resolving legal claims for RMA for \$45 million following the liquidation of an Approved Insurance Provider that went into receivership. In Kansas, OGC's defense resulted in affirmation of the RMA's directives when its decision relating to good farming practices was challenged in three separate actions.

Mountain Region

OGC's Mountain Region provided legal support and advice to USDA agencies in 10 states in the Rocky Mountain and western area of the country.

Travel Management. OGC spent considerable time during 2013 assisting the Forest Service in implementing its travel management decisions, including helping the Forest Service respond to administrative appeals and defending decisions in Federal court. Many of the travel plans are being challenged by motorized vehicle use groups, environmental groups, or both. Active travel management litigation included challenges to travel plans for the Custer and Gallatin National Forests (NF) in Montana, the Payette NF in Idaho, the Medicine Bow NF in Wyoming, the Santa Fe NF in New Mexico, and the San Juan and Pike-San Isabel NFs in Colorado.

NEPA, NFMA, and ESA. OGC handled a wide range of legal issues arising under the NEPA, NFMA and ESA. OGC provided extensive advice to the Forest Service on NEPA and NFMA compliance issues, including forest health projects under the Healthy Forests Restoration Act and the protection of endangered and threatened species such as the Canada lynx, bighorn sheep, sage grouse, cutthroat trout, and San Francisco Peaks groundsel. Examples of active litigation include *Salix v. U.S.* (D. Mont.) (challenge to 18 forest plans for failure to initiate consultation with the Fish & Wildlife Service regarding the Canada lynx); *Center for Biological Diversity v. Marr* (D. Colo.) (challenge to trails in a watershed that is home to endangered greenback cutthroat trout); *Center for Biological Diversity v. USFS* (D. Ariz.) (claim that Forest Service must protect California condor from ingestion of lead bullets); *Water Supply and Storage Company v. USDA* (D. Colo.) (dispute involving a dam owner's responsibility to mitigate the effects of its water diversion on cutthroat trout); *Save the Peaks Coalition v. USFS* (D. Ariz. and 9th Cir.) (challenge to use of reclaimed water for snowmaking at Arizona Snowbowl, based on alleged adverse impacts to the groundsel); *High Country Citizens Alliance v. USFS* (D. Colo.) (challenge to coal mine permit decision on multiple bases including alleged air quality issues).

Water Rights. OGC represented the Forest Service in water rights issues at the regional and national levels. OGC is actively involved in helping the Forest Service establish and protect water rights in state administrative proceedings in Colorado, Nevada, Arizona, Montana, and Utah. In *Water Supply and Storage Company v. USDA and USDOJ*, (D. Colo.), OGC is defending the Forest Service in litigation challenging regulation of a private dam.

Mining and Energy Development. OGC advised the Forest Service regarding controversial oil and gas development projects in Colorado, Utah and Wyoming; coal development in Colorado, Wyoming, and Utah; and mines and proposed mining projects throughout the region, including proposed copper and uranium mines in Arizona, phosphate and cobalt mines in Utah, a proposed molybdenum mine in Colorado, and proposed silver mines in Montana. In *U.S. v. Armstrong* (D. N.M.), OGC actively supported litigation to recover millions of dollars from

mining companies that illegally removed and sold pumice, and in *Havasupai Tribe v. Williams* (D. Ariz.), OGC helped to successfully defend a Forest Service decision to allow reopening of a previously-permitted but long dormant uranium mine.

Grazing. OGC continued to provide extensive advice and litigation support to the Forest Service regarding its ongoing efforts to reconcile grazing rights with its obligations to protect bighorn sheep, which are susceptible to disease spread by domestic sheep. Examples include *Biodiversity Conservation Alliance v. Blazer* (D. Wyo.) (Medicine Bow NF) and *WWP v. USFWS* (D. Idaho) (Salmon-Challis NF).

Fire. The four Forest Service regions served by the Mountain Region of OGC have active wild-land fire programs, which led to a large number of claims for collection of fire suppression costs and damages. Numerous costs collection suits are pending, and OGC routinely assisted the Forest Service with administrative cost collection efforts.

Contract Issues. OGC represented USDA agencies in a number of CBCA cases in the Mountain Region, often involving Forest Service stewardship and timber contracts and, currently, a construction contract dispute relating to the Vallecito Reservoir in Colorado.

Land Issues. OGC is defending the Forest Service in quiet title litigation filed by the State of North Dakota and several counties in that State which seek to block Forest Service travel management initiatives in the Little Missouri National Grassland by asserting public rights of way over all section lines in the Grassland. This case could significantly affect Federal land management in all states with section line laws. OGC has also provided extensive advice and litigation support to the Forest Service in a number of other lawsuits raising quiet title and RS 2477 road claims, including *Shoshone County v. USFS* (9th Cir. (Idaho)) and *Pueblo of Jemez v. USFS* (10th Cir. (N.M.)), and has assisted the Forest Service with major land acquisition projects, including the Montana Legacy Project (acquisition of 112,000 acres from The Nature Conservancy).

Law Enforcement Issues. OGC helped Forest Service law enforcement negotiate a memorandum of understanding with the Western States Sheriffs Association, which included a template for an operational agreement to be entered between Forest Service law enforcement and individual county sheriffs. In addition, OGC provided litigation support for *U.S. v. Utah* (D. Utah), in which the U.S. successfully challenged the constitutionality of a new Utah statute that purported to criminalize Forest Service and BLM law enforcement activity on Federal lands in Utah.

Hazardous Materials Cleanup and Cost Recovery. OGC provided extensive advice relating to hazardous materials cleanup on national forest system lands, as well as litigation support in CERCLA cases such as *Chevron v. U.S.* (D. N.M.) (a contribution claim against the U.S. for part of \$882 million in cleanup costs at the Molycorp Mine Site in New Mexico), and *U.S. v. Federal Resources* (D. Idaho), a cost recovery case to recover \$4 million in clean-up costs for a site near Coeur d'Alene, Idaho.

FSA. OGC provided legal advice to FSA with respect to loan issues and bankruptcies in more than 100 matters in the Mountain Region during the past year.

Pacific Region

OGC's Pacific Region provided legal support and advice to USDA agencies in 7 states along the Pacific Coast, and American Samoa, Guam, Palau, the Federated States of Micronesia, and the Marshall Islands.

Affirmative Fire Claims. OGC actively pursued cost-recovery actions against parties responsible for negligently starting fires on NFS lands in the Pacific Region. It has represented USDA in affirmative fire cases that have resulted in the recovery of more than \$470 million (in cash and the value of real property conveyed to the United States), including more than \$100 million in FY 2013. Of the amount recovered by the OGC, the Forest Service has received about \$300 million to help restore the NFS lands burned in the fires, make the lands more resilient to climate change, and enhance water resources.

Alaska Subsistence Program. OGC advised the Federal Subsistence Board and USDA officials on controversial issues regarding subsistence resources for rural residents of Alaska. This work included helping the Department

respond to legislation that would alter the management of resources on the national forests in Alaska, such as remote cabins used for subsistence hunting and fishing. The Pacific Region continued to provide assistance to the DOJ in litigation affecting the Federal Subsistence Program, resulting in the Ninth Circuit's affirmation of the program's jurisdictional reach into the navigable waters within the boundaries of Alaska's national forests.

Climate Change. OGC worked with the Forest Service to address climate change considerations in NEPA analyses and the evolving role of carbon accounting with respect to Forest Service facilities, procurements, and land management projects.

Contract Litigation. OGC successfully defended USDA agencies in contract-related litigation before the CBCA.

Farm Loan Programs. OGC provided advice to FSA regarding various projects and loans. It helped FSA make millions of dollars in loans to family farmers and small farming operations in seven states. Pacific Region attorneys helped FSA recover debt in bankruptcy cases and other litigation matters, and provided advice to the agency regarding its conservation programs and foreclosure actions.

Grazing. OGC devoted significant resources to grazing matters because environmental groups continue to file lawsuits challenging the Forest Service's grazing program in the Pacific Region.

Hydropower. OGC helped the Forest Service respond to a large number of proposals for projects involving alternative sources of energy. In Alaska, for example, there are more than 30 proposed hydroelectric projects on NFS lands, most of which are in roadless areas and pose potential conflicts with USDA roadless policies.

Law Enforcement Assistance. OGC reviewed orders issued under 36 CFR 261.50 to ensure that they met legal requirements and provided advice to Forest Service law enforcement personnel with respect to ongoing criminal investigations. Pacific Region attorneys helped the Forest Service and DOJ obtain criminal convictions of individuals who were conducting unauthorized mining activities on NFS lands.

Legislation and Congressional Relations. OGC provided legal services to the Forest Service and the Department on Alaska-specific legislation and congressional relations. For example, Senate Bill 340 would transfer 70,000 acres within the Tongass National Forest to Sealaska Corporation, an Alaska Native corporation, for logging, to finalize Sealaska's entitlement under the Alaska Native Claims Settlement Act. Pacific Region attorneys reviewed and offered opinions on the effect of particular sections in the legislation to help ensure that the meaning of the bill comported with the Administration's policies, and worked extensively on the Department's congressional testimony and responses to congressional questions.

Mining and Minerals. OGC helped the Forest Service address unauthorized mining activities and unauthorized occupancies and helped DOJ file civil and criminal enforcement actions in some of these cases. Pacific Region attorneys also helped the Forest Service resolve issues involving authorized mining.

Native American Issues. A number of the national forests in the Pacific Region are renewing or entering into agreements with Native American tribes. OGC reviewed and provided advice to the Forest Service with respect to these agreements.

Natural Resources Litigation. OGC provided invaluable assistance to DOJ in natural resources litigation, including lawsuits challenging protections for roadless areas and proposals for timber sales in roaded areas of the Tongass National Forest. OGC was heavily involved in *Pacific Rivers Council v. Forest Service*, a lawsuit challenging the 2004 Sierra Nevada Framework, an amendment to the Land and Resource Management Plans for 11 national forests in California. OGC played a critical role in the decision by the Solicitor General of the United States to file a petition for *certiorari* in the *Pacific Rivers* case. After the Supreme Court granted the petition, Pacific Rivers withdrew its underlying claim and the Supreme Court vacated the unfavorable Ninth Circuit decision, effectively dismissing the *Pacific Rivers* lawsuit.

The Pacific Region continued to handle a large number of lawsuits challenging the Forest Service's tree thinning projects, fuels reduction projects, and other vegetation management projects, grazing program, and travel management plans.

Pre-Decisional Environmental and Natural Resources Advice. OGC provided pre-decisional advice to the Forest Service on many significant environmental and natural resources matters to reduce the vulnerability of agency decisions in litigation. This included advice in support of the Administration's strategy to help communities shift from relying on old-growth timber resources of the Tongass National Forest to a more diversified economy. OGC also provided advice on land and resource management plans, salvage and green timber sales, fuels and hazard reduction projects, and grazing allotments. OGC developed a "Law for Resource Managers" course. More than 30 Forest Service employees attended the course, which was offered for the first time in November 2013. The course enhanced the technical expertise of the participants and the ability of the Forest Service to achieve its mission of caring for the land.

Renewable and Alternative Sources of Energy. OGC advised USDA agencies on renewable energy projects in the Pacific Region, including projects involving wind, solar, and biomass power generation. A Pacific Region attorney worked on the interconnection and tariff agreement issues relating to a solar photovoltaic system at the Forest Service's San Dimas Technology and Development Center in Southern California. The attorney and three Forest Service employees were awarded a Department of Energy 2013 Federal Energy and Water Management Award and were also among the eight project teams selected by the White House Council on Environmental Quality to receive a 2013 GreenGov Presidential Award for their ground-breaking work on the program that now generates more than 100 percent of the facility's energy needs and provides billing credits to benefit an adjacent national forest. OGC provided advice on issues related to the use of woody biomass and related incentive programs available under Federal law, and helped the Forest Service respond to proposals from power companies seeking to upgrade existing infrastructures on NFS lands and to build major new transmission lines.

OFFICE OF THE GENERAL COUNSEL

Summary of Budget and Performance
Statement of Agency Goals and Objectives

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

OGC has one strategic goal and five strategic objectives that contribute to all the Department’s strategic goals.

Agency Strategic Goals	Agency Objectives	Programs that Contribute	Key Outcome
<p>To provide effective legal services in support of all programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.</p>	<p>Conduct litigation before courts and administrative forums, and provide litigation support services to the Department of Justice in connection with litigation arising out of USDA programs and activities.</p> <p>Provide advice and counsel to USDA officials concerning legal issues arising out of USDA programs and activities.</p> <p>Review all draft regulations submitted by USDA agencies, and provide advice to USDA officials as to the legal-sufficiency of the draft regulations.</p> <p>Prepare and review for legal sufficiency legal documents, memoranda, and correspondence.</p> <p>Draft legislation, and review proposed legislation, reports, and testimony for legal sufficiency in connection with proposal to establish or amend USDA programs and activities.</p>	<p>Legal Services Program</p>	<p>Provide effective legal services in a timely and responsive manner to support USDA activities, consistent with the priorities established by the Secretary of Agriculture.</p>

Summary of Budget and Performance
Key Performance Outcomes and Measures

Agency Strategic Goal: To provide effective legal services in support of all Programs and activities of USDA, consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.

Key Performance Targets:

Performance Measure	2009 Actual	2010 Actual	2011 Actual	2012 Actual	2013 Actual	2014 Target	2015 Target
Litigation before administrative forums, including Equal Employment Opportunity Commission, Merit Systems Protection Board, USDA's Administrative Law Judge's and Judicial Officer, and other administrative bodies, conducted in an effective and timely manner.	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner	Pleadings and filings made in an effective and timely manner
Provision of assistance to Department of Justice and U.S. Attorneys in connection with litigation in Federal courts as assigned accomplished in an effective and timely manner.	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner	Litigation assistance provided effectively and briefs filed in a timely manner
Legal advice and counsel to USDA officials and agencies provided timely and in an effective manner.	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner	Legal advice provided in a timely and effective manner
Dollars (in thousands)	\$41,530	\$43,393	\$41,387	\$39,259	\$40,826	\$41,202	\$47,567

Selected Past Accomplishments toward Achievement of the Key Outcome:

- In FY 2013, OGC handled 23,246 legal matters handled, including financial transactions, litigation of all types in federal, state and administrative tribunals.
- In FY 2013, OGC recovered a total of at least \$106 million for U.S. taxpayers, including: over \$100 million in costs associated with fires burning National Forest System lands; \$2 million for pollution control clean-up costs; \$925,932 in civil penalties under the Animal Welfare and Horse Protection Act; plus reparation awards of \$5.3 million for Perishable Agricultural Commodities Act cases.
- Assisted FSA with the Feedstock Flexibility Program and the purchase and sale of sugar under the Cost Reduction Option of the Food Security Act of 1985, saving the taxpayers tens of millions of dollars associated with potential forfeitures of sugar under non-recourse loans. In addition, OGC assisted in the planning and operation of measures to dispose of forfeited sugar, saving over million dollars.
- Assisted FNS in issuing and implementing regulations for nutrition standards for snack foods in schools.
- Assisted NRCS in its role to help develop and implement natural resources restoration projects intended to restore the Gulf of Mexico ecosystem following the 2010 Deepwater Horizon Oil spill, the largest offshore oil spill in U.S. history.
- Assisted FSA in implementing an out of court administrative claims process for women and Hispanic farmers and ranchers who alleged discrimination in the making of FSA loans, making available in excess of \$1.33 billion for compensation.
- In coordination with DOJ, presented USDA's legal position in approximately 150 cases on appeals, including reviewing briefs and advising DOJ in cases affecting USDA programs before the United States Supreme Court. In a hotly contested case argued before the U.S Supreme Court that challenged USDA's decision regarding the interpretation of the Agricultural Marketing Agreement Act of 1937, *Horne et al. v. USDA*, OGC assisted DOJ in preparing the briefs and the oral argument.
- Assisted the Food Safety and Inspection Service (FSIS) with the development of a much anticipated final rule to modernize poultry slaughter inspection.
- OGC defended or assisted in numerous proceedings before the Civilian Board of Contract Appeals, the Court of Appeals for the the Federal Circuit (CAFC), the Court of Federal Claims, District Court, and the Government Accountability Office.
- In FY 2013, OGC cleared 240 regulations; 242 guidance documents; 504 letters to Congress; and held 122 training sessions for client agencies.

Selected Accomplishments Expected at the 2015 Proposed Resource Level: OGC will provide effective legal services in a responsive manner in order to ensure that agency officials can implement their programs.

Strategic Goal Funding Matrix
(Dollars in thousands)

Program/ Program Items	2012 Actual	2013 Actual	2014 Estimate	Increase	
				or Decrease	2015 Estimate
Legal Services.....	\$39,345	\$45,074	\$41,202	\$6,365	\$47,567
Staff Years.....	253	244	241	31	272

Full Cost by Agency Strategic Goal
(Dollars in thousands)

Agency Strategic Goal: To provide effective legal and ethics services in support of all programs and activities of USDA consistent with the strategic goals of USDA and the priorities of the Secretary of Agriculture.

Program / Program Items	2012	2013	2014	2015
	Actual	Actual	Estimate	Estimate
Administrative costs (direct).....	\$36,103	\$37,189	\$38,422	\$42,063
Indirect costs.....	3,156	3,637	2,780	5,504
Total Costs.....	39,259	40,826	41,202	47,567
FTEs.....	253	244	241	272