

ANALYSIS

Department of Justice Environmental Crimes and Cultural Resources Enforcement Unit

Analyst: John Borden

Request: Acknowledge receipt of the report.

Analysis: The budget report for SB 5514 (2021), the Department of Justice’s primary budget measure, included the following budget note:

The Department of Justice is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2023 on the activities of the Environmental Crimes and Cultural Resources Enforcement Unit. The report is to include, but is not limited to, the number and types of matters, legal status or outcomes, costs and billings for legal services, and the recovery of cost from litigation settlements and restitution.

Background

The genesis of the budget note is an effort to understand the, mission, scope, objectives, and outcomes of the Department of Justice - Criminal Justice Division, Environmental Crimes and Cultural Resources Enforcement Unit (ECCREU). The legislative history of ECCREU has evolved over time.

The 2009 Legislature (SB 797) expanded the legal authority of the Civil Enforcement Division to use the Protection and Education account to fund criminal prosecutions under state and federal environmental laws. The fiscal impact for the measure noted:

The DOJ anticipates the expansion of the use of these funds to include activities relating to environmental crimes will generate between \$100,000 and \$250,000 in 2009-11 and between \$1.0 million and \$1.5 million in 2011-13.

Since ECCREU’s inception, the Unit has produced only nominal revenue from litigation settlements and restitution and far below the cost of operating the Unit. In other words, ECCREU was being heavily subsidized by revenue from non-environmental litigation settlements and restitutions. The legislative intent of having the ECCREU within the Protection and Education Account was for the ECCREU to be financially self-supporting through legal settlements or recoveries. Concern also existed that ECCREU staff was undertaking legal work outside ECCREU mandate.

Based on this concern, the 2020 Legislature moved ECCREU to an hourly billing model so that the unit would no longer be subsidized by the Protection and Education Account (HB 4304, 2020). DOJ raised concerns that the hourly billing model was proving non-viable, as ECRU found few agencies to actually bill for the Unit’s legal services. The 2021 Legislature then move ECCREU to being a General Funded program or unit (SB 5514, 2021). In addition, the 2021 Legislature transferred ECCREU from the Civil Enforcement to the Criminal Justice Division.

According to DOJ, ECCREU “...is responsible for pursuing civil and criminal litigation to protect Oregon’s environment and cultural resources.” For 18 months of the 2021-23 biennium, ECREU reports

“...working on 55 cases (44 environmental crime cases and 11 cultural resource cases). Of these cases, 16 are pending trial, 8 have resulted in convictions, and 25 are being investigated. These cases are criminal cases which do not result in settlements or restitution.” A footnote to the report states that “The remaining six cases included two defendants who died pending trial, two cases the local DA chose not to pursue, a case that resolved with an administrative remedy, and a conviction that was overturned on appeal.”

The report also notes ECCREU’s work with federal, state, and local agencies with the report specifically noting that “Local law enforcement agencies and district attorney’s offices generally do not have personnel with specialty expertise in how to investigate and prosecute these cases.” The report notes over 100 consultative calls with state agencies, and at least one federal agency, including: Department of Environmental Quality, Oregon State Police, Oregon Department of Agriculture, State Historic Preservation Office, Water Resources Department, and the federal Environmental Protection Agency.

Report Analysis

While Criminal Justice Division’s ECCREU report is somewhat informative, the Legislature requires far more of a detailed response to fully understand ECCREU, the Unit’s activities, caseload reporting by case-type, performance and case outcomes, budget, actual costs, cost by case, and the Unit’s billing-model. For example, the report makes no mention of the budget for ECCREU, including the number of authorized positions and full-time equivalents (FTE) nor how ECCREU is funded. The report also fails to make any connection to Criminal Justice Division’s anti-poaching activities and how such activities may relate to ECCREU. In the past, anti-poaching activities have represented the majority of ECCREU work. ECCREU also needs to clearly articulate why the Unit is unable to recover legal services the Unit provides, especially if such services result in legal recoveries or settlements for the state.

The Legislature may want to consider clarifying the mission of ECCREU in statute. In addition, for the Legislature to better track, and evaluate the activities of ECCREU, consideration in the budget process should be given to establishing ECCREU as a section within the Criminal Justice Division and to direct the establishment of performance measures. This will help to ensure that ECCREU’s work remains dedicated to the stated mandate of ECCREU rather than potentially other activities within the Criminal Justice Division.

Legislative Fiscal Office Recommendation: The Legislative Fiscal Office recommends acknowledging receipt of the report.

Department of Justice Gibson

Request: Report on the Environmental Crimes and Cultural Resources Enforcement Unit by the Department of Justice.

Recommendation: Acknowledge receipt of the report.

Discussion: In response to a budget note, the Department of Justice (DOJ) submitted a report on the activities of the Environmental Crimes and Cultural Resources Enforcement Unit within the Criminal Justice Division.

House Bill 5014 (2021) Budget Note:

The Department of Justice is directed to report to the Joint Committee on Ways and Means during the Legislative Session in 2023 on the activities of the Environmental Crimes and Cultural Resources Enforcement Unit. The report is to include, but is not limited to, the number and types of matters, legal status or outcomes, costs and billings for legal services, and the recovery of cost from litigation settlements and restitution.

Environmental and cultural resource litigation is highly specialized and often requires dedicated resources with expertise in investigating and prosecuting such crimes. The Criminal Justice Division's Environmental Crimes and Cultural Resources Enforcement Unit fulfills this role by providing specialty expertise in civil and criminal environmental and cultural resource litigation. In 2021, the unit expanded to add an anti-poaching prosecutor to work with the Oregon State Police and the Oregon Department of Fish and Wildlife by prosecuting offenders who illegally harvest fish and wildlife.

According to DOJ's report, the unit has worked 44 environmental crimes cases and 11 cultural resource cases to date this biennium. Most of the new cases in this biennium are still under investigation, however, eight cases have resulted in convictions, and 16 more are pending trial. The report also details the unit's recent accomplishments and a list of key partnerships across the state.

The report does not reference the cost of legal services or whether any of the services provided by the unit are billable. Additionally, recovery of litigation costs is not detailed in the report, although the agency notes that most cases are criminal rather than civil.



DEPARTMENT OF JUSTICE

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January 13, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Nature of the Request

The Department of Justice – Criminal Justice Division requests that the committee acknowledge receipt of this report on the activities of the Environmental and Cultural Resources Enforcement Unit (ECREU).

Agency Action

See the attached report.

Action Requested

The Department of Justice – Criminal Justice Division requests that the committee acknowledge receipt of this report on the activities of the Environmental and Cultural Resources Enforcement Unit (ECREU).

Legislation Affected

None.

Sincerely,

LISA M. UDLAND
Deputy Attorney General

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
January 13, 2023
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cc: Michael Slauson, Chief Counsel of the Criminal Justice Division
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State of Oregon

Department of Justice



**Criminal Justice Division
Environmental Crimes and Cultural
Resources Enforcement Unit**

**Report to the 2023 Legislature
January 2023**

1.0 Agency Overview

Mission: The mission of the Oregon Department of Justice (DOJ) is to serve state government and to support safe and healthy communities throughout Oregon by providing essential justice services.

The Attorney General and the Department's eight divisions are dedicated to:

- Providing ethical, independent and high-quality legal services to state government;
- Safeguarding consumers from fraud and unfair business practices;
- Fighting crime and helping crime victims;
- Advocating for vulnerable children;
- Supporting families through the collection of child support;
- Enforcing environmental protections;
- Defending the civil rights of all Oregonians; and
- Pursuing justice and upholding the rule of law.

2.0 Criminal Justice Division Overview

The programs and functions administered and performed within the Criminal Justice Division provide support and line services to district attorneys and law enforcement agencies. As a statewide-multipurpose catalyst to Oregon's public safety efforts the Division's work advances the goal of promoting Excellence in State Government.

The Division is organized in three sections:

- Special Investigations and Prosecutions Section
- Organized Crime Section
- Analytical and Criminal Investigative Support Services Section

Each section works to maximize public resources by enhancing—as opposed to supplanting—public safety efforts at the local level. The Division achieves that mission by providing direct services to law enforcement and prosecutors throughout the state, including investigative, trial, and training support. Moreover, the Division works to encourage collaboration among law enforcement agencies and shares critical information relating to ongoing criminal activity with our public safety partners. The Division's efforts to timely and thoroughly investigate and prosecute allegations of public corruption helps to restore the public's confidence in government. Given the

growth and complexity of crime in this state over the last decade, the problems confronting the state's law enforcement agencies have become more sophisticated and unmanageable. As a result, the services provided by the Criminal Justice Division are all the more crucial. For many local law enforcement agencies, the DOJ - Criminal Justice Division is the only agency resource available in the state to provide investigation support and prosecution services.

3.0 The Environmental and Cultural Resources Enforcement Unit (ECREU) Purpose

This unit is responsible for pursuing civil and criminal litigation to protect Oregon's environment and cultural resources. Local law enforcement agencies and district attorney's offices generally do not have personnel with specialty expertise in how to investigate and prosecute these cases. Without the support and leadership of the ECREU unit, many of these cases would not be pursued.

4.0 Environmental and Cultural Resources Enforcement Unit (ECREU) Activities

The Environmental and Cultural Resources Enforcement Unit (ECREU) has been busy and productive in the 2021 – 2023 biennium. The team logged 5,281 hours of legal service time between July 1, 2021 and December 31, 2022. A major part of the ECREU team's work is case prosecution. From July 1, 2021, to December 31, 2022, the team has worked on 55 cases (44 environmental crime cases and 11 cultural resource cases). Of these cases, 16 are pending trial, 8 have resulted in convictions, and 25 are being investigated.¹ These cases are criminal cases which do not result in settlements or restitution.

ECREU prosecutors are also always available for calls and consultation with each of our partners. We receive calls on a weekly basis from our enforcement partners regarding investigative strategies, the merits of particular cases, and the implications of pertinent statutory schemes. We regularly receive calls from Department of Environmental Quality (DEQ), Environmental Protection Agency (EPA), Oregon State Police (OSP), Oregon Department of Agriculture (ODA), State Historic Preservation Office (SHPO), Oregon Water Resources Department (OWRD), and others. So far this biennium, the ECREU has provided this type of assistance over 100 times.

¹ The remaining six cases included two defendants who died pending trial, two cases the local DA chose not to pursue, a case that resolved with an administrative remedy, and a conviction that was overturned on appeal.

Some of the team's major accomplishments so far this biennium:

- A case involving the unlawful disposal of solid waste on city property, adjacent to residential property. The fill was migrating into waters of the state with impacts to essential salmonid habitat. The case was investigated and prosecuted by ECREU. Defendant pleaded guilty to one count of Unlawful Water Pollution in the Second Degree and one count of Discarding Refuse within 100 Yards of Waters of the State. A restitution hearing is pending.
- A case involving the unlawful discharge of water via unpermitted drainage of lake/dam release. There were multiple days of illegal discharge (Water Pollution) resulting in habitat degradation downstream and causing a significant fish kill. Multiple state and federal agencies were involved, and there was a joint state and federal investigation and prosecution. ECREU assisted the Columbia County prosecution of the case and was involved in mediating a resolution. The homeowner's association paid DEQ a \$439,000 fine, and insurers paid another \$3.7 million to Oregon Department of Fish and Wildlife (ODFW).
 - The two individuals who were responsible for draining the lake pleaded guilty to one count each of Unlawful Water Pollution in the Second Degree, Unlawful Taking of Wildlife, and Waste of Wildlife.
- An illegal guiding operation in Wallowa County. The defendants guided out-of-state hunters in Hells Canyon National Recreation Area for at least ten years. A complaint led to an investigation and subsequent charges in a case that spanned two years and stretched from Oregon to Ohio and Michigan. This case involved a significant amount of evidence--There was a total of 187,329 files on 26 DVDs and a thumb drive. These files, over 50 GB on the thumb drive alone, contained dozens of hours of body cam footage and recorded conversations and photos. ECREU assisted the investigation and acted as a liaison with federal partners. ECREU also assisted with discovery and provided support for the District Attorney prosecuting the case. Both defendants entered guilty pleas on multiple charges. Evidence seized for the case was forfeited, including pack bags, a chainsaw, and saddles. Eventually, two of six mules were definitively linked to the crime and seized. They are now the property of ODFW, where they might be used in the high lakes fish stocking program.
- The team built and presented both virtual and in-person environmental crimes training to multiple district attorney's offices, law enforcement partners from the

local, state and federal level, and multiple state natural resource agencies. From these trainings, ECREU has worked to develop regular communication with these parties to improve investigation and enforcement practices in multiple jurisdictions. The training continues to be available, and our goal is to continue to provide it and build upon it.

- ECREU worked with OSP and DEQ to update and improve the DEQ's criminal referral process. From this work, we hope to engage in education alongside the agency to better inform inspectors.
- ECREU worked at length with OWRD to help educate agency personnel on the criminal process as they have worked to implement HB 4061. We also reached out to DA and law enforcement partners to discuss the implications of the bill. This work is a part of a larger focus by ECREU to examine how the state can better handle illegal water use.
- Over the past year, ECREU has taken a close look at the intersection between environmental crimes and illegal cannabis. Using trainings built and hosted by ECREU and in conjunction with the work of both the Cross Agency Cannabis Enforcement group and the HB 3000 subcommittee task forces, our unit has been an active member in the conversation about how such harms can be better captured either by criminal prosecution or administrative enforcement. We have presented to the subcommittee task forces and held multiple meetings and trainings with legislators, agency partners, law enforcement partners and district attorneys to discuss the challenges and potential solutions to the investigation and prosecution of environmental crimes as illegal cannabis grows. Through these discussions, we have helped build and reinforce a network that has been willing to work on improvements to incident response, investigation, evidence collection and interagency communication. Through this education and collaboration, ECREU is a valuable partner in the state's response to the harms of illegal cannabis. We have already seen DAs and law enforcement utilize these tools in investigations and prosecutions.

Interaction between ECREU prosecutors and our state and federal agency partners is another critical part of our mission. This cooperation ensures that we identify the proper cases and achieve the most effective outcome in each particular case while coordinating and minimizing duplicative efforts. Within the context of environmental enforcement, ECREU prosecutors participate in regularly scheduled, state and federal, multi-agency taskforce meetings with our enforcement partners, including the following:

- DEQ Criminal Coordination
 - Organized in conjunction with DEQ's Office of Enforcement & Compliance, OSP's Special Investigations Unit and EPA's Criminal Investigation Division.
 - Meets regularly to discuss criminal case investigations.
 - Attended by DEQ enforcement staff, OSP, EPA Criminal Investigation Division, ECREU, and other state and federal enforcement/agency partners.
- US Attorney's Office/Green Team
 - Organized and attended by US Attorney's Office and federal agencies.
 - Meets quarterly to discuss pending and recently resolved criminal and civil cases.
- Cross Agency Cannabis Enforcement Meeting
 - Organized by Oregon Department of Agriculture (Sunny Summers, Cannabis Policy Coordinator).
 - Meets regularly to discuss enforcement issues involving cannabis.
 - Attended by many state agencies.
- Culture Cluster
 - Government-to-government workgroups made up of representatives from each of the Tribes and state agencies, focusing on cultural resources.
 - Meets four times a year to increase agency and public awareness of cultural resource issues and tribal history, and to reinforce relationships between each of the Tribes and the State.
 - Attended by representatives from the nine Tribes and nineteen State agencies.
- Governor's Taskforce on Tribal Cultural Items
 - This Task Force is required under Executive Order 17-12. It is tasked with recommending a process for soliciting information from state agencies and other public institutions relating to cultural items within their possession that may be associated with Oregon's nine federally recognized Native American Tribes.

- Intergovernmental Cultural Resource Council (ICRC)
 - Formed to promote informal but effective cultural resource management discussions in Oregon.
- ARPA Taskforce (Archaeological Resources Protection Act)
 - Regular meeting among federal land management agencies, law enforcement partners, US Attorney's Office, and Oregon DOJ regarding cultural resources investigations and trainings.
- State Impact Center/Environmental and Natural Resources Division Counsel for State and Local Affairs
 - Organized by US DOJ and a multistate group of environmental attorneys.
 - Point of contact between Environment and Natural Resources Division at US DOJ and State and local government agencies.
 - Facilitates joint trainings, creates opportunities for collaboration, promotes the development of effective inter-agency relationships, fosters cooperation with our state and local counterparts.
- Environmental and Natural Resources (ENR) Interdivisional Meeting
 - Monthly meeting of DOJ divisions which touch on environmental and natural resources matters.
- Portland Metro Abandoned & Derelict Vessel and Camping Workgroup
 - Regular meeting of concerned citizens, local business owners, partner state agencies, local governments, and other stakeholders who discuss abandoned and derelict vessels within the Portland Metro area.

The ECREU team has also met with and/or presented to several legislative committees to provide information and education on environmental crimes. These include the Water and Natural Resources Subcommittee, HB 3000 Law Enforcement Subcommittee, and the Interagency Task Force on Agricultural Labor Housing.