

THE JUSTICE DEPARTMENT'S ENVIRONMENT & NATURAL RESOURCES DIVISION CELEBRATES 100TH ANNIVERSARY

This November, the Environment & Natural Resources Division of the Department of Justice—the nation's environmental lawyer and the largest environmental law practice in the country—celebrates its centennial anniversary. Throughout its history, the division has litigated groundbreaking cases in the fields of public lands, natural resources, water rights, acquisition of Indian land, and environmental and administrative law. The division has acquired millions of acres for conservation, military, and other governmental purposes, including lands for the Appalachian Trail, Redwoods National Park, Everglades National Park, the National Aeronautics and Space Agency's facility at Cape Canaveral, the U.S. Marine Base at Quantico, and the Cape Cod National Seashore.

The Division's Early Years

Almost 100 years ago, on Nov. 16, 1909, Attorney General George Wickersham signed a two-page order creating the Public Lands Division of the Department of Justice "for the purpose of properly attending to the enormous and increasing volume of business relating to the public lands of the United States, and of Indian affairs." In the division's early days, its six attorneys were responsible for all cases involving public land, water rights, and Indian land. In 1911, Ernest Knaebel was appointed head of the division and given the rank of assistant attorney general.

The division's creation was prompted by an increasing number of legal actions involving federal lands, including numerous disputes over mineral rights, railroad rights of way, sales and transfers of land, and the displacement of Indians that resulted from the westward expansion and land distribution policies of the previous century. During Theodore Roosevelt's presidency (1901–1909), the federal government also greatly expanded its role in preserving our nation's resources with the passage of the 1906 Antiquities Act; the establishment of the U.S. Forest Service; and the setting aside of approximately 230 million acres of public lands as national parks, forests, monuments, and wildlife refuges. Land cases were being handled on a piecemeal basis by the Department of Justice and by legal offices at the Department of the Interior and other federal agencies. The attorney general sought to consolidate the legal representation of the United States and to promote greater expertise among federal attorneys.

By 1910, the department's new Public Lands Division had 2,459 civil cases and 466 criminal cases related to federal land, and more than half of the cases involved Native Americans. Over the next decades, the division continued to grow in both staff and caseload, and its workload was dominated by issues such as set-asides of water resources for irrigation and reclamation, Indian water rights, unlawful incursions into national forests by power companies,

unlawful enclosure of federal land, and patents granted to railroads for western land known to hold minerals.

The division was involved in many notable cases, including the legal fallout from the Teapot Dome scandal. During President Warren G. Harding's administration, the advantageous leasing of the U.S. Navy's oil reserves at Elk Hills, Calif., and Teapot Dome, Wyo., to private oil companies set off a scandal that tarnished the Harding administration and led to a series of lawsuits by the Public Lands Division against the oil companies. After a long period of litigation, the U.S. Supreme Court affirmed the return of the reserves to federal control.¹

The Division in Wartime

As World War II approached, the Public Lands Division became increasingly involved in litigation arising from land acquisition by condemnation. In the late 1930s, the division was involved in the acquisition of millions of acres of land, primarily for conservation, flood control, and slum clearance projects under Franklin D. Roosevelt's New Deal. In the years following the attack on Pearl Harbor, the division became "the biggest real estate office of any time or any place," acquiring through condemnation or purchase approximately 12,000,000 acres of land—an area approximately the size of Massachusetts, Connecticut, Rhode Island, Delaware, and most of New Jersey combined. The average time the division took to acquire land—from receiving a request to obtaining possession—was reported to be a bit more than four days. For example, in less than 24 hours, the division obtained a condemnation order for the Stevens Hotel (now the Hilton Chicago), which was originally owned by Justice John Paul Stevens' family. With 3,000 rooms, the Stevens Hotel was one of the biggest hotels in the world and was used as a training facility for the Army Signal Corps. More than \$250,000,000 was disbursed to landowners and leaseholders as compensation for the condemnation. In the 1940s and 1950s, the division also acquired property for the expansion of the government's atomic energy program, including hundreds of thousands of acres for facilities in Ellenton, S.C., and Hanford, Wash.

During and after World War II, the division continued its work prosecuting and defending lands and Indian cases. With the creation of the Indian Claims Commission in 1946, the Public Lands Division became increasingly involved in defending against Indian claims, eventually creating a team of attorneys dedicated to these cases.

By the 1960s, the federal government began to assume a stronger role in protecting resources in public lands, as the depletion of those resources came to public attention. The division also continued to provide consultation for and litigate cases involving water resources, particularly cases dealing with the establishment of interstate compacts spec-

ifying water rights, such as the Klamath River Basin Compact of 1957 and the Bear River Compact of 1958.

The Rise of Environmental Law

The American public's awareness of environmental issues increased in the 1960s, spurred by events such as the publication of Rachel Carson's *Silent Spring*, a massive oil spill off the coast of Santa Barbara, Calif., and the fires on the Cuyahoga River in 1969. The Public Lands Division began to explore the use of existing environmental statutes to clean up pollution. In 1961, the division brought the first enforcement action under the 1948 Federal Water Pollution Control Act in a case against the city of St. Joseph, Mo., for pollution of the Missouri River, and, in response to the filing of the suit, the city initiated sewer improvements to abate the problem. In 1970, the division litigated its first civil cases based on a section of the Rivers and Harbors Act of 1899 known as the Refuse Act.² Prior to 1970, however, most environmental laws did not provide for enforcement authority.

A wave of new environmental legislation started in 1970 with the enactment of the National Environmental Policy Act and the modern Clean Air Act. The U.S. Environmental Protection Agency was also established that year, creating what is now one of the division's most significant client agencies. The Water Pollution Control Act followed in 1972, the Endangered Species Act in 1973, and the Comprehensive Environmental Response, Compensation, and Liability Act in 1980. The passage of these statutes and their successors transformed the work of the Public Lands Division and made civil and criminal enforcement of these laws one of the division's major tasks. In addition, federal agencies took on an increasing role in issuing regulations and taking actions under these laws. Defending these agencies' actions also grew to occupy a significant portion of the division's time and resources. In recent years, the division has been involved in nearly all of the groundbreaking cas-

es interpreting statutes relating to the environment, natural resources, and wildlife preservation, as well as administrative law, and continues to litigate the most significant cases in these fields. In 2008 alone, the division was involved in nine cases heard by the U.S. Supreme Court.

As the nation grew and developed, so did the division's responsibilities. As a result, to reflect those increasing responsibilities, the division's name was changed over time—from the Public Lands Division, to the Lands Division, to the Land and Natural Resources Division, and finally to the Environment and Natural Resources Division. The division's priorities will continue to change as new needs and challenges arise. Today, in addition to its Executive Office, the Land and Natural Resources Division consists of nine litigating sections: Appellate, Environmental Enforcement, Environmental Defense, Indian Resources, Land Acquisition, Law and Policy, Natural Resources, Environmental Crimes, and Wildlife and Marine Resources. With offices in Washington, D.C., Anchorage, Boston, Denver, Sacramento, San Francisco, and Seattle and a staff of more than 600 people, the division currently handles more than 6,000 active cases and has represented virtually every federal agency in courts all over the United States and its territories and possessions.

The Environment and Natural Resources Division is planning a series of events and publications to commemorate its centennial. More information about the division and these activities may be found at www.usdoj.gov/enrd. **TFL**

Endnotes

¹*Pan Am. Petroleum & Transp. Co. v. U.S.*, 273 U.S. 456 (1927); and *Mammoth Oil Co. v. U.S.*, 275 U.S. 13 (1927).

²For example, *U.S. v. Fla. Power and Light Co.*, 311 F. Supp. 1391 (S.D. Fla. 1970) (addressing thermal pollution); *U.S. v. Armco Steel Co.*, 333 F. Supp. 1073 (S.D. Tex. 1971) (addressing discharge of toxic wastes).

CHALLENGES *continued from page 54*

ment that enables a constructive exchange of information between project proponents, regulators, and affected stakeholders. Ideally, this undertaking will result in a better project and broader support for the project. At minimum, an effective process will clarify the issues in dispute and narrow their scope.

The incentives for properly siting facilities that will generate renewable energy and related power transmission lines are growing. But the process at arriving at a decision that will satisfy the majority of affected parties and will minimize the risk of challenges and impediments is complex and is likely to be contentious. Environmental conflict resolution offers a way to navigate the process more effectively and productively. **TFL**

Lynne Gillette is the director of operations for the U.S. Institute for Environmental Conflict Resolution. She spent 15 years in Washington, D.C., at the U.S. Environmental Protection Agency and the U.S. Department of Energy, where

she worked primarily on renewable energy and issues involving exposure to electric and magnetic fields around transmission lines. Jeff Silvyn is general counsel for the same institute and its parent federal agency, the Morris K. Udall Foundation. Rebecca Guiao is an intern at the agency; she graduated from Western Washington University and will be pursuing her J.D. at Lewis and Clark Law School this fall. The perspectives expressed in this piece are those of U.S. Institute staff Lynne Gillette, Jeff Silvyn, and Rebecca Guiao and do not necessarily reflect the institutional perspective of the U.S. Institute for Environmental Conflict Resolution. Any errors or omissions are solely the responsibility of the authors.

