

ENRD

PUBLIC LANDS AND NATIONAL TREASURES:

THE FIRST 100 YEARS

OF THE ENVIRONMENT & NATURAL RESOURCES DIVISION



1909-2009



PUBLIC LANDS AND NATIONAL TREASURES

The First 100 Years of the
Environment and Natural Resources Division



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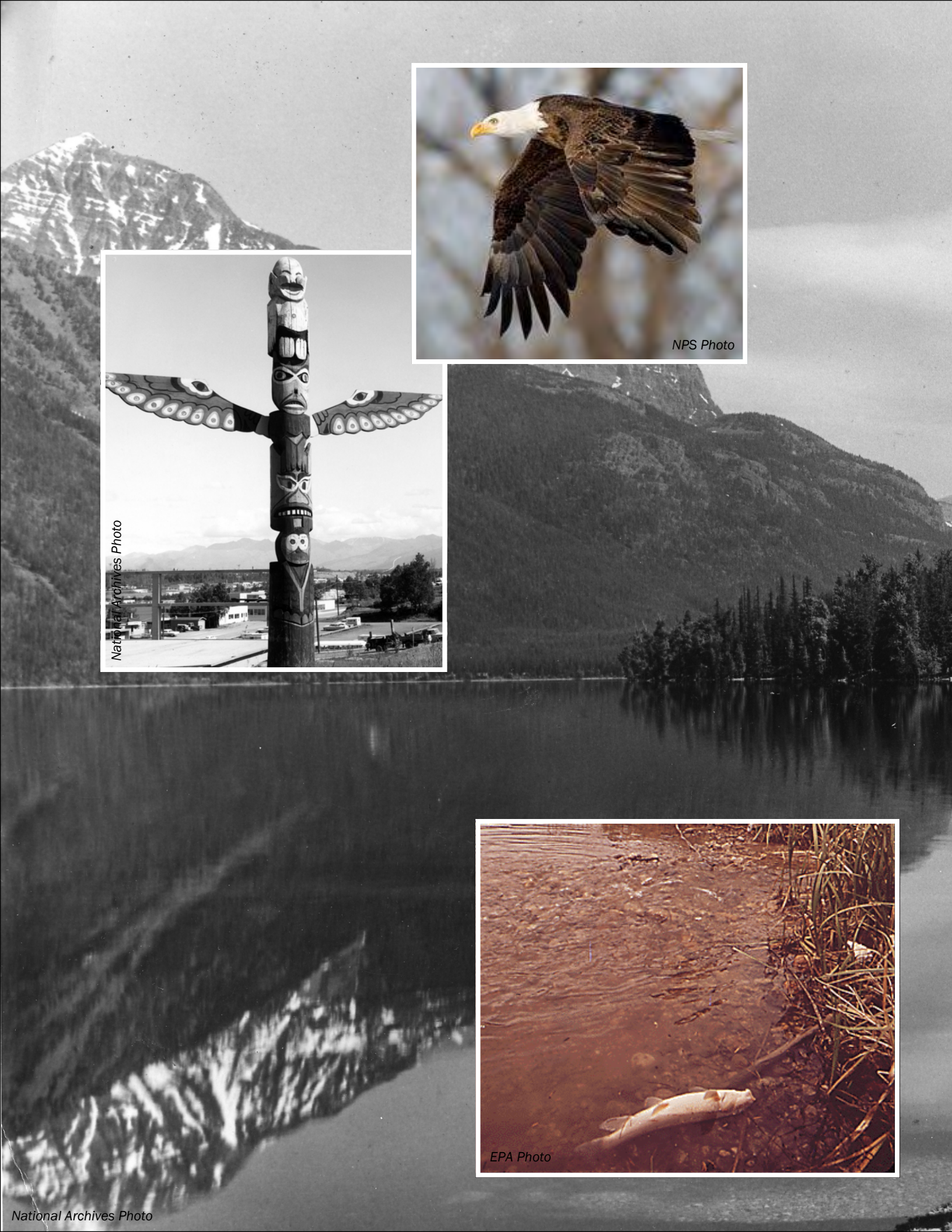
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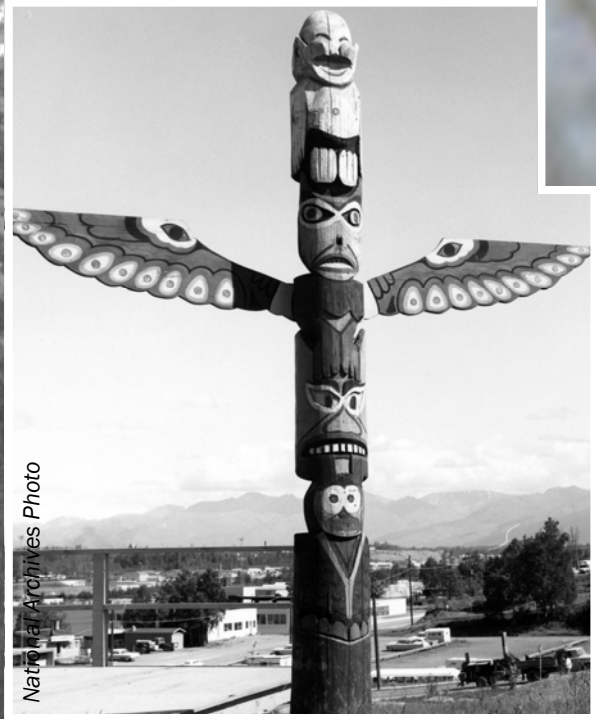
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NPS Photo



National Archives Photo



EPA Photo



FOREWORD

This year, the Environment and Natural Resources Division of the Department of Justice celebrates the one hundredth anniversary of its creation. Originally named the “Public Lands Division,” the Division was created on November 16, 1909 to handle on behalf of the United States “[a]ll suits and proceedings concerning the enforcement of the Public Land law,” including suits related to Indian lands.

Over the years, representing the United States with respect to issues of public lands and Indian affairs has remained among the Division’s core responsibilities. But as the United States has changed and developed over the last one hundred years, so too has the Division expanded and changed its mission and responsibilities. The Division today represents the United States regarding issues as diverse as climate change, oil and gas leasing, water rights, endangered species, cleanup of hazardous waste sites, acquisition of land, Indian matters, and the management of the nearly 650 million acres of land owned by the United States.

The history of the Division necessarily mirrors the country’s changing relationship with public lands, natural resources, and the environment. At the beginning of the twentieth century, the United States government and its citizenry were coming to the realization that the country’s resources were limited, and that the generous land and resource distribution systems of the previous century could not continue. In its early years, the Division represented the United States in many suits to assert government claims over mineral resources and public lands, and to acquire lands needed for the public good. In the New Deal era, as the federal government’s role in society expanded, the Division took on new responsibilities – acquiring land for dam and reservoir sites for the largest reclamation, irrigation and hydroelectric power projects in the nation’s history, for wetlands and grazing districts, and for



John C. Cruden
Acting Assistant Attorney General

massive flood control projects, such as the Ohio River Basin program. During the Second World War, the Division provided critical support for the country's military effort, acquiring millions of acres of land to create military bases, establish training facilities, and secure resources needed for the war.

Beginning in the 1960s and 1970s, the nation turned its attention to the need to preserve and protect our environment and natural resources, resulting in an explosion of new legislation that set in motion the environmental part of the Division's responsibilities. The Division's mission and workload transformed with the passage of statutes such as the National Environmental Policy Act, the Clean Water Act, the Clean Air Act, and the Endangered Species Act, and the creation of what is now one of the Division's largest client agencies, the Environmental Protection Agency. The Division has led the way in developing the law under these and many other environmental statutes, and today, more than half of the Division's 420 attorneys enforce or defend agency actions related to these environmental statutes. At the same time, the Division has not ignored its traditional responsibilities and continues its active and vigorous representation of the United States' interests with respect to Indian tribes, public lands and resources, and the acquisition of land for the public good.

In 2009, a range of new environmental legislation is pending before Congress, and the Division is playing an active role in the development of new laws that will present opportunities and challenges for the Division's work in the future. The pressures on the nation's environment and natural resources are ever-increasing, and the challenges of how to protect these resources become ever more complex. The talents and dedication of the Division's staff will continue to allow the United States to rise to these challenges and help ensure a healthier environment and a prosperous nation in the years ahead.

This history attempts to recount some of the accomplishments of this Division. It is only a summary; the Division has litigated tens of thousands of cases throughout its one hundred years, including leading Supreme Court cases. We act to memorialize the work of the thousands of attorneys and staff that have diligently served the interests of the United States over the last one hundred years. Through the exceptional work of the Division's staff, the history of the United States has been al-

tered. Lands have been preserved, species have been saved from extinction, the land, air, and water have been made cleaner, and the interests and prosperity of the United States have been advanced. As said by Attorney General Robert F. Kennedy, "Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation." The Environment and Natural Resources Division, through countless efforts large and small, has made a significant contribution to the history of this generation and generations to come. For this, the Division, its employees past and present, and its friends and supporters, can be proud.

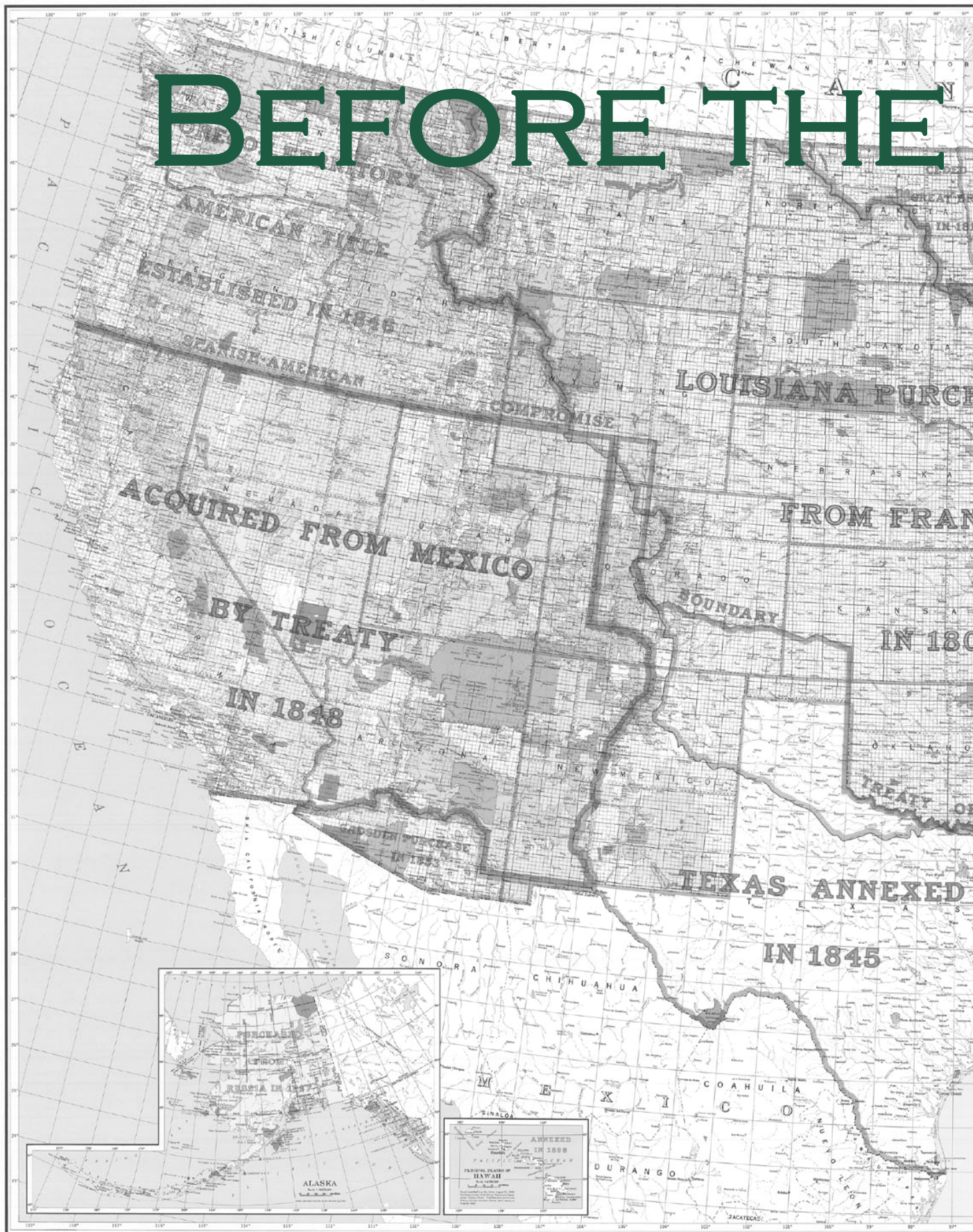
This history will provide a valuable resource for the Division in the future. Through this history, we can better understand the background and purposes for the work we do today, and develop ways to do our mission even more effectively in the future.

The compilation of this history, as well as the other Centennial celebration events and materials would not have been possible without the work of many people. I would particularly like to recognize and thank Eileen Sobeck, the Division's former Deputy Assistant Attorney General who is now the Deputy Assistant Secretary for Fish, Wildlife, and Parks at the Department of the Interior. Eileen provided strong leadership and inspiration for this project and the Division's Centennial celebration, and took on the important task of collecting and recording the recollections of each of the living Assistant Attorneys General of the Division. I would also like to recognize Polly Milius, Amber Blaha, Katie Duncan, and Stacy Stoller of the Law and Policy Section and Bob Bruffy and Betsy Preston of the Executive Office for their significant contributions to this project, as well as the efforts of many others, inside and outside of the Division, who have helped make the Division's Centennial celebration so meaningful. The major credit for this history, however, goes to Amber Blaha, without whose vision and perseverance this document would not have come to be. To all of you, I give my thanks.

October 1, 2009

John C. Cruden
Acting Assistant Attorney General

BEFORE THE

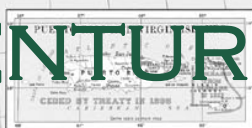
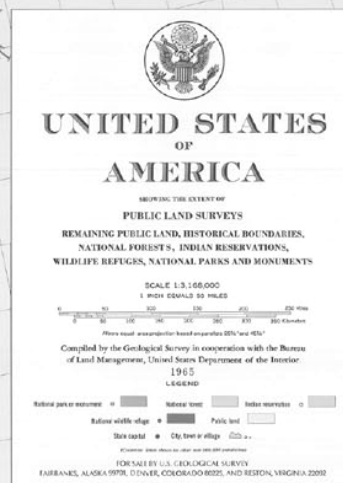


DIVISION

TERRITORY OF THE
ORIGINAL

THIRTEEN STATES

FEDERAL LAND USE AND DISTRIBUTION IN THE 18TH AND 19TH CENTURIES





Although the Public Lands Division – now known as the Environment and Natural Resources Division – was not established in the Department of Justice until 1909, its origins are intertwined with the United States’ relationship with public lands and Indian lands, and the federal government’s attempts to balance public versus private uses of these resources. An understanding of the early years of the Division must start with this history.

At its founding, the United States occupied 568 million acres, which was soon augmented by the Louisiana Purchase (1803), the purchase of Florida (1819), the annexation of Texas (1845) and the Oregon Territory (1846), the Mexican Cession (including California) (1848), and the Alaska Purchase (1867). Under the Articles of Confederation and later the Constitution, much of the land not included within the boundaries of the original thirteen states became public domain, owned and administered by the national government. Early laws only permitted the purchase of large tracts of land from the government, favoring wealthy speculators over individual farmers, but beginning in 1800, Congress passed a series of statutes that slowly reduced the minimum purchase amount and price of land, moving toward the democratic policy of widespread private ownership of land.

The Homestead Act of 1862 granted 160 acres of land to settlers in the western United States in return for productive activity on the land. The Homestead Act was followed by a series of statutes that encouraged the acquisition and cultivation of western public lands by private individuals and companies, including the Timber Culture Act of 1873, the Desert Land Act of 1877, and the Timber and Stone Act of 1878. These statutes offered land at a low cost, with the condition that the buyer plant trees or irrigate the land.

Graft and corruption often tainted disposal of the public land in the late nineteenth century, and land speculation – the accumulation and subsequent resale of property at a profit – by companies and individuals became an established form of enterprise throughout this time period. The large-scale movement of settlers onto public lands resulted in legal disputes over contract terms, settlement amounts, and fraudulent transactions.

The largest grants of land from the federal government went to railroads to en-

courage construction of the transcontinental lines. Altogether, between 1850 and 1871, railroads received an estimated 175 million acres of public land. Although those grants generally restricted timber cutting and mineral extraction on adjacent public lands, railroads often ignored such restrictions. The railroads also sold railroad grant land in violation of the restrictions imposed by the federal grant, resulting in litigation.

By the mid-1800s, the discovery of valuable minerals in western territories and states, much of whose area remained under federal control, necessitated that federal

laws specify access to resources under public

lands. Though not permitted by federal law, the practice of open mining on public lands had become universal in the West. At the end of the Civil War, some eastern congressmen regarded western miners as squatters who were robbing the public patrimony, and proposed seizure of the western mines to pay the huge war debt. Western representatives successfully argued that western miners and prospectors were performing valuable services by promoting commerce and settling new territory, and in 1865, Congress passed a law that instructed courts deciding questions of contested mining rights to ignore federal ownership and defer to the miners in actual possession of the ground. With the passage of the General Mining Act of 1872, discoverers were granted rights to stake mining claims to gold, silver, cinnabar (the principal ore of mercury), copper, and “other valuable deposits.” Subsequently, new federal lawsuits arose out of disputes over compliance with that law.

During the rapid occupation of the public lands in the nineteenth century, American Indians were displaced as settlers moved into the Indians’ historical territory. Through treaties and the operation of the General Allotment Act of 1887 and tribe-specific legislation, millions of acres of land were moved from Native

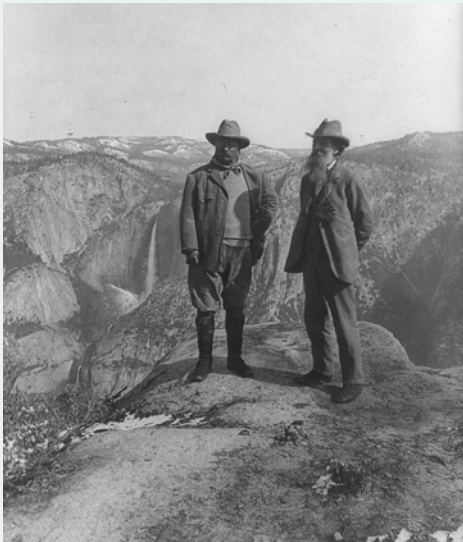


***Joining the tracks for the first transcontinental railroad.
Promontory, Utah Territory, 1869.***

National Archives Photo

John Muir (1838-1914) was a Scottish-born American naturalist, author, geologist, and pioneering advocate of preservation of wilderness. From 1868 on, he spent all of his free time relentlessly exploring the Yosemite region in California, climbing its peaks, and writing about his experiences. In 1892, he and his friends banded together to form a club that would “make the mountains glad” – the Sierra Club. The club immediately began opposing efforts to reduce the size of Yosemite National Park and worked to raise awareness about the rampant exploitation of Yosemite Valley’s resources and the impacts of live-stock. The new Sierra Club wanted Yosemite Valley, which was still managed by the State of California, transferred to the federal government to permanently protect its pristine beauty.

In 1903, President Theodore Roosevelt accompanied Muir on a visit to Yosemite. Roosevelt slipped away from the presidential entourage, and with only a few Park staff accompanying them, the President and Muir set up camp at the base of a giant sequoia and talked late into the night. The next day, the



Historical Photo

pair rode through the backcountry of Yosemite, stopping that night to camp near Glacier Point, where they were dusted with a light snowfall as they slept. Roosevelt was staggered by the majesty of the park and the mighty forests, and declared that this had been “the grandest day of my life.”

Muir’s efforts to convince the President to preserve Yosemite Valley were rewarded in 1905 when Congress transferred Yosemite Valley and the Mariposa Woods to federal control. In 1908, Roosevelt paid tribute to Muir by naming a redwood forest north of San Francisco “Muir Woods” and designating it as a national monument.

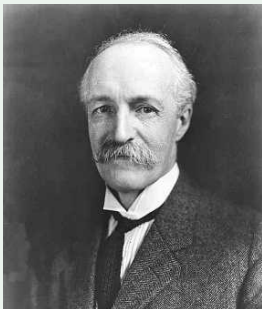
American to federal control. In treaties and agreements with Native American tribes, the United States affirmed reservations and assumed obligations, including monetary restitution for land, resettlement of tribal populations in designated locations, and services to be provided in those locations. The government’s compliance with and efforts to protect the lands and resources reserved by these treaties would later be litigated in thousands of lawsuits.

National land policy, which had been focused on getting public land into private hands quickly, easily, and cheaply, began to change around 1890 as a new conservation movement was taking hold in the United States. The Forest Reservation Act of 1891 permitted restricting timber lands from private entry, and that same year, the Yellowstone Timberland Reserve (now the Shoshone National Forest) was set aside, creating the first national forest. In 1872, Yellowstone National Park was established as the first national park in the world, and numerous other national parks followed, including Sequoia National Park and Yosemite National Park in 1890, Mount Rainier National Park in 1899, and Mesa Verde in 1906.

The presidency of Theodore Roosevelt, from 1901-09, marked a new stage in public land preservation policy, with Roosevelt declaring in his first message to Congress that “forest reserves and water problems are the most vital concerns of the United States.” Between 1901 and 1907, some 95 million acres went under federal protection by executive order of the President. The purposes of this expanded protection were both economic and environmental: Roosevelt set aside land for parks, game reserves, dam sites, and other public purposes, and the federal

The Role of Gifford Pinchot

Professional forester Gifford Pinchot (1865-1946) was perhaps the single most influential person in the transition of public land policy from distribution, the predominant approach to public lands in the 19th century, to a type of conservation that stressed multipurpose management. Pinchot was named head of the Department of Agriculture’s Forestry Division in 1898, and in 1905, President Theodore Roosevelt named Pinchot the first head of the newly-established Forestry Service.



Historical Photo

Pinchot’s conservation philosophy, in which Roosevelt generally concurred, was one that placed human access to natural resource as the top priority. Pinchot said, “The object of our forest policy is not to preserve the forests because they are beautiful....or because they are refuges for the wild creatures of the wilderness....” Instead, next to “the making of prosperous homes,” “every other consideration becomes secondary.” Based on Pinchot’s conservation views and his expansive view of presidential power, Roosevelt withdrew an estimated 234 million acres of land from private access, of which about 148 million was forests. About 76 million acres was identified for future coal extraction. Pinchot’s plan for the forests was private development, under set terms, in exchange for a fee. His utilitarian approach differed strongly from that of his contemporary, John Muir, who advocated the preservation of natural areas for their own sake and for their spiritual value to mankind.

When William Howard Taft succeeded Roosevelt in 1909, he brought with him a more conservative view of presidential power. Accordingly, Taft’s secretary of the interior, Richard Ballinger, restored some of the land that Roosevelt had withdrawn, incurring the displeasure of Pinchot. When Pinchot became involved in a dispute with Ballinger and Taft over the firing of a General Land Office official and issued a public statement harshly criticizing Interior Department policies, Taft sought and received his resignation. Nevertheless, Pinchot’s multiple-use approach to conservation dominated public land policy during most of the twentieth century.



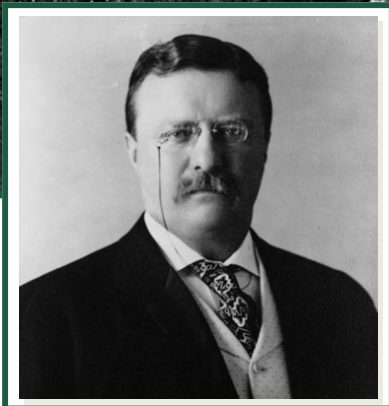
Historical Photo

T. Roosevelt and Pinchot.

government reserved phosphate deposits, oil, coal, and grazing lands. Gifford Pinchot became the first head of the Forest Service in 1905 and influenced the Roosevelt policy of acquiring forests and other lands for preservation but also for profitable management. Roosevelt asserted that the executive branch had broad authority to withdraw land from the overall public domain. Although a stricter construction of presidential authority was seen in the administration of Roosevelt's successor, William Howard Taft, the concept of setting aside public lands for economic and non-economic uses remained a strong element of public policy – and the subject of federal litigation – throughout the twentieth century.



Roosevelt's public land policies were a direct response to the haphazard land-use policies of the previous century. As Assistant Attorney General Carl McFarland later reflected, "The nation had been lavish in the dispensation of its landed wealth, and was confronted with the realization that little remained of a great patrimony. Finally, in recent years, prodigal methods of cultivation and exploitation received tardy notice." In keeping with this change in national and presidential attitudes, at the beginning of the twentieth century, the federal government increased its focus on legal methods of protecting the nation's resources.



To waste, to destroy, our natural resources, to skin and exhaust the land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.

Theodore Roosevelt
Message to Congress, Dec. 3, 1907

CREATING THE PUBLIC LANDS DIVISION

REPRODUCED AT THE NATIONAL ARCHIVES

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Cir # 1414.

Order for Division of Business.

of the Department's work
A Division is hereby created to be known as The

Public Lands Division, of which Attorney Ernest Knaebel shall have charge. All suits and proceedings concerning the enforcement of the Public Land Law, including suits or proceedings to set aside conveyances of allotted lands, are assigned to said Division.

There is transferred to that Division ^{Mr.} Henry C. Lewis, Mr. Willis N. Mills, Special Assistant, Mr. Austin Harveycutter, Mr. Alexander B. Semmes, and Mr. Arthur J. McCabe, Assistant Attorney. Also the following stenographers: Miss Grace Murphy, Miss Alice E. Brown, and Miss Maude H. Yates. The services of F. E. Hutchins, Assistant Attorney, in the preparation of opinions in connection with the Division will be available as found necessary.





ongress created the position of Attorney General in 1789, but from this date until 1870, the Attorney General was supported by no cabinet department. In 1870, Congress established the Department of Justice together with the Office of Solicitor General to assist the Attorney General and directed U.S. Attorneys, who since the Judiciary Act of 1789 had functioned independently of the Attorney General as chief prosecutors in federal judicial districts, to report to the Attorney General. Certain attorneys at other federal agencies were also instructed to report to the Attorney General. The new department was authorized to hire two Assistant Attorneys General and clerical help.

In the late 1800s, federal prosecutions related to the illegal removal of timber, grazing, and enclosure of public lands steadily increased. In the 1890s, major federal cases were brought against railroads and lumber companies challenging the terms of use of their land grants. Many resource-related disputes, particularly those related to water, were delegated to the U.S. Attorneys for prosecution, and other cases were handled by attorneys at the Department of the Interior or other cabinet departments.

In the early 1900s, increasing litigation involving federal interests put new organizational pressure on the still small Department of Justice. In 1908, the Department had only two Assistant Attorneys General, one who handled Native American litigation claims and the other responsible for “the business of the Department of Justice in the Court of Claims.” The need for expansion and specialization in handling the nation’s legal work resulted in a series of changes in the Department, including the creation of a dedicated group of attorneys to handle antitrust matters in 1903 and the creation of a new “special agent force,” which eventually became the FBI, in 1908.

By 1908, the Department of Justice was also seeking to centralize more operations in the Main Justice Department, as opposed to the U.S. Attorneys’ Offices. Among other changes, in that year U.S. Attorneys’ Offices were instructed to report information on land and timber suits and title suits to the Attorney General’s office, which would then prepare a consolidated report for the General Land Office.

However, much of the government’s legal business was still handled by

Solicitors and “Assistant Attorney Generals” assigned to particular federal agencies. In a May 1909 memorandum to the Attorney General, Justice Department attorney M.C. Burch discussed the lack of centralization of the government’s legal business, noting that each agency had developed its own significant corps of attorneys, “practically independent from this Department.” The Department of the Interior’s General Land Office, Indian Bureau, and Reclamation Bureau, and the Agriculture Department’s Bureau of Forestry each had its own law division that litigated in federal courts. The law department of the Interior Department was described by Burch as “the cause of more loss and damage to the United States than any other, because greater opportunities therefor have occurred.” That office has “issued already about thirty-five bound volumes of decisions and opinions on land matters, a considerable portion of which



George Wickersham

are very bad, and from the evil effects of which the United States will not recover in generations.”

Attorney General Charles Bonaparte (1906-09) also noted the increasing frequency of private “acquisition of title to public lands in direct violation of the plainly expressed intent of the statutes,”

and the Justice Department’s obligation “to remedy these evils and protect the public

domain.” In 1909, the Department’s land fraud litigations recovered \$311,700 in payments and penalties and 315,200 acres of illegally patented public land.

OFFICE OF THE ATTORNEY GENERAL PUBLIC LANDS DIVISION		
Name and office.	Salary.	Original appointment.
APPOINTED BY THE ATTORNEY GENERAL—continued.		
<i>Assistant Attorney General.</i>		
Ernest Knaebel.....	\$5,000	Sept. 16,
<i>Attorneys.</i>		
Marsden C. Burch.....	5,000	July 16,
David D. Caldwell.....	3,750	June 1,
Frank E. Elder ¹	3,000	Aug. 3,
Stephen W. Williams.....	3,000	Aug. 5,
<i>Special Assistants to the Attorney General.</i>		
Willis N. Mills.....	4,000	Apr. 29,
Henry O. Lewis.....	4,000	Feb. 28,
Frank Hall.....	4,000	May 6,
Charles S. Easterling.....	2,000	July 6,
<i>Assistant Attorney.</i>		
Austin Harveycutter.....	2,000	July 5,
<i>Law Clerks.</i>		
Alex. H. Semmes.....	2,000	Feb. 26,
James C. Crawford.....	1,800	Aug. 18,

¹Temporary.

1911 Lands Division Payroll

ERAL—Continued.

ON.

al ent.	Appointment to present grade.	State.
1909	May 9, 1911	Colo.
1897	June 24, 1908	Mich.
1894	Aug. 1, 1911	Ill.
1911	Aug. 3, 1911	Ohio.
1911	Aug. 5, 1911	S. C.
1909	Nov. 10, 1909	Mich.
1900	Aug. 1, 1911	Ga.
1907	Feb. 12, 1910	Okla.
1896	Aug. 1, 1911	Kans.
1904	Aug. 1, 1911	D. C.
1902	Sept. 16, 1908	D. C.
1911	Aug. 18, 1911	La.

In response to these concerns as well as the need to “properly attend to the enormous and increasing volume of business relating to the public lands of the United States, and of Indian affairs,” Attorney General George Wickersham (1909-1913) established “The Public Lands Division” by order dated November 16, 1909. The new Division was assigned responsibility for “[a]ll suits and proceedings concerning the enforcement of the Public Land law, including suits or proceedings to set aside conveyances of allotted lands.” Ernest Knaebel, special assistant to the Attorney General, was designated to lead the Division, and the Attorney General’s Order transferred five additional attorneys and three stenographers to the Division .

The Division’s six attorneys were responsible for all public land law (including water rights cases), both civil and criminal, and regardless of “whether the land be open to entry under the general land laws, or reserved for public purposes, or lands devoted to the uses of tribal or individual Indians, including actions to recover rents and royalties.” Certain Indian cases were initially reserved for another Assistant Attorney General, Charles Russell.

By 1910, the Attorney General noted in his report to Congress that “the extent, variety, and importance of the work assigned to this division are so great that the attorney in charge should have the rank of assistant attorney general, and I recommend the creation of that office.” Ernest

Knaebel was officially nominated to be Assistant Attorney General (AAG) by

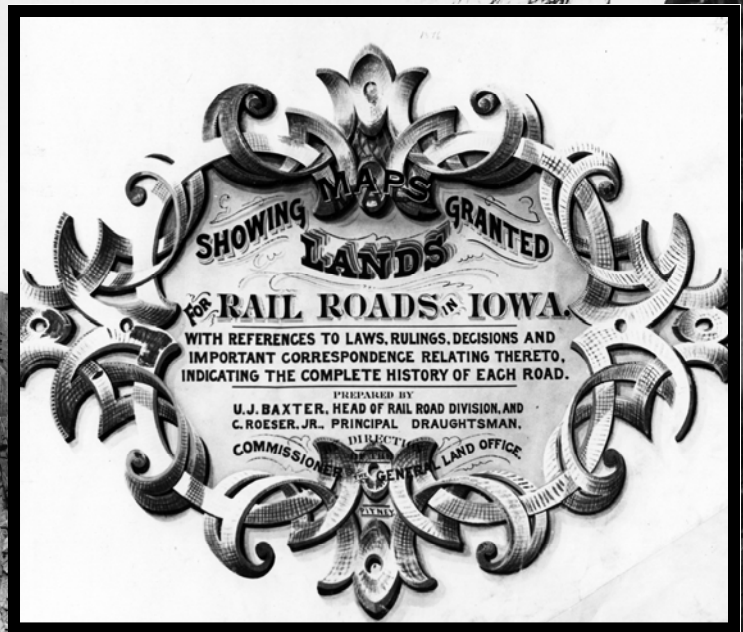
President Taft on April 28, 1911 and was confirmed on May 9, 1911 .

Ernest Knaebel

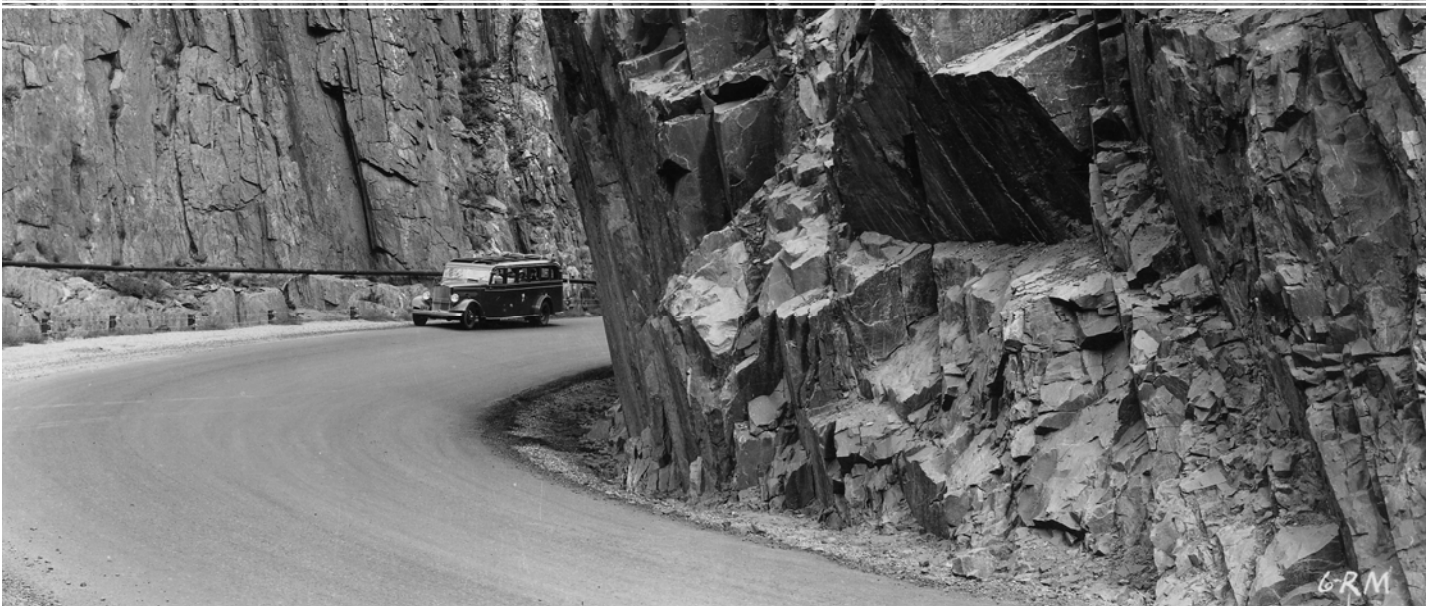
June 14, 1872 – February 19, 1947



After receiving his law degree from Yale University, Ernest Knaebel practiced law in New York, New York, and Denver, Colorado. He served as U.S. Attorney in Denver from 1902 until 1907, when he became a special assistant to the Attorney General. After serving as the first Assistant Attorney General of the Public Lands Division, he became the eleventh reporter of decisions of the U.S. Supreme Court, a position he held from 1916 until 1944, making him the Court’s longest serving reporter.



THE EARLY YEARS OF THE PUBLIC LANDS DIVISION



In the Division's first years, it focused on cases involving 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, invalidation of patents granted to railroads for western land known to hold minerals, and reversal of land grants to the Territory of New Mexico.

At the end of 1910, the Public Lands Division had pending 2,459 civil and 466 criminal cases related to federal land, of which more than half involved Native Americans. That year, the Division initiated 480 civil cases for the recovery of about 500,000 acres of federal land and more than \$2 million in cash, as well as 252 civil cases related to Native American land disputes. Another 543 civil, 117 criminal and 1,109 Native American cases were opened in 1911. In the *Annual Reports of the Attorney General* for 1910 and 1911, Attorney General Wickersham appealed for an increased staff to deal with the Public Lands Division's workload, particularly with respect to Indian land matters.

In 1911, Attorney General Wickersham reported that, because of the increased workload of the Department of Justice, he had to "increase the hours of attendance of the clerical force at the department half an hour, making the prescribed hours from 9 a.m. to 5 p.m. daily, except during the three summer months." He continued, "The professional members of the department know no hours; they have toiled early and late."

Taking on the Railroads

The restoration of federal land deemed to have been acquired fraudulently by private parties was an immediate priority for the new Public Lands Division. In 1909, the Division brought the first in a series of suits against the Oregon and California Railroad Company and numerous other parties who had purchased land in Oregon granted to the railroad by the government. The Supreme Court's decision in *Oregon & California Railroad Company v. United States*, 238 U.S. 393 (1915), failed to restore the 2.7 million acres of land which the railroad allegedly had sold or utilized in violation of the terms of its federal grant, but the court froze sales of the unsold land and in 1916, Congress remanded title to that land to the United States.

Recovery of mineral- and oil-containing land from railroads was also the subject of many Division suits. In 1910, the Division began a series of cases against the

Southern Pacific Railroad seeking restitution of land in Southern California patented to the railroad as non-mineral land but containing valuable deposits of oil and other materials. In 1916, the active cases involved about 150,000 acres of land worth an estimated \$500 million. In the first of the cases, *Southern Pacific Railroad Co. v. U.S.*, 200 U.S. 341 (1906), the Supreme Court supported the government's claim of fraudulent acquisition and returned the land to federal control. However, in other cases, such as *Burke v. Southern Pacific*, 234 U.S. 669 (1914) (handled by Division attorneys Ernest Knaebel and B.D. Townsend), the courts found no fraudulent intent and the railroad's land patent was upheld.

Railroad land cases continued well into the 20th century and often involved issues of first impression concerning Indian title. The Division was involved in a series of suits involving the Northern Pacific Railroad Company in which the United States sought title to about 2.75 million acres of land in the Northwest claimed by the railroad on the basis of federal land grants in 1864 and 1870. These included lands that the Supreme Court held to be part of the Yakima Indian Reservation, thus invalidating the railroad's patent. See *Northern Pacific R. Co. v. United States*, 227 U.S. 355 (1913) (argued by AAG Ernest Knaebel). Many of these cases set significant precedents, such as *Great Northern Railway Company v. United States*, 315 U.S. 262 (1942), in which the Court affirmed that land grants to railroads permitted only a surface right-of-way and not any extraction of minerals from the land granted.

From Giveaways to Take-Backs – The Division Defends Presidential Set Asides of Public Land

Another critical legal issue facing the new Division was the scope of Presidential authority to withdraw public lands and mineral rights from private use. In response to rising demand for fuel oil, the petroleum industry turned its attention to new exploration and drilling on western public lands. At the time, the General Mining Act of 1872 and other statutes established that public lands containing minerals (such as gold, silver, copper, and lead, as well as oil and other fossil fuels) were open to exploration.

This "open-access" policy quickly had significant effects. On September 17,

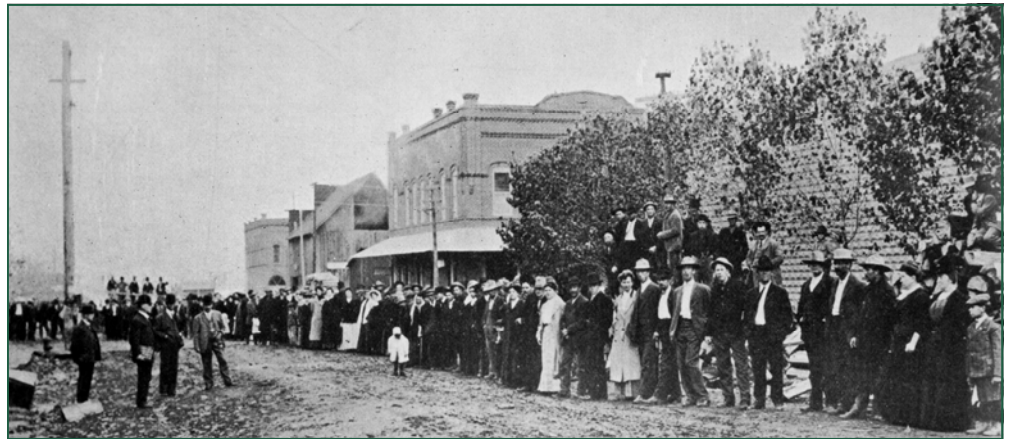
1909, the director of the U.S. Geological Survey reported to the Secretary of the Interior that companies acting under the General Mining Act were claiming the petroleum deposits of the public lands in California at such a rate that it would “be impossible for the people of the United States to continue ownership of oil lands for more than a few months.” In light of the Navy’s rapidly increasing demand for fuel oil, “the Government will be obliged to repurchase the very oil that it has practically given away.” As a result, on September 27, 1909, President Taft issued a

proclamation that temporarily withdrew from private entry three million acres of oil-bearing lands in California and Wyoming. Uncertain of his constitutional authority to reserve federal lands from public use, Taft asked Congress to ratify

his decision. Congress responded the following year by enacting the Pickett Act, which authorized Presidential withdrawals, but did not retroactively approve Presidential land reservations that were made before the effective date of the statute.

In Wyoming, prospectors entered an area of the public lands that had been withdrawn by President Taft’s proclamation and discovered oil. They assigned their interest in the oil and land to Midwest Oil Company, which extracted about 50,000 barrels. Upon learning of the illegal drilling, the Public Lands Division sued to recover the land and for an accounting of the oil that had already been pumped out. Midwest defended itself on the grounds that the President’s withdrawal of the land from entry and location under the General Mining Law was unconstitutional.

The case reached the Supreme Court, where the United States was represented by Solicitor General John W. Davis and AAG Knaebel. In *United States v. Midwest Oil Company*, 236 U.S. 459 (1915), the Supreme Court upheld the President’s authority to prohibit private entities from purchasing mineral rights to particular public lands, relying on implied congressional acquiescence in this long-standing presiden-



Settlers line up to secure claims to government lands, Lakeview, Oregon, October 26, 1907.

National Archives Photo

tial practice. This case was followed by the Mineral Leasing Act of 1920, which changed the open-access and free-extraction policies with respect to deposits of oil, natural gas, and certain other minerals, and allowed government leases to include conditions to protect the environment, limit resource exploitation, and collect royalties.

Presidential withdrawals continued to be mired in controversy for several decades. President Taft set aside federal land in Elk Hills, California, as oil reserves for the use of the Navy, and President Wilson set aside land in Wyoming, known as Teapot Dome, for the same purpose. In 1922, President Harding's Secretary of the



Interior Albert Fall leased the oil fields to private oil companies without competitive bidding, setting off the “Teapot Dome” 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, in 1927, the Supreme Court held that the oil leases had been corruptly obtained and invalidated the leases, returning the

Senate Committee hearings on the Teapot Dome oil leases, 1924.

reserves to federal control. *Pan American Petroleum & Transp. Co. v. United States*, 273 U.S. 456 (1927); *Mammoth Oil Co. v. United States*, 275 U.S. 13 (1927).

Entering the Fray of Water Resource Disputes

Water rights cases also occupied the Division in its earliest days, and have maintained a consistent presence on the Division's docket to the present day. By 1900, the platforms of both major political parties supported federal projects to “reclaim” arid lands for agricultural use. The Reclamation Act of 1902 established the Reclamation Service to study irrigation proposals in the federal lands of 16 states, and by 1909, about 30 such projects were underway. In 1908, the Supreme Court decided

Winters v. United States, 207 U.S. 564 (1908), which held that agreements and treaties establishing Indian reservations contained an implied reserved right to the amount of river water necessary to support the purposes of the reservation. Recognizing that adjudication of water resources was becoming a critical and controversial issue as the development of the West accelerated, Attorney General Wickersham's original assignment for the Public Lands Division included "questions involving water rights of the United States or of Indians."

In his annual report for 1912, Attorney General James McReynolds noted that "the growing importance of irrigation in the arid and semiarid States has already led to the appropriation of most of the available surplus waters. . . ." As a result, he said, "the Government has found . . . that the assertion of its rights in behalf of reclamation projects is complicated by the rival claims of others. Litigation, therefore, in nearly every instance will become inevitable, and upon the results of the litigation may depend the fortunes of the projects affected thereby. Those who are familiar with this kind of litigation are aware that it is usually tedious, expensive, and complex." In 1913, the Public Lands Division assigned two specialized attorneys to represent the government in water resource-related issues. By 1926, AAG Bertice Parmenter (1925-29) reported that some 30 federal cases involving irrigation in the West or the Southwest were being handled by the Division, not counting numerous suits brought by the Public Lands Division to protect the water rights of Native Americans.

The Division represented federal and Native American interests in the case of *U.S. v. Hope Community Ditch*, which yielded important new precedents for dealing with complex water disputes, including the expansion of the authority of special masters. After nearly 20 years of litigation, the special master's final 1933 decision in the case, a landmark that came to be known as the Hope Decree, distributed river water in New Mexico among numerous claimants, including Native American tribes and the interests of the United States' Carlsbad irrigation project.

The Division was also involved from the beginning in a long-running dispute over the water rights to the Colorado River, the major source of water for crop irrigation and drinking water for southern California and the southwestern states. In 1922, seven states in the watershed reached a water apportionment agreement, the



1914 Grand Canyon and Colorado River Map

Colorado River Compact, which set conditions for major federal water projects such as the Hoover Dam. The agreement has been the basis of a series of federal lawsuits between Arizona, which did not ratify the compact until 1944 and contested interpretations of its distribution language, and California, a major beneficiary of the agreement. In 1952, Arizona filed an original action in the Supreme Court against California seeking a division of the waters of the Colorado River. The United States intervened to protect federal water rights, including reserved water rights held for the benefit of five Indian reservations. Because Native American and conservation interests, a water-resource treaty with Mexico, federal agency interests, and federal reclamation projects also were vitally involved in the distribution conflict, the Division has participated in negotiations and litigation to establish appropriate distribution over the decades, including Supreme Court cases in 1931, 1936, 1963, 1983, and 2000. The case continued until 2005, when the Supreme Court issued an order approving a water rights settlement between Arizona, California, the United States and the Quechan Tribe.

Representing the United States in Dealings with Native Americans

From its inception, the Public Lands Division assumed responsibility for civil cases related to Native American land claims and for representing the United States in its trust capacity with respect to Indian tribes. The General Allotment Act of 1887 sought to assimilate Native Americans into the national economy and culture by providing individual Native Americans with a property interest in formerly tribal lands. Particularly when inherited parcels contained oil or other valuable resources, many Native Americans required the assistance of federal litigation to prevent swindles or reverse frauds. In response, in 1910, an attorney in the Public Lands Division was specifically tasked with protecting Native Americans against fraud, and in subsequent years, special counsels were hired to handle land cases involving particular tribes.

In the first years of the Division, it was involved in many suits to cancel unlawful deeds and leases of Indian allotments. For example, the Division successfully prosecuted many suits to reverse forged, fraudulent, and otherwise illegal deeds and

mortgages for Seminole Indian lands in Oklahoma, under which the Attorney General reported those Indians “were being ruthlessly deprived of their lands.” Similar suits seeking to reverse fraudulent transfers were brought in the first decade of the Division on behalf of the Kickapoo Indians, the Quapaw Indians, and the Chippewa Indians on the White Earth Reservation.

By 1921, a substantial block of cases (248 of 301) brought in 1908 to restore title to lands illegally obtained from the Five Civilized Tribes in Oklahoma had been resolved. A number of other “illegal allotment” cases continued on behalf of Native Americans throughout the 1920s. In the same period, the Division brought numerous cases in the U.S. Court of Claims to protect Native American access to water and to collect debts owed to tribes for the use of water on reservations.

*One-Called-From-A-Distance (Midwewinind),
a Chippewa from White Earth Reservation,
Minnesota, 1894 .*

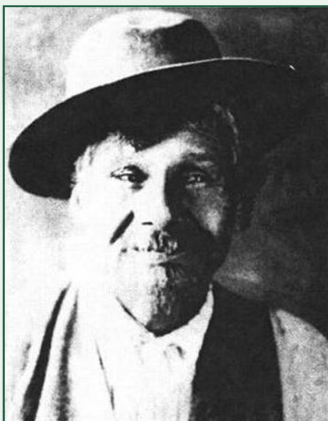


National Archives Photo

“The World’s Richest Indian”

One notable case that the Division was involved in was the dispute over the lands and fortune of Jackson Barnett, known at the time as the “world’s richest Indian.” Jackson Barnett was an eccentric Oklahoma Creek Indian who was living in relative poverty on land allotted to him under the Dawes Act. Around 1912, oil was discovered on his property, suddenly giving him thousands of dollars in monthly income. Despite this newfound wealth, Barnett refused to leave his home or change his mode of living. A local probate court declared him incompetent and appointed a guardian.

After he became wealthy, the federal government put Barnett’s land and assets under the supervision of a federal Indian agent, touching off disputes with the State over guardianship. The situation was further complicated when Anna Lowe, a single mother from Kansas, reportedly drove to his home in a taxicab, found the aged millionaire, abducted him across the Kansas line, and married him. Arguing that Ms. Lowe was taking advantage of Mr. Barnett, the Bureau of Indian Affairs tried to nullify the marriage, seeing her as, in the words of one official, an “adventuress of the most dangerous type.” After his marriage, Barnett apparently created two trust funds of \$550,000 each, one to go to his wife at his death and the second for the use and benefit of Bacone College in Muskogee, Oklahoma. The trust fund arrangement was approved by the Department of the Interior, but subsequently attacked by AAG Bertice Parmenter and the Department of Justice on the grounds that Barnett did not knowingly make these donations.



This created significant conflict between the Departments of Justice and the Interior. As a native Oklahoman, AAG Parmenter took a deep interest in the Barnett case and hired his former law partner, Charles Selby (also of Oklahoma), as chief counsel.

A tangle of lawsuits, contradictory positions by federal agencies, Senate hearings, and a public relations fiasco followed. In 1926, Harold McGugin, Ms. Lowe’s lawyer, appealed to President Coolidge, arguing that Senator Pine of Oklahoma had improperly influenced AAG Parmenter to intervene against the Interior Department’s settlement of the case. He demanded the resignation of Parmenter as Assistant Attorney General, while Senator Pine demanded the resignation of Indian Commissioner Burke, who had approved the Barnett donations.

Eventually, a federal court held that Barnett’s donations to his wife and Bacone College were void, and ordered Barnett’s estate turned over to the Department of the Interior for administration on the ground that the aged Barnett was incompetent and had married an adventuress. Barnett and his wife moved to Los Angeles and took up residence in a palatial home on Wilshire Boulevard, but the litigation continued, meriting its own paragraph in the Report of the Attorney General for 1933. A federal judge later held that the marriage of Ms. Lowe and Barnett was void, but allowed Barnett to employ his wife as a housekeeper at \$2500 per month. Barnett is reported to have spent his days directing traffic on Wilshire Boulevard from the curb in front of his mansion until his death in 1934.

THE 1930s – 1940s: THE NEW LANDS DIVISION





In 1933, Attorney General Homer Cummings undertook a complete reassessment of the Division's functions and changed its name from the Public Lands Division to the Lands Division. That year, the Division had 57 employees and was organized into one group of lawyers dealing specifically with government land acquisition (by purchase and condemnation), and a second group of lawyers dealing with all other matters. However, the Division did not handle every case within its jurisdiction. Many complex cases were still contracted out to special counsel from other agencies.

LANDS DIV.
T. OF JUSTICE
RICHARDSON
ORNEY GENERAL
D.C. MARCH, 2, 1933.

1933
1516-H-ST.

The Division acquired responsibility for negotiation, value estimation, and litigation of federal land acquisition and condemnation in 1922; prior to this date, land acquisition issues were handled by others in the Department of Justice, including a separate Attorney in Charge of Titles and Condemnations. However, until the 1930s, land acquisition was a relatively small portion of the Division's workload, involving approximately 400 title opinions per year and acquisitions valued at approximately \$3 million annually.

Beginning in the 1930s, the federal government began acquiring land to support New Deal policies to resettle impoverished farmers, build large-scale irrigation projects, and establish new national parks. Many parcels of land were acquired for conservation purposes, as part of the New Deal emphasis on natural resource recovery. Notable condemnation proceedings during fiscal year 1931 alone included the land for the new Department of Justice building, the Botanic Gardens, the National Arboretum, the Rock Creek and Potomac Parkway, Bolling Air Force Base, and the extension of the Library of Congress. In 1935, the Division was involved in land acquisition or title work for the creation of Shenandoah, Great Smoky Mountains, and Mammoth Cave National Parks.

By 1937, the government's annual land acquisitions through the Lands Division

Women Attorneys Join the Division

An organizational chart from July 1937 lists at least five female attorneys in the Title Section's Washington, D.C. and field offices, as well as one woman listed under "attorneys and law clerks" assigned to the Appellate Section. According to some observers, land acquisition was considered socially acceptable work for female attorneys in this time period, and as late as the 1960s, most of the few female attorneys in the Division did title and land acquisition work.

had doubled. That year about 9,000 court cases were based on contested valuation amounts for federal property condemnations. The new AAG, Carl McFarland (1937-39), reported to the Attorney General that the Lands Division was "staggering under an increased load of title work."

This work, along with an increasing workload in other areas of the Division, necessitated the addition of hundreds of attorneys to the Division throughout the 1930s. The Division jumped in size from 57 employees in 1933 to 500 employees in 1939, 225 of whom were stationed in field offices in nearly every state in the country. AAG Norman Littell explained this expansion in his annual report for

1939: "This increase both in functions and personnel can only be understood in the light of a marked reversal of national policy from that of settling and disposing of

the public domain as rapidly as possible during the first 100 years or more of our history, to a policy of acquiring for salvage and conservation lands depleted by years of prodigal waste and soil exploitation.”

Under the leadership of AAG Carl McFarland, six separate sections were established in 1937. The Trial Section, headed by Charles E. Collett, dealt with all court cases except those relating to condemnation – mainly with public lands and Indian matters. Some 4,423 cases were on the Trial Section’s docket in mid-1937, and another 3,712 had begun by mid-1938. Teams of five or six attorneys were assigned to large matters, including the Northern Pacific case, the Standard Oil case, and Indian claims.

The Condemnation Section served the constantly expanding federal land acquisition program. The section had 1,838 active cases in

mid-1937, and another 1,864 were filed in the following year. The Title Section, led by Allen E. Denton, examined title validity for lands purchased by the government, aside from condemnations. In that year, the section approved titles on 11,268 tracts. The Condemnation and Title Sections had field offices in 39 states, plus Washington, D.C., each with several attorneys and clerical staff.

The Legislation and General Section, led by Frank Chambers, analyzed laws and potential legislation having potential impact on the Division’s activity. The Appellate Section, led by C.W. Leaphart, handled all matters in the intermediate courts of appeals, and assisted the Solicitor General with cases in the Supreme Court. There



Carl McFarland not only served as Assistant Attorney General of the Lands Division from 1937-39, he also played a significant role in President Roosevelt’s efforts to protect New Deal legislation from reversal by the Supreme Court. Most notably, McFarland was one of the chief designers of the “Court-Packing Plan,” which was aimed at altering the structure of the Supreme Court itself by permitting the President to appoint additional Justices to the Court once a sitting Justice reached the age of 70 and had ten years of service on the Court. The plan generated much controversy and ultimately failed.

When Carl McFarland began his tenure as AAG in 1937, he reported to the Attorney General that the rapid expansion of Division personnel had not been matched by expansion in office space, and that “five or six attorneys crowded into a single room – indeed, nine people and part of the library were located in the offices designed for the head of the division.” He sought to remedy this and other administrative challenges brought about by the Division’s rapidly increasing workload.

were four attorneys and law clerks assigned to the Section. Between mid-1937 and mid-1938, the Division handled 109 appellate cases. The Administrative Section, headed by Mac Asbill, supported the Division, and handled budget, personnel,

physical facilities, supplies, and supervision of the stenographic pool.

*In 1939, **Roger Marquis** joined the Appellate section. He was appointed Appellate Section Chief in 1945, and served in that position until his retirement in 1969. Westlaw lists him as having argued or participated in the briefing of 1,085 federal court cases and 42 state court cases, the highest number of Westlaw hits for any Appellate Section attorney. He was an authority on condemnation law and authored large parts of the Division's condemnation handbook.*

The Division in Wartime

The Division's increased land acquisition efforts of the New Deal era set the stage for even greater land acquisition required by the United States' participation in World War II. Early in his term, AAG Norman Littell (1939-44) made several additional reforms of the Lands Division. He obtained legislation that expedited the Attorney General's title

approval procedure, eliminating delays in land acquisition. And, claiming that 269 different condemnation procedures had been identified in various jurisdictions, he lobbied for, but did not achieve, a uniform condemnation standard. Littell also lent staff to the Office of the Quartermaster General's Real Estate Branch and other agencies of the War Department to streamline those overworked agencies' acquisition operations. Littell's organizational reforms proved essential as land acquisition went from a peacetime to a wartime footing.

In the years following the attack on Pearl Harbor in December 1941, the Lands Division became "the biggest real estate office of any time or any place," overseeing the acquisition of more than 20 million acres of land – an area approximately the size of Massachusetts, Connecticut, Rhode Island, Delaware, and most of New Jersey. The land was used for airports, naval stations, fleet bases, bombing fields, proving grounds, and other national defense installations. A total of 18,160 cases emanated from federal condemna-



FWS Photo

WWII weapons production

The Tenure of Norman Littell

In early 1939, upon the resignation of AAG Carl McFarland, President Roosevelt replaced him with Norman Littell, a successful lawyer in Washington State who had served as a special assistant to the U.S. Attorney General and argued numerous cases before the Supreme Court during the 1930s. In his first annual report, Littell was strongly critical of United States land policy through the early 1930s. He opined that the disastrous droughts of the early 1930s resulted from improvident allocation of public lands, which in turn resulted in improper cultivation, overgrazing, and the destruction of wildlife habitat. He reported a significant turnaround under the Roosevelt administration, as “the problem of arresting this waste of land resources has been vigorously attacked.” Littell noted that the Lands Division was responsible for the litigation aspects of Roosevelt’s conservation and resettlement programs.

Littell developed a number of conflicts with Attorney General Francis Biddle and others in the Roosevelt administration, includ-

ing regarding the 1943 leasing of the Elk Hills oil reserve in California. Littell declared the Elk Hills deal, a 1942 contract signed by the Navy to allow Standard Oil Company to take more than \$30,000,000 worth of oil from the Elk Hills Reserve, illegal and invalid because it disproportionately benefitted the oil company. Littell further alienated influential administration figures by contributing substantial material to the U.S. Senate’s Special Committee to Investigate the National Defense Program, better known as the Truman Committee, which exposed many instances of fraud and mismanagement in wartime military procurement.



On November 18, 1944, Attorney General Biddle asked Littell to resign on the grounds that they were “personally incompatible.” This created much controversy, as several in Congress came to Littell’s defense, describing him as “one of the most outstanding and fearless public servants in the entire American Government.” As *Time* magazine reported in 1944, “Instead of his resignation, Littell wrote out a withering 12,000-word blast at his boss” charging that the Attorney General “was guilty of ‘confusion [and] superficiality of mind . . . frustration . . . personal vanity . . . devious ways . . . petty, personal animosity, and . . . intimate connections’ with Lobbyist Tommy Corcoran to the detriment of the public interest.” He also alleged that Corcoran was influencing Biddle to pressure Littell to settle cases on terms unfavorable to the government. On November 30, 1944, President Roosevelt found that Littell’s public statements constituted insubordination, and removed him from office.

tions in this period, resulting in payment of about \$520 million. More than 3,000 cases remained pending in early 1948.

The Division’s average time to acquire land, from receipt of the agency request

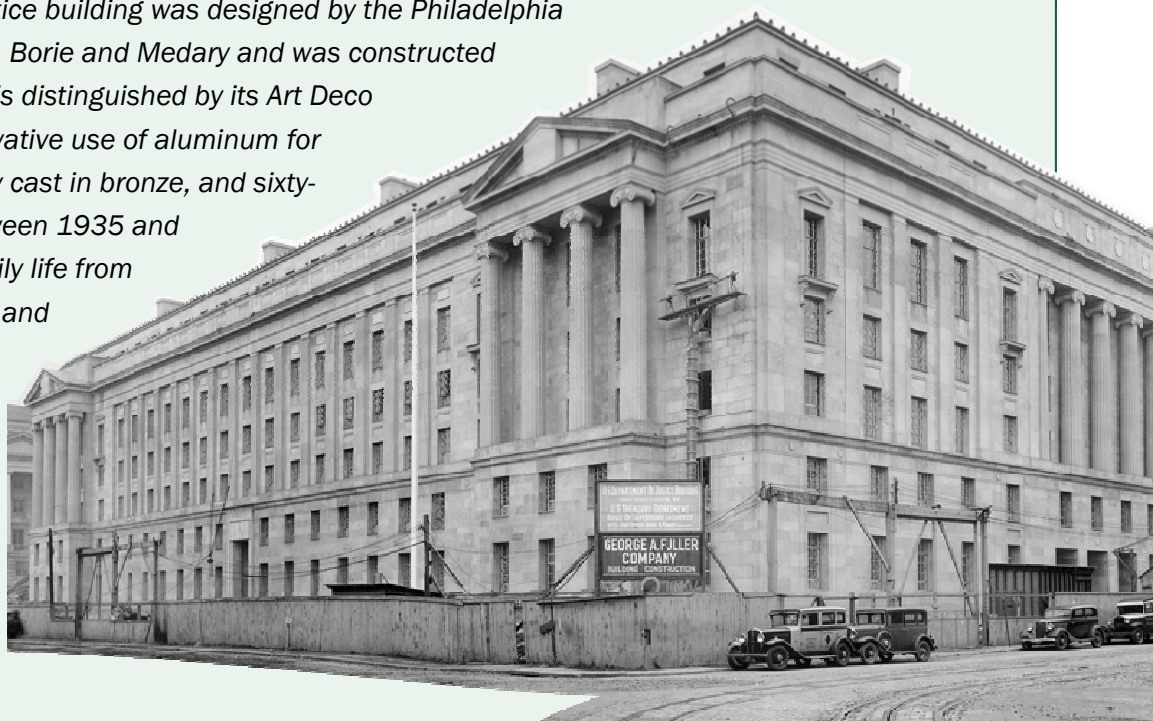
to obtaining possession, was reported to be just over four days. In less than 24 hours turnaround, the Division obtained a condemnation order for the Stevens Hotel in Chicago, Illinois, for use as an Army Signal Corps training school. Now the Hilton Chicago, the hotel was originally owned by the family of Justice John Paul Stevens, and with 3000 rooms was then one of the biggest hotels in the world. The Division was involved in the acquisition of many high-profile military sites, including the land for the Los Alamos Laboratory in New Mexico and the Oak Ridge Laboratory in Tennessee, integral to the highly-classified Manhattan Project.

During World War II, the Lands Division was the largest division of the Department of Justice, and second in size only to the Federal Bureau of Investigation among Department components. At that point the Division employed more than 500 lawyers and operated offices in every state of the union. Between 1939 and 1944, the Division's annual budget increased from slightly more than \$1 million to more than \$4 million.

In the years immediately following World War II, the Division's land acquisition activities decreased significantly. In 1946, AAG David Bazelon (1946-47) con-

The Main Justice Building

The Main Department of Justice building was designed by the Philadelphia architectural firm Zantzinger, Borie and Medary and was constructed between 1931 and 1935. It is distinguished by its Art Deco architectural elements, innovative use of aluminum for details that were traditionally cast in bronze, and sixty-eight murals completed between 1935 and 1941 depicting scenes of daily life from throughout American history and symbolic interpretations or allegorical themes relating to the role of justice in our society. The offices of ENRD's Assistant Attorney General are on the second floor near the Great Hall.



solidated the Title and Condemnation Sections into one, designated as the Land Acquisition Section. In 1952, the section had 47 attorneys and 32 clerical employees. Most of its cases involved acquisitions for flood control, river improvement, and reclamation on behalf of the Department of Defense and the Department of the Interior.

The Indian Claims Commission

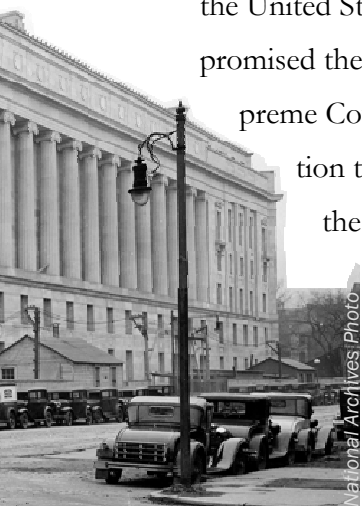
When Attorney General Homer Cummings reorganized the Department in 1933, responsibility for Claims Court suits by Indian tribes against the United States for land compensation was transferred from the Department's Court of Claims Division to the Lands Division. The number of these cases rose steadily throughout the 1920s and 1930s. During AAG Harry Blair's tenure (1933-1937), the Division was handling over one hundred cases by Indian tribes against the United States, with claims totaling over \$3 billion. The tribes argued that their lands had been taken away without sufficient payment, or that money received in payment had not been used for the tribes' benefit, or that the United States did not provide the lands or materials promised in various treaties. Many of these cases involved counterclaims by

the United States arguing that it had, in some cases, supplied more than what was promised the tribes by treaty. In 1935, in the case of *U.S. v. Creek Nation*, the Supreme Court upheld the Creek land claim and rejected the government's assertion that the Tribe should have contested an improper transfer of land at the time it occurred. *United States v. Creek Nation*, 295 U.S. 103 (1935).

Many grievances of Native Americans arising from the government's alleged failure to honor the terms of treaties and agreements initially went unheard, because the litigation of such claims required that the tribe obtain a special jurisdictional act of Congress. As a

Felix Cohen's Handbook of Federal Indian Law

In late 1938, AAG McFarland and Charles E. Collett, the Chief of the Trial Section, asked Felix Solomon Cohen of the Department of the Interior to compile a survey of Federal Indian Law. Initially, the compilation of Federal Indian Law was a collaborative effort between DOJ and DOI, and McFarland and Collett anticipated that it would assist attorneys in the Department of Justice in defending cases against Indians. Interior published the first edition of The Handbook of Federal Indian Law in 1941.



result, legislation was introduced in Congress in 1935 to create an Indian Claims Commission.

In 1946, Congress enacted the Indian Claims Commission Act (ICCA), establishing the Indian Claims Commission to resolve existing tribal claims. The ICCA was an historic attempt to compensate tribes for past wrongs suffered at the hands of the United States. The Act permitted tribes to bring legal and equitable claims, as well as claims that the United States had not acted “fairly and honorably,” lifting time bars to such claims. From the tribal perspective, however, the ICCA fell short of remedying past wrongs by providing solely for monetary awards, rather than allowing the return or replacement of tribal lands that had been lost. Appeals of ICC decisions could be brought before the United States Court of Claims (known prior to 1948 as the Court of Claims), with the possibility of a final appeal before the Supreme Court.

In the Attorney General’s annual report for 1948, AAG A. Devitt Vanech (1947-51) reported that the Division had 26 pending Indian claims cases whose claims he estimated to total nearly the “astronomical” amount of \$5 billion. By 1953, more than 400 cases had been filed. Between 1946 and 1953, these cases were handled by the Trial Section, but in 1953, in response to the increasing number of cases, the Division created an Indian Claims Section to represent the government in cases brought before the ICC. An important and complex aspect of the Section’s work was estimating land values and resolving conflicts between the estimates of its experts and those of the plaintiffs, often dealing with claims dating from agreements or events of the previous century. For example, in the 1948 case of *Osage Tribe of Indians v. United States*, the United States was represented before the ICC by AAG Vanech and Indian Claims Section attorney Ralph A. Barney. The ICC ruled that the tribe was owed about \$777,000 because the government’s payment for the land in 1865 did not represent its true value.

The number of outstanding ICC cases increased slightly through the 1950s, reaching 463 in 1960, as the pace of case resolutions remained between eight and fifteen per year.

Double Desserts

A 1943 memo from T.C. Quinn to "All employees in the Department of Justice Building" admonishes: "Request that no silverware or china be taken from the cafeteria except in an emergency and that all employees now having some in their offices will return it as soon as possible; it is further requested that the practice of securing 'double desserts' per person be discontinued."

Looses Cafeteria 44-2-1-10 44-2-1-10	Property Justice	7-30-43
Quinn, T. C.		CIRCULAR 3743 SUPPLEMENT #1
TO ALL EMPLOYEES IN THE DEPARTMENT OF JUSTICE BUILDING:		
Re: Request that no silverware or china be taken from the cafeteria except in an emergency and that all employees now having same in their offices will return it as soon as possible; it is further requested that the practice of securing "double desserts" per person be discontinued.		
ag;vc encl.	8-7-43	8-9-43

THE 1950S AND 1960S: THE LAND AND NATURAL RESOURCES DIVISION



By 1953, the Division consisted of the Assistant Attorney General, one Assistant, and six sections – the Trial Section, the Appellate Section, the Legislation and General Section, the Appraisal Section, the Land Acquisition Section and the Administrative Section. That year, under AAG Perry W. Morton (1953-1961), the Lands Division underwent several organizational changes. The Water Resources Section was established to represent the government in water rights-related litigation and provide expertise on interstate water issues and federal water-related legislation. The Division also closed all of its field offices as part of the Department of Justice’s policy to consolidate local and regional cases in the offices of the U.S. Attorneys. Beginning with that realignment, Division land attorneys were assigned to the U.S. Attorneys’ Offices to handle condemnation cases. The Indian Claims Section was also established in 1953.

Due to this restructuring, between 1953 and 1955 the Division’s personnel decreased by more than 50 percent, from 444 to 209. By 1957, the Division had only three attorneys in field offices. The number of attorneys continued to decrease over the subsequent years, and in 1960 the Washington office reported 101 attorneys and 111 clerical staff, with seven attorneys and four staff people in the field.

In 1960, the Water Resources and Trial Sections were combined into the General Litigation Section, which retained distinct Water Resources and General Trial units. Division staffing decreased slightly in the 1960s, reaching 197 (of whom 96 were attorneys) in 1966. In 1963, AAG Ramsey Clark (1961-65) eliminated the Legislation and General Section, distributing its functions and personnel between the General Litigation and Administrative Sections. The Division also began publication of the Lands Division Journal in this year, which included articles on the substantive areas of law handled by the Division.

*During his tenure as AAG of the Lands Division (1961-65), **Ramsey Clark** was assigned by Attorney General Robert F. Kennedy to handle many sensitive civil rights matters unrelated to the work of the Division. Kennedy sent Clark to investigate the state of desegregation in the South and to compile a report of civil rights conditions there. Clark’s memo to Kennedy suggested that it was time for the federal government to enact sweeping civil rights legislation, providing an outline of sorts for what would become the Civil Rights Act of 1964. President Lyndon Johnson appointed Clark Deputy Attorney General in 1965 and Attorney General in 1967. He continued to be involved in drafting civil rights legislation and helped to ensure the passage of the 1968 Civil Rights Act.*



**Order redesignating the Lands Division as the
Land and Natural Resources Division. October 8, 1965.**

OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D. C.

OCTOBER 8, 1965

TITLE 28 - JUDICIAL ADMINISTRATION
CHAPTER I - DEPARTMENT OF JUSTICE

ORDER NO. 348 - 65

REDESIGNATING THE LANDS DIVISION AS
THE LAND AND NATURAL RESOURCES DIVISION

Under and by virtue of the authority vested in me by Section 161 of the Revised Statutes (5 U.S.C. 22) and Section 2 of Reorganization Plan No. 2 of 1950, it is hereby ordered as follows:

SEC. 1. The Lands Division is redesignated as the "Land and Natural Resources Division."

SEC. 2. Chapter I of Title 28 of the Code of Federal Regulations is amended by deleting "Lands Division" wherever that title appears therein and by inserting in lieu thereof "Land and Natural Resources Division."

SEC. 3. All references to the Lands Division in all other orders, memoranda, directives, and other official documents shall be deemed to refer to the Land and Natural Resources Division.

SEC. 4. This order shall be effective on the tenth day after the date thereof.

Authority: R.S. 161; 5 U.S.C. 22; sec. 2,
Reorg. Plan No. 2 of 1950; 3 CFR, 1949-53
Comp.; 64 Stat. 1261.

Nicholas deB. Katzenbach
Attorney General

October 8, 1965

The name change will make clearer the Division's close identification with some of the most vital issues of the day and will better inform the public and other government agencies of the Division's functions. It will clearly label what the Division does: protect the public interest in the natural resources of our nation.

*Excerpts from the staff
notification and press release
announcing the Division name
change. October 11, 1965.*

The change is designed to be far more descriptive of the basic work of the Division. The old title is a carry-over from the days when its principal function was the administration of the public lands laws, such as the Homestead Acts and so forth. (The Division once was called the "Public Lands Division.")

In 1965, at the request of AAG Edwin Weisl (1965-67), the Lands Division was redesignated as the Land and Natural Resources Division by Attorney General Katzenbach. At the time, the Division employed 100 attorneys.

A Deputy Assistant Attorney General (DAAG) was appointed in 1968 when Glen E. Taylor filled the position under AAG Clyde Martz (1967-69). He was succeeded by Walter Kiechel, Jr., former Chief of the General Litigation Section.

Changes in Technology

Until 2001, all Main Justice offices had sinks. Because of the use of carbon paper until the 1970s, all DOJ employees had a need to frequently wash their hands.

In 1969, all work was typed on IBM Selectric typewriters. As late as the mid-1970s, attorneys hand wrote their briefs, which the secretaries then typed and retyped to integrate attorney edits. In the 1980s, the Division obtained IBM typewriters that were attached to an 8" floppy disk reader, so that text could be saved and edited. Under AAG Jim Moorman (1978-81), the Division obtained 28 Lexitrons, dedicated word processing microcomputers that used 5 ¼" floppy discs.

In 1972, the Division had only one copy machine, which did not collate. The Administrative Officer of the Division approved each copy made. Permission was also required to make a long distance telephone call.

Land Acquisition in the 1950s and 60s

The Korean Conflict, which began in 1951, caused a dramatic increase in land acquisition. In 1954, about one-half of land acquisitions were defense-related.

The early 1950s also saw a proliferation of a new type of land condemnation case, whose purpose was to clear airspace adjacent to newly constructed military airports. The acquisition of an estate in land to ensure adequate clearance for the lower approach and takeoff patterns of modern aircraft, called an aviation easement, required evaluation and compensation for significant tracts of privately owned land. Because air traffic involves a broad range of impediments to private activity, assessment of compensation for this type of estate proved more complex than for conventional estates acquired by land condemnation. Similar problems arose at new missile sites.

Until the 1960s, male attorneys still wore white shirts and suits to work, and most women wore a hat and gloves.

A second new category of land condemnation developed from the Federal Aid Highway Act of 1956, which allowed the Department of Commerce to acquire lands required for interstate highway projects in situations where a state could not gain access to the required land in a timely manner. As a result, private parties brought, and the Lands Division defended, litigation contesting the federal government's right to condemn land on behalf of state interests and its interpretation of the phrase "in a timely manner." In an early case, *United States v. Certain Parcels of Land in Knox County Tennessee*, a district court in 1959 held that national defense considerations legitimized federal condemnation of land for highways on behalf of the state of Tennessee.

By the 1960s, expenditures and time spent by the Lands Division on acquisition of land for various purposes had increased, as the Federal Highway Act required extensive parcels throughout the United States and a spate of new federal office buildings required expensive urban property. In 1964, the government paid nearly \$200 million for land acquired through purchase and condemnation, more than doubling the acreage acquired in the previous year and exceeding the totals for all previous postwar years. Among the three major functions of the Division in 1964 (the others being litigation and Native American affairs), about half of its manpower was devoted to the processes supporting land acquisition, such as title examination and preparation of condemnation proceedings.

Water Rights Cases Increase

As reflected by the creation of a separate Water Resources Section in 1954, the Division experienced an increase in the number of water-related cases in the 1950s. In his report for 1966, AAG Edwin L. Weisl, Jr. noted that such cases normally were complex and moved slowly through the system; 114 such cases were pending at the end of the year.

In 1963, the Supreme Court handed down another in a series of rulings on the dispute in *Arizona v. California*. The Court upheld the United States' position that the contested distribution of water among watershed states and the United States was determined neither by the Colorado River Compact nor by state law, but by the

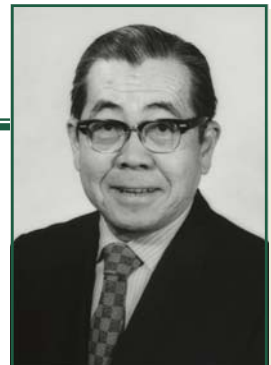
In 1963, the Division assisted in obtaining a key precedent requiring courts to give “great deference” to the Secretary of the Interior’s interpretation of statutes and Executive Orders. Udall v. Tallman, 380 U.S. 1 (1965). Interior Secretary Udall later gave Appellate Section Chief Roger Marquis an autographed copy of a book Udall authored. Udall inscribed the gift with a note that, until he read the Appellate Section’s brief, he did not know the Secretary of the Interior possessed such vast power and authority.

specific allotments stated in the Boulder Canyon Project Act of 1928, as administered by the Secretary of the Interior. The Court also affirmed the authority of the United States to reserve water for tribes, finding that “[i]t is impossible to believe that when Congress created the great Colorado River Indian Reservation and when the Executive Department of this Nation created the other reservations they were unaware that most of these lands were of the desert kind – hot scorching sands – and that

water from the river would be essential to the life of the Indian people and to the animals they hunted and the crops they raised.” Based on this, the Court concluded that “enough water was reserved to irrigate all the practicably irrigable acreage on the reservations” in order to meet “future as well as present needs.” AAG Ramsey Clark described the verdict as a major step in development of the Southwest. Motions and negotiations continued for many years thereafter, and supplementary Supreme Court decrees have altered the distribution of the Colorado River’s water seven times since that decision.

In the 1950s, the Division also continued to provide consultation on water resource cases, particularly on the establishment of interstate compacts specifying water rights, such as the Klamath River Basin Compact of 1957 and the Bear River Compact of 1958.

In 1969, Assistant Attorney General Shiro Kashiwa argues a case in the Supreme Court seeking the reversal of an adverse ruling in a condemnation case, becoming the first Japanese American and the first member of the Hawaii bar to represent the United States before the Supreme Court.

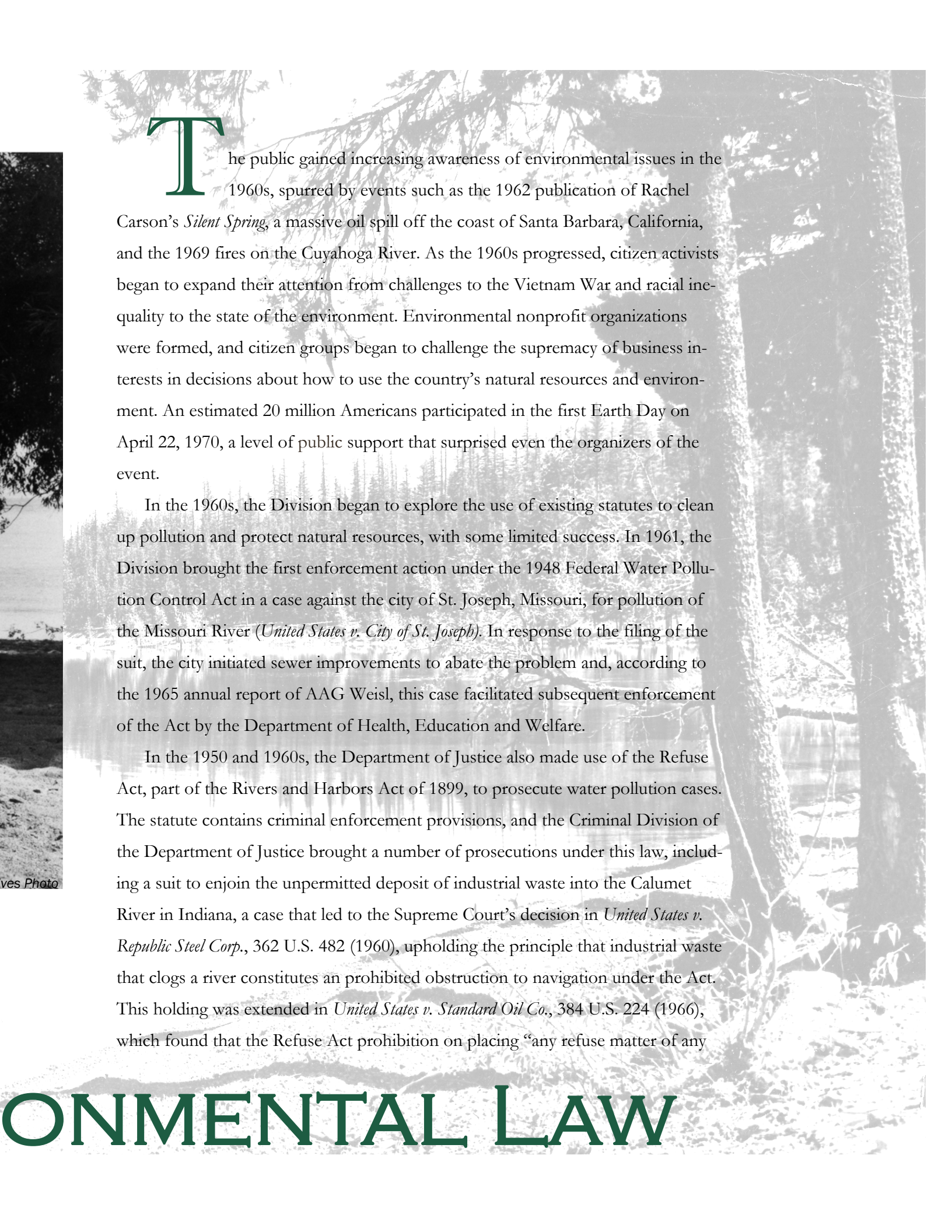




National Archi

A sign warning swimmers of polluted water did not discourage these bathers from an afternoon frolic in Lake Erie waters, August 1962.

THE RISE OF ENVIR



The public gained increasing awareness of environmental issues in the 1960s, spurred by events such as the 1962 publication of Rachel Carson's *Silent Spring*, a massive oil spill off the coast of Santa Barbara, California, and the 1969 fires on the Cuyahoga River. As the 1960s progressed, citizen activists began to expand their attention from challenges to the Vietnam War and racial inequality to the state of the environment. Environmental nonprofit organizations were formed, and citizen groups began to challenge the supremacy of business interests in decisions about how to use the country's natural resources and environment. An estimated 20 million Americans participated in the first Earth Day on April 22, 1970, a level of public support that surprised even the organizers of the event.

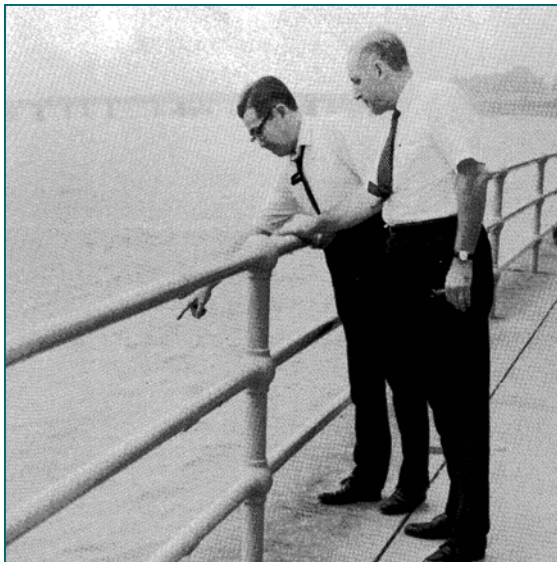
In the 1960s, the Division began to explore the use of existing statutes to clean up pollution and protect natural resources, with some limited success. In 1961, the Division brought the first enforcement action under the 1948 Federal Water Pollution Control Act in a case against the city of St. Joseph, Missouri, for pollution of the Missouri River (*United States v. City of St. Joseph*). In response to the filing of the suit, the city initiated sewer improvements to abate the problem and, according to the 1965 annual report of AAG Weisl, this case facilitated subsequent enforcement of the Act by the Department of Health, Education and Welfare.

In the 1950 and 1960s, the Department of Justice also made use of the Refuse Act, part of the Rivers and Harbors Act of 1899, to prosecute water pollution cases. The statute contains criminal enforcement provisions, and the Criminal Division of the Department of Justice brought a number of prosecutions under this law, including a suit to enjoin the unpermitted deposit of industrial waste into the Calumet River in Indiana, a case that led to the Supreme Court's decision in *United States v. Republic Steel Corp.*, 362 U.S. 482 (1960), upholding the principle that industrial waste that clogs a river constitutes an prohibited obstruction to navigation under the Act. This holding was extended in *United States v. Standard Oil Co.*, 384 U.S. 224 (1966), which found that the Refuse Act prohibition on placing "any refuse matter of any

ONMENTAL LAW

kind” in a navigable water should be interpreted broadly and includes gasoline and other inadvertently discharged valuable product. In reaching this conclusion, the Court noted that “[t]his case comes to us at a time in the Nation’s history when there is greater concern than ever over pollution – one of the main threats to our free-flowing rivers and to our lakes as well,” and that “[w]e cannot construe section 13 of the Rivers and Harbors Act in a vacuum.”

During the 1960s, the Justice Department used the Refuse Act and related statutes as a basis for criminal charges against polluters approximately 400 times. In



Reprinted from Attorney General's Annual Report (1969)

AAG Shiro Kashiwa and DAAG Walter Kiechel, Jr. give personal attention to the pollution issues handled by the Lands Division in this photo made for the 1969 Attorney General's Annual Report.

1970, the Division issued to U.S. Attorneys’ Offices *Guidelines for Litigation Under the Refuse Act*, which encouraged the use of the Act to punish significant accidental or infrequent discharges, but not continuing discharges that are the result of manufacturing. This latter type of discharge was under the purview of the Federal Water Pollution Control Administration (part of the Department of Health, Education, and Welfare) and its successor agency, the Federal Water Quality Administration (part of the Department of the Interior), which eventually developed a permit process.

In 1968, at the request of the Secretary of Health, Education, and Welfare, the Division brought a test case under the Federal Clean Air

Act, *United States v. Bishop Processing Co.* (D. Md. 1968), to enjoin the company from emitting air pollution that moved across state lines. The constitutionality of the Act was upheld, and the pollution was eventually abated by consent decree.

By 1969, expanding public support began to yield more focused, powerful laws which addressed administrative agency decisional processes, substantive environmental protection, and the allocation and disposition of federal resources on the public lands. That year, Congress passed the National Environmental Policy Act (NEPA), which established a national environmental policy and required the con-

sideration by federal agencies of environmental values in environmental impact statements before undertaking major projects. NEPA became a major tool for those attempting to halt projects which altered the natural environment, on the ground that environmental impacts were inadequately considered.

This wave of new legislation continued in 1970 with the enactment of the modern Clean Air Act. The Environmental Protection Agency was also established that year, creating what is now one of the Division's most significant client agencies. The Federal Water Pollution Control Act followed (1972), along with Coastal Zone Management Act (1972), the Marine Mammal Protection Act (1972), the Endangered Species Act (1973), the Safe Drinking Water Act (1974), the Toxic Substances Control Act (1976), the Federal Land Policy and Management Act (1976), the National Forest Management Act (1976), the Magnuson Fishery Conservation and Management Act (1976), the Resource Conservation and Recovery Act (1976), the Surface Mining Control and Reclamation Act (1977), and the Public Rangelands Improvement Act (1978).

The passage of these statutes and their successors dramatically transformed the work of the Division in two ways. First, for those environmental statutes which provided for civil and criminal enforcement, those functions became some of the Division's major occupations. Second, many of these laws provided grounds for

Deputy Assistant Attorney General Walter Kiechel opened a January 14, 1972 speech: "The question posed by the title of this speech is: What's to Come in the Environmental Field? Without resort to a crystal ball or other aids to prognostication, I can say in answer, 'A great deal of litigation!'"

challenging the decisionmaking processes of federal agencies. Defending agency decisionmaking under these statutes and their implementing regulations also grew to occupy a significant portion of the Division's time and resources.

Kathryn "Kay" Oberly joined the Appellate Section in 1974 and was quickly recognized for her outstanding work in a number of areas, including Indian fishing rights, wildlife protection, and the navigational servitude. While still in the Appellate Section, she was permitted by the Solicitor General to argue an important navigational servitude case in the Supreme Court – Kaiser Aetna, Inc. v. United States, 444 U.S. 164 (1979). Kay went on to serve as an Assistant to the Solicitor General. She is currently a judge on the District of Columbia Court of Appeals and was chosen to swear in Secretary of State Hillary Clinton.



Senate Photo

SOME MEMORIES FROM THE POLLUTION CONTROL SECTION IN THE 1970s

By Raymond W. Mushal

The days of the Pollution Control Section (1970-81) were before the time of electronic communications within the Department. Within the Division, everything moved by messenger.

Prepare a document, put a buckslip on it, stick it in a holed enveloped, and put it in the Out box. Periodically throughout the day, messengers rotated through the Division emptying the Out boxes and filling the In boxes. The messenger from that period who sticks in my mind was Carlos, who was with us in 1974-1975. That was when I was courting – look it up in an old dictionary, youngsters – Barbara Cantey, who was the AAG's Administrative Assistant.

Wishing to avoid any attention to our developing relationship, we kept a very low profile. Only Carlos realized that a great deal of message traffic went back and forth between us at our opposite ends of the hall. Sometimes in those envelopes were personal messages; other times the Post crossword puzzle when one of us got stuck on a word; occasionally a bone for Barbara's dog. Carlos helped us keep our secret until we went off on our afternoon coffee break and got married on Friday, August 15, 1975, at Saint John's Church on Lafayette Square. Only on the following Monday was our relationship revealed to others in the Division, taking them entirely by surprise. Main Justice is not necessarily the cold and unromantic place that it appears from the outside.

— Ray Mushal joined the Pollution Control Section as an Honors Graduate in August 1973. He is currently a Senior Counsel in the Environmental Crimes Section.

Formation of the Pollution Control Section

On October 1, 1970, AAG Kashiwa created a new Pollution Control Section and assigned it responsibility for both civil and criminal enforcement actions by the United States to abate air, water, and other types of pollution. The Section also handled defensive litigation for agency rulemakings. Attorneys from the General Litigation Section and the Department's Criminal Division were transferred to staff the new section. In the early 1970s, the Section was headed by Martin Green. The Attorney General officially assigned responsibility for both civil and criminal enforcement of the environmental laws to the Division in 1971.

In 1970, the Division litigated its first civil cases based on the Refuse Act, including a suit to protect lower Biscayne Bay, Florida, from thermal pollution from a power plant (*United States v. Florida Power and Light Co.* (S.D. Fla. 1970)), and a suit to enjoin a steel company's discharge of toxic wastes (*United States v. Armco Steel Co.* (S.D. Tex. 1971)). These Refuse Act cases continued in 1971, with approximately 54 new civil enforcement actions filed that year. AAG Kent Frizzell (1972-73) reported that in the first two years of civil Refuse Act lawsuits, every case resulted in either immediate cessation of pollution activity or commitments by the polluter to amend its practices to comply with standards issued by the Environmental Protection Agency.

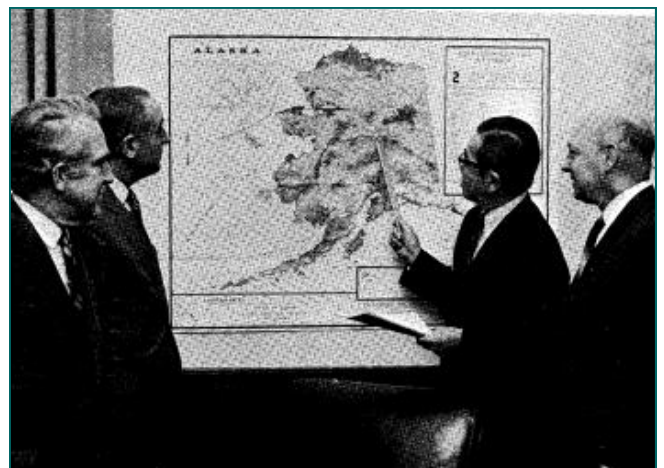
The passage of the Federal Water Pollution Control Act (also known as the Clean Water Act) in 1972

granted substantial new enforcement authority to the federal government, but resulted in a short-term drop in enforcement actions while the Division and EPA handled large numbers of petitions for review of agency action (108 under the Clean Water Act in 1974 alone).

The Pollution Control Section also was responsible for wetlands protection, another environmental issue that received increased attention in the 1970s. In the mid-1970s, a series of U.S. district court rulings in southern Florida, the northeastern United States, and the on west coast extended federal authority to enjoin dredging and filling of tidal wetlands. The District of Columbia District Court ruling in *NRDC v. Callaway* (1975) forced the U.S. Army Corps of Engineers to expand its definition of “navigable waters” under the Federal Water Pollution Control Act, therefore expanding the regulatory sweep of that law and allowing the federal government to exercise increased jurisdiction.

NEPA – Making New Law

In the Attorney General’s annual report for 1970, AAG Kashiwa noted a wide variety of new cases brought by groups to block projects deemed harmful to the environment, as well as an increase in the environmental content of the Division’s normal legislative activities. In the early 1970s, in addition to its usual docket of public lands and Indian cases, the General Litigation Section, headed by Floyd France, increasingly was occupied with cases involving environmental protection. Environmental groups used the newly-passed National Environmental Policy Act to challenge many agency actions, and Division cases included attempts to block timber sales in Alaska and Colorado, the development of mineral deposits in national forests in Minnesota and West Virginia, construction of the Trans-Alaska Pipeline to move oil from Alaska’s north slope to an ice-free shipping point, and a cross-Florida barge canal.



Reprinted from Attorney General's Annual Report (1970)

Lands Division AAG Shiro Kashiwa discusses an environmental study on Alaska with staff members.

The Division's earliest cases under NEPA included *Committee for Nuclear Responsibility, Inc. v. Seaborg* (D.C. Cir. 1971), *Calvert Cliffs Coordinating Committee, Inc. v. U.S. Atomic Energy Commission*, (D.C. Cir. 1971), and *West Virginia Highlands Conservancy v. Island Creek Coal Co.* (4th Cir. 1971). *Committee for Nuclear Responsibility*, involving a challenge to an underground nuclear test explosion on the Alaskan island of Amchitka, was also the Division's first major case involving tension between national security needs and compliance with environmental laws. The Division argued three appeals in two weeks, ultimately persuading the D.C. Circuit to allow the test to go

In a 1969 internal memorandum, Assistant Attorney General **Shiro Kashiwa** commented on press reports that President Nixon wished to focus on environmental issues, and observed a "change in the thinking throughout the country" regarding the importance of the environment. Kashiwa noted, "[e]ven in the applications of honor students for positions in Justice a greater percentage now prefer a position in Land and Natural Resources instead of the other Divisions they heretofore preferred."

forward. The Supreme Court denied a stay of the decision after a rare Saturday morning argument.

In 1976, the Supreme Court decided one of its first major cases under NEPA, *Kleppe v. Sierra Club*, 427 U.S. 390 (1976). In that case, which was handled by the Division in the trial and lower appellate courts, environmental groups argued that the Department of the Interior and other federal agencies were required to prepare a regionwide, comprehensive environmental impact statement for developing coal reserves on federally owned or controlled land in the Northern Great Plains region. The Court held that such a

statement was not required absent an existing proposal for regionwide action. It also articulated the oft-repeated standard that the "only role for a court is to insure that the agency has taken a 'hard look' at environmental consequences." The Division was also responsible for trial and appellate work leading to *Andrus v. Sierra Club*, 442 U.S. 347 (1979), in which the Supreme Court found that substantial deference was due to CEQ's interpretation of NEPA, and that appropriations requests by federal agencies were not subject to NEPA's requirements.

In 1980, AAG Moorman reported that the General Litigation Section had over 300 cases pending under NEPA, describing these as "typically fast-moving through the trial and appellate courts" and consuming "much attorney time." In 1979, the Council on Environmental Quality promulgated new NEPA regulations applicable to all federal agencies, and the Division saw a slight rise in NEPA suits in subsequent years, with 350 cases pending in the Division in 1984.

Defending Agencies and Environmental Laws

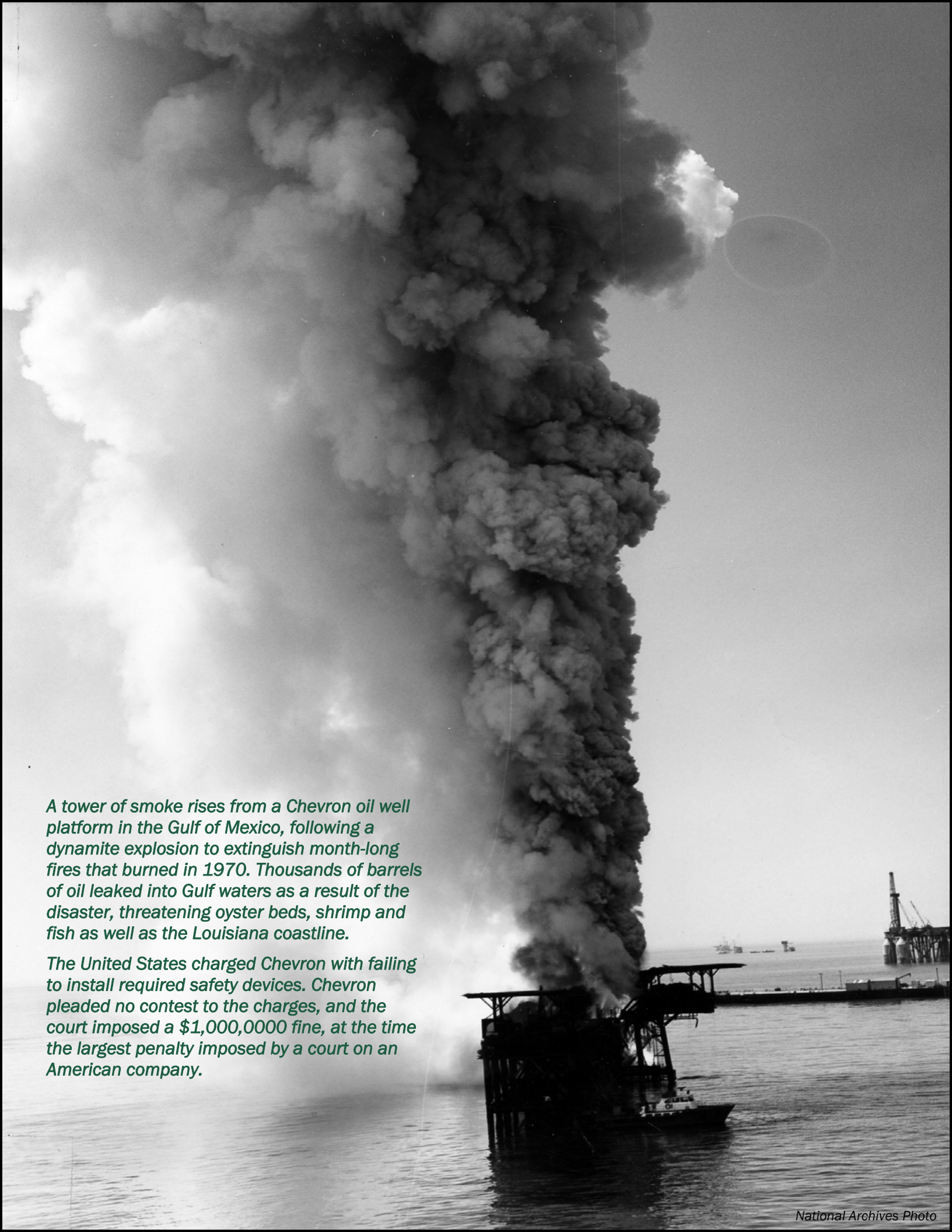
In the 1970s and early 1980s, EPA focused its efforts on promulgating regulations to implement the new environmental laws. During this period, the Division defended EPA in numerous suits challenging the agency's rulemakings or failure to meet statutory deadlines. The judicial review provisions in the new laws helped usher in a new era of constitutional and administrative law in which courts sought to balance the principle of deference to agency decisions with the public's interest in a clean and healthy environment.

Of particular importance was the development of the law of standing, as citizens' groups and corporations asserted the right to challenge agency actions in the federal courts. The Division defended the Departments of the Interior and Agriculture in *Sierra Club v. Hickel* (9th Cir. 1970), a challenge to the permits required for implementation of a plan by Walt Disney Productions to build a large ski resort in Mineral King Valley in the Sequoia National Forest in California, as well as a road to the resort that would traverse a portion of Sequoia National Park. The appellate court found that the Sierra Club had not proved that its members would be harmed by the resort, and on appeal, the Supreme Court upheld the determination that the Sierra Club lacked standing. The Court also affirmed that citizens' groups did not need to demonstrate an economic interest in a dispute to establish standing – the injury in question “may reflect aesthetic, conservational, and recreational” values as well, thus opening the courts to other citizen suits to protect environmental interests.

AAG Hank Habicht (1983-87) described the Division in the 1980s as “assum[ing] a more aggressive litigation posture in successfully protecting important federal initiatives from legal challenge and defending against demands for attorneys' fees where the government has prevailed on all issues in dispute.” This included a more aggressive use of defenses such as lack of standing, ripeness, and mootness.

Spam Wellington

In the 1970s, the Appellate Section's Ed Shawaker handled the appeals of some of the Division's most difficult Indian law issues, including the status of Eastern tribes and reservation boundary issues. He participated in landmark Supreme Court cases involving Indian law, including Ramah Navajo School Bd., Inc. v. Bureau of Revenue of New Mexico, 458 U.S. 832 (1982) and Duro v. Reina, 495 U.S. 676 (1990). Shawaker is equally well-known among his colleagues for the famous “Spam Wellington” he brought to many Appellate Section potluck gatherings.



A tower of smoke rises from a Chevron oil well platform in the Gulf of Mexico, following a dynamite explosion to extinguish month-long fires that burned in 1970. Thousands of barrels of oil leaked into Gulf waters as a result of the disaster, threatening oyster beds, shrimp and fish as well as the Louisiana coastline.

The United States charged Chevron with failing to install required safety devices. Chevron pleaded no contest to the charges, and the court imposed a \$1,000,000 fine, at the time the largest penalty imposed by a court on an American company.

In the late 1980s, Division attorneys defended a challenge to the Bureau of Land Management's land withdrawal program under NEPA that led to the Supreme Court decision in *Lujan v. National Wildlife Federation*, 497 U.S. 871 (1990). This case was followed by *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), a challenge to the Department of the Interior's Endangered Species Act regulations. In that case (argued by Edwin Kneedler, who has argued over 100 cases before the Supreme Court, including many on behalf of the Division), the Court found that the plaintiffs did not assert sufficiently imminent injury to establish standing, nor was their claimed injury redressable. These cases, among others, established the contours of the modern law of standing.

The Division also emerged as a key player in the development of administrative law. *Chevron, U.S.A. v. Natural Resources Defense Council*, 467 U.S. 837 (1984), considered by many legal scholars to be one of the most important administrative law decisions in the modern era, originated in the Division as a challenge to an EPA regulation implementing the Clean Air Act. The case established the principle that federal courts, in reviewing a statutory interpretation by an administrative agency, should not substitute their own judgment for the agency's, but rather should accept the agency's interpretation as long as it is reasonable and Congress has expressed no clearly stated intent to the contrary.

Ed Clark became the Section Chief of the Appellate Section in 1969, and **Ray Zagone** was the single Assistant Section Chief through much of the period. Attorneys from this period recall regular morning coffee get-togethers to discuss cases, report on oral arguments, and discuss where to have lunch and what to order. The Appellate Section found itself on the cutting edge of the new field of environmental law, and to stay on top of quickly evolving law, attorneys collected notebooks of Division briefs and judicial opinions and shared ideas and information with each other.

The Division also litigated *Chemical Manufacturers Association v. NRDC*, 470 U.S. 116 (1985), which defended EPA regulations implementing the Clean Water Act. The Court's decision was instrumental in solidifying the principle of administrative law that great deference is due to an agency's interpretation of the statutes it administers. To this day, the Division continues to be involved in many cases addressing important issues of administrative law.

THE 1980s:

THE DIVISION EXPANDS

After several years of sorting out the scope of the enforcement authority and litigating challenges to the new laws, by 1979, the Division was beginning to settle into its new role of enforcing environmental laws. To support this mission, the Division grew substantially between 1978 and 1980, from 243 employees (137 attorneys) to 339 employees (196 attorneys).

By 1979, under AAG James Moorman (1977-81), the Land and Natural Resources Division added two additional Deputy Assistant Attorneys General and divided supervisory responsibility for the Division's sections among the three DAAGs: Anthony Liotta, Angus MacBeth, and Sanford Sagalkin. Three new sections also were added in 1979: the Wildlife Section, the Policy, Legislation, and Special Litigation Section, and the Hazardous Waste Section.

The new Wildlife Section, headed by Ken Berlin, was assigned civil and criminal jurisdiction over wildlife laws, particularly those dealing with the illegal trade in wildlife and plants.

The new Policy, Legislation, and Special Litigation Section (PLSL), headed by J. Vance Hughes, and later by Larry Wallace (1982-84), consolidated policy formation functions with the legislative functions previously filled by the Division's legislative assistant. The Section was also responsible for developing litigation strategies for unique legal problems, in cooperation with other sections of the Division. An early example of this cooperative approach was the coordination of the various provisions of federal law that dealt in some way with the issue of storage and disposal of hazardous waste.

One of the first products of PLSL was a June 1979 study, "The Superfund Concept: Report of the Interagency Task Force on Compensation and Liability for



A junk pile on the bank of a stream in Junction City, Oregon adding to the pollution which flows into the nearby Willamette River.

Releases of Hazardous Substances.” The report constituted the most comprehensive analysis to date of the legal issues concerning the control of toxic wastes, and would help inform the Carter administration’s position on the proposed Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, which was signed in 1980. PLSL also was responsible for reporting on proposed legislation of interest and tracking the progress of existing bills.

The Hazardous Waste Section was added in 1979, in the words of AAG James Moorman, “to develop an aggressive and effective litigation program to deal with hazardous waste disposal problems.” An additional mandate of the new Section, which had 13 attorneys, was to defend challenges to hazardous waste regulations under the 1976 Resource Conservation and Recovery Act (RCRA). The Section was led by Anthony (Tony) Roisman.

In its first year, the Hazardous Waste Section worked with EPA to investigate 167 sites under RCRA and filed over 50 new hazardous waste-related complaints. The best known case in the Hazardous Waste Section’s first year was that of Love Canal in Niagara Falls, New York. In 1982, Love Canal became one of the original sites for application of the new Superfund law .

In 1980, AAG Moorman created a new Environmental Enforcement Section, and appointed Steve Ramsey as its Chief. At its inception, EES had 15 attorneys and 15 support staff. The Section’s main clients were the Army Corps of Engineers and EPA. The Section was tasked with bringing natural resource dam-

age actions on behalf of federal agencies such as the Departments of Agriculture, Commerce, Defense, Energy, and the Interior, claims against private parties for contamination of public lands, and suits seeking compensation on behalf of the Coast Guard for cleanup of oil spills. In the 1980s, the Section used the Clean Water Act to ensure that publicly-owned sewage treatment plants attained an adequate level of sewage treatment prior to discharging to rivers and streams. Cases against large municipalities such as Washington, D.C., Philadelphia, Boston, Miami, St.



Photo: EPA

Love Canal resident protests toxic dangers

Louis, Denver, and San Francisco were brought throughout the late 1980s and early 1990s.

Also in 1980, AAG Moorman created an Energy Conservation Section, led by Section Chief Kathryn Oberly, to coordinate and consolidate the Division's increasing and diversified energy-related caseload. The Section was responsible for conducting litigation based on the several statutes under the umbrella National Energy Act of 1978, including challenges to the constitutionality of those statutes.

At the end of 1980, the Division was comprised of twelve litigating sections: the Pollution Control Section (headed by Donald Stever), the Environmental Enforcement Section (headed by Steve Ramsey), the Hazardous Waste Section (headed by Tony Roisman), the Wildlife Section (headed by Ken Berlin), the Appellate Section (headed by Peter Steenland), the Marine Resources Section (headed by Bruce Rashkow), the General Litigation Section (headed by Lois Schiffer), the Energy Conservation Section (headed by Kay Oberly), the Indian Resources Section (headed by Myles Flint), the Land Acquisition Section (headed by Gerald Levin), the Indian Claims Section (headed by Donald Mileur and then Dick Beal), and the Policy, Legislation, and Special Litigation Section (headed by Vance Hughes). Two nonlitigating sections aided the work of the Division. The Appraisal Section (headed by Norman Lauer) provided assistance in land acquisition matters, and the Administrative Section (headed by Allen Smith) handled internal management, fiscal matters, and litigation support services. The Division had field offices in Anchorage, Alaska; Denver, Colorado; Miami, Florida; New York, New York; and Portland, Oregon.

In 1981, the Office of Management and Budget of the new Reagan Administration froze all positions in the executive branch, eliminating the funding for 50 positions obtained by AAG Moorman to support the sections created in 1979 and 1980. AAG Carol Dinkins (1981-83) again reorganized the Division, eliminating the short-lived Energy Section and transferring its functions to the General Litigation Section. The Marine Resources Section was merged with the Wildlife Section into a new Wildlife and Marine Resources Section, which handled all fisheries and wildlife work. The Marine Resources Section's submerged lands, coastal zone and outer continental shelf oil and gas leasing work was assigned to the General Litigation Section.

The Pollution Control Section was renamed the Environmental Defense Section, and was led by Don Stever (1981-82), followed by Jose Allen (1982-84) and Margaret Strand (1984-91). The Environmental Defense Section's mandate was to defend federal agencies against litigation challenging decisions and regulations under the environmental laws. At the urging of Section Chief Don Stever, the wetlands protection function of the former Pollution Control Section remained with the Environmental Defense Section after the 1981 reorganization. The Hazardous Waste Section was eliminated, and its affirmative litigation was transferred to the Environmental Enforcement Section and its defensive litigation to the Environmental Defense Section.

AAG Dinkins named Mary Walker and F. Henry "Hank" Habicht II as politically-appointed DAAGs. After Carol Dinkins' elevation to Deputy Attorney General, Hank Habicht was nominated in 1983 by President Reagan to serve as Assistant Attorney General. He named Mitt Spears and Roger Marzulla, and then Tom Hookano, as political DAAGs. Habicht's subsequently moved to be Deputy EPA Administrator, and Roger Marzulla became AAG in 1988. Mary Mann, James Byrnes, and Richard Leon served as DAAGs under AAG Marzulla. Donald Carr served as Acting AAG at the end of the Reagan administration.

Civil Superfund Enforcement – Polluter Pays

In 1980, in response to threats to human health and the environment posed by abandoned toxic waste disposal sites, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), popularly known as Superfund. The statute taxed the petroleum and petrochemical industries to create a fund to clean up hazardous waste sites, and empowered the United States to recover cleanup costs from persons responsible for the contamination. CERCLA became an important statute for the Division, as it required civil judicial enforcement to both obtain cleanup and reimbursement for EPA's costs.

The Division's first CERCLA case, *United States v. Hooker Chemicals* (W.D.N.Y. 1982), helped establish CERCLA's liability and cost recovery standards, and recovered \$129 million in EPA cleanup costs. *United States v. Chem-Dyne Corp.* (S.D. Ohio

LOVE

In the fall of 1977, Lois Gibbs, a 27-year-old housewife in Niagara Falls, New York, whose son Michael had serious health problems, became aware that many other local residents suffered from health problems as well, including birth defects, mental retardation, respiratory problems, leukemia, and nerv-

ous disorders. Mrs. Gibbs and her neighbors soon learned that their homes and the local school had been built over a giant former hazardous waste landfill. The site, originally a mile-long trench dug by the entrepreneur William Love in a failed attempt to construct a shipping canal that would bypass Niagara Falls, was used for decades by the Hooker Chemical Company to dispose of waste chemicals from its nearby chemical plant. During the summer of 1978, Lois Gibbs and her neighbors formed the Love Canal Homeowners' Association and successfully focused national media attention on their plight. In August of that year, both the state and federal governments declared health emergencies at Love Canal, which provided funds for residents to relocate.



Love Canal Cleanup

Photo: EPA

The Division played a key role in formulating the federal government's response to the Love Canal disaster. In 1978, when EPA first began investigating Love Canal, the Division's Policy, Legislation, and Special Litigation Section worked with Congress to draft the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), known as the Superfund law, which provides funds for the cleanup of hazardous waste sites and liability provisions authorizing the government to recover cleanup costs from parties responsible for the contamination. The Divi-

sion's Hazardous Waste Section (and later, the Environmental Enforcement Section (EES)), in concert with the State of New York, brought a CERCLA cost-recovery action against Hooker Chemical in 1979. The Division's civil prosecution of that case helped establish favorable legal standards still in use today, and the eventual settlement for \$129 million in cleanup costs stands as one of the Division's landmark achievements. In the 1980s, EES brought an action against Hooker under the Resource Conservation and Recovery Act ("RCRA"), alleging Hooker's improper storage of hazardous wastes at the Love Canal site. In 2004, EPA declared the Love Canal cleanup complete.

The Love Canal disaster awakened America to the unfolding environmental and health problem caused by decades of neglect in the disposal of toxic substances. It became one of the first cases in which the Division used the government's authorities under Superfund to help remedy the plight of communities damaged by the irresponsible disposal of hazardous wastes, and in the process, helped establish the Division's expertise in working with Congress to address environmental problems.



Evacuated Home

Photo: EPA

1983), another early landmark Superfund case brought by EES, established that CERCLA imposed joint and several liability on responsible parties.

In 1983, the Environmental Enforcement and Environmental Defense Sections cooperatively litigated on behalf of the Army, and against Shell Oil Company, over the cleanup of the Rocky Mountain Arsenal, a former military chemical weapons manufacturing center near Denver, Colorado. The Rocky Mountain Arsenal case established further CERCLA cost recovery precedent, and was one of the first cases in which the Enforcement and Defense Sections worked together to allocate cleanup costs between the United States and a private party at a former defense facility. Career DAAGs Myles Flint, Nancy Firestone, and John Cruden led successive negotiating teams on the case.

United States v. Hardage, an early landmark CERCLA case, helped establish the model that would guide CERCLA enforcement against private parties – cleanups funded by the Superfund or administratively ordered by EPA, followed by EES cost-recovery actions against the liable and economically viable parties. When *Hardage* was affirmed in the Tenth Circuit in 1992, the decision established a guiding precedent for the recovery of environmental response costs incurred by the United States. EES also persuaded the courts, in cases such as *United States v. Western Processing Co.* (W.D. Wash. 1986), to limit judicial review of EPA's selections of response actions to the agency's administrative record using an arbitrary and capricious standard.

In 1986, Division attorneys, led by PLSL Chief Ann Shields and EES Deputy Chief Nancy Firestone, worked closely with Congress and EPA (led by Linda Fisher) to obtain reauthorization of CERCLA. The Superfund Amendments and Reauthorization Act of 1986 (SARA) gave EPA new enforcement authorities, and codified the principle of record review that EES had successfully argued in *Western Processing* and other cases.

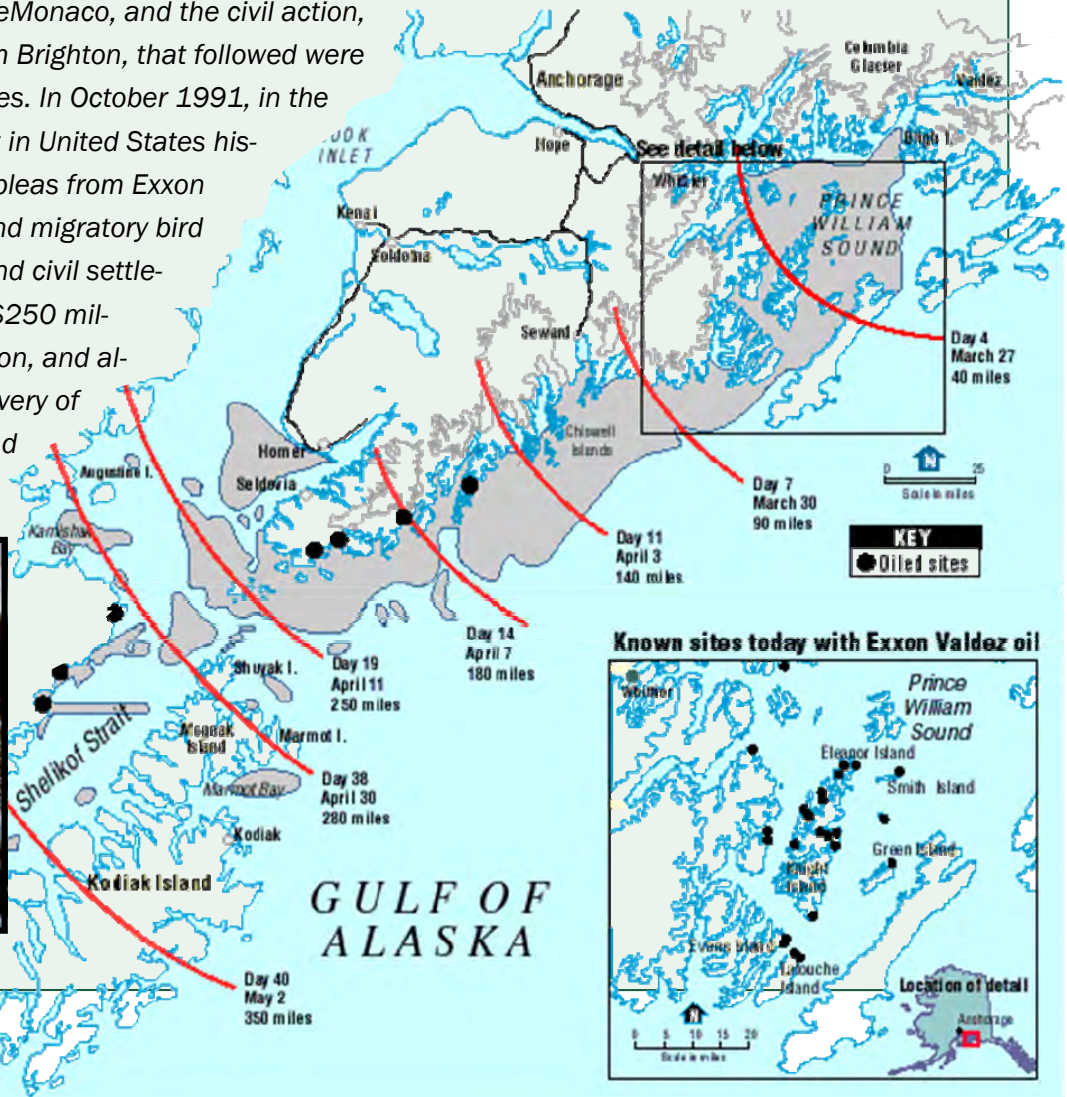
Working principally with the Interior and Agriculture Departments and the National Oceanic and Atmospheric Administration, EES under Section Chief David Buente (1984-89) and John Cruden (1991-95) also established favorable legal standards for natural resource damages cases under CERCLA. Four landmark cases in this area were the *New Bedford Harbor* case (D. Mass), involving releases of haz-

ardous substances in New Bedford Harbor in Massachusetts, the *Montrose Chemical* case (C.D. Cal.), involving damages to the marine environment from the disposal of DDT and PCBs off the coast of southern California, *United States v. Exxon* (D. Alaska), involving damages from the *Exxon Valdez* oil spill, and *United States v. Asarco* (D. Idaho), involving natural resource damages to Idaho's Coeur d'Alene Basin from the disposal of hazardous mine wastes and mill tailings.

Over time, the Division's enforcement work under CERCLA evolved – from making new law under a novel statute, to the litigation of factually complex and sci-

Exxon Valdez

In the early morning hours of March 24, 1989, the Exxon Valdez oil tanker ran aground on Bligh Reef in the waters of Prince William Sound, spilling 11 million gallons of crude oil into pristine waters, fouling hundreds of miles of coast line, and killing thousands of migratory birds, fish, and other wildlife. The criminal prosecution, led by ECS Assistant Chief Charles DeMonaco, and the civil action, led by EES Assistant Chief William Brighton, that followed were among the Division's biggest cases. In October 1991, in the largest environmental settlement in United States history, the Division obtained guilty pleas from Exxon Corporation for water pollution and migratory bird crimes. The combined criminal and civil settlement of \$1.125 billion included \$250 million in criminal fines and restitution, and almost a billion dollars for the recovery of environmental response costs and natural resource damages.



entifically challenging cases under more established principles of law. Cases became more sophisticated, relying more often on the testimony of technical and scientific experts to unravel increasingly complex scenarios. EES's CERCLA practice also expanded to cover an increasing number of natural resource damages cases, as well as referrals from agencies, such as the Department of Agriculture's Forest Service, with younger and less-developed CERCLA programs. Since CERCLA's enactment, cases brought and successfully resolved by EES have resulted in the cleanup of hundreds of Superfund sites and the recovery of billions of dollars in cleanup costs.

Criminal Enforcement of the Environmental Laws

In the 1970s, the Division's Pollution Control Section was responsible for both civil and criminal enforcement of the environmental laws. The early environmental laws, however, contained only misdemeanor criminal provisions, and thus were infrequently used by Department of Justice prosecutors. The Division initially brought criminal cases involving illegal discharges into public sewer systems, including prosecutions in the mid-1970s of Allied Chemical for discharging the pesticide kepone into the public sewer system of Hopewell, Virginia. The illegal discharge resulted in the total disruption of the sewer system, injuries to workers, and the contamination of the James River so severe that fishing was banned for a decade.

In 1980, the Resource Conservation and Recovery Act Amendments added felony provisions to that statute. In November 1982, the Division created an Environmental Crimes Unit within EES to specialize in the prosecution of environmental crimes and thus help deter violations of environmental requirements. The new unit worked with the FBI and the criminal investigators of EPA's newly formed Criminal Enforcement Division, as well as with U.S. Attorneys' Offices. Between 1983 and 1985, 123 indictments were returned, usually against individuals responsible for illegally dumping hazardous waste. In 1987, the Clean Water Act was amended to include felony violations.

The work of the Environmental Crimes Unit increased throughout the 1980s. In response, in 1987 the Division created a separate Environmental Crimes Section, led by Judson Starr, to prosecute criminal violations of federal environmental stat-

utes and coordinate the work of U.S. Attorney's offices in this area. During this time period, the Division successfully prosecuted the massive Exxon Valdez oil spill case. In 1988, Joseph (Jerry) Block became Acting Chief of ECS, followed in 1991 by Neil Cartusciello.

In 1992, the House Energy and Commerce Subcommittee held hearings on EPA's criminal enforcement program that included scrutiny of DOJ environmental prosecutions. In 1993, the Associate Attorney General created an Internal Review Committee to examine the environmental crimes program, and in 1994, that committee submitted a lengthy report. The report emphasized that ECS should devote more of its resources to policy development and coordinating policy with EPA, U.S. Attorneys' Offices, and others, a recommendation that helped to shape the modern role of the Section. Ronald Sarachan became Chief of ECS in 1994 and began the process of working collaboratively with USAOs, creating the well-regarded Environmental Crimes Policy Committee.

Protecting Wildlife and Marine Resources

In the 1970s, the Division took on the significant new function of protecting the United States' interests in marine and wildlife resources using an array of new and older statutes. This was accomplished through the creation of two new sections. The Marine Resources Section was created by AAG Kashiwa in 1969 "in recognition of the growing importance of the Outer Continental Shelf." The Section, led by experienced Appellate Section attorney George Swarth, was involved in original suits in the Supreme Court to fix federal-state offshore boundaries.

Typically, state boundaries – and mineral rights – extend three nautical miles offshore. More seaward resources are strictly federal. The states have argued for the most seaward possible resolutions to boundary disputes. Litigation in these cases is conducted as a Supreme Court original action, tried before a Special Master appointed by the Court, and ultimately resolved by the Court itself through the application of law to facts found by the Special Master. More than 17 such cases have been litigated in the last half century, some continuing for up to 15 years and involving many billions of dollars in mineral receipts.

In its first few years, the Marine Resources Section handled litigation including *United States v. Louisiana*, 394 U.S. 11 (1969), involving oil and gas royalties of over a billion dollars, and *United States v. Maine*, 395 U.S. 955 (1969), involving the determination of boundaries between thirteen Atlantic Coast States and the federal government. Because of the valuable resources found in

off-shore areas, the Lands Division Journal described this as “the most important area of litigation, at least in terms of economic impact upon the United States, ever



Photograph of Platform Holly, South Ellwood Offshore Oil Field, near Santa Barbara, California

Rapid-Fire Filings

In 1982, as the Reagan Administration expanded oil and gas leasing on the outer continental shelf, the Appellate Section faced an increasing number of fast-paced challenges to the lease sales. In preparation for a possible injunction against sale of leases offshore of California, Appellate Section Chief Peter Steenland and Section administrative assistant Catherine “Doodie” Barbour traveled to Los Angeles with a Lexitron, one of the first generation of word processors. After the district court enjoined the sale, they rapidly filed motions to stay with three Circuit Judges in different locations, a possible land speed record for rapid multi-district filings.

handled by the Department of Justice.” In later years, the Marine Resources Section established federal control of large stretches of valuable off-shore territory in cases against the states of California and Louisiana because of the skillful advocacy of Division attorney Mike Reed, along with Louis Claiborne and Jeff Minear of the Solicitor General’s office.

In 1978, amendments to the Outer Continental Shelf Lands Act thrust the Marine Resources Section into a new round of litigation in lower courts involving the government’s oil and gas leasing rights on the Outer Continental Shelf. Attorneys from the Section defended a series of challenges, both to the Secretary of the Interior’s Outer Continental Shelf Oil and Gas Leasing Program and to

individual lease sales from Alaska to California to New England.

Offshore issues would continue to play a significant role in the Division’s work

throughout the 1980s, and to the present day. For example, in *Amoco Production Co. v. Village of Gambell*, 480 U.S. 531 (1987) (argued by AAG Habicht), the Supreme Court denied an effort by Alaskan native villages to enjoin the Secretary of the Interior's sale of oil and gas leases for federally-owned lands on the outer continental shelf of Alaska.

The Marine Resources Section also was responsible for litigation regarding conservation of marine mammals and the management of fisheries within the 200-mile coastal fishery zone under the Magnuson Act, the Marine Mammal Protection Act, and the Endangered Species Act. The fisheries management docket included the defense of fisheries management plans adopted by local councils and approved by the Secretary of Commerce.

To enforce non-marine wildlife laws, AAG Moorman created the Wildlife Section in 1979. The Section was tasked with "seek[ing] stiff penalties for persons who engage in illegal wildlife or plant trade including jail sentences for principal violators," and initially had eight attorneys, handling criminal and civil litigation, including the illegal importation of wildlife. In its first year, the Section initiated 50 investigations and achieved 18 convictions for illegal wildlife trade, exposing a multimillion-dollar illegal trade in wildlife. Cases were often prosecuted jointly with U.S. Attorneys, and relied heavily on statutes such as the Lacey Act.



John F. Lacey (1848-1936) was an unlikely patron of environmental causes. Lacey was a conservative Republican Congressman from Iowa, but became a partner with President Theodore Roosevelt to enact several important conservation laws. Two of the statutes he spearheaded – the Lacey Act and the Antiquities Act – are particularly important to the work of the Division.

At the turn of the century, the passenger pigeon was being hunted to extinction, and populations of other birds were in decline due to the trade in feathers for women's hats and other purposes. The Lacey Bird and Game Act of 1900 prohibited interstate transport of wild animals or birds killed in violation of state or territorial law. The statute still serves as a principal wildlife enforcement statute for the Division, and was recently amended to add enforcement provisions with respect to plants, providing for the first time legal tools to address illegal logging and timber trafficking. LPS and ECS attorneys played a key role in obtaining these amendments, and continue to be involved in their implementation.

In 1906, Lacey's support was also critical to the passage of the Antiquities Act. Although the statute was originally meant to prevent vandals from looting Indian ruins, it granted authority to the President to set aside parcels of public land, authority that was later used for other purposes. Theodore Roosevelt used the Act to protect the Grand Canyon; Franklin Roosevelt used it to protect the Grand Tetons, Jimmy Carter used it to protect 15 sites in Alaska, Bill Clinton used it to create the Grand Staircase-Escalante National Monument in Utah, and George W. Bush used it to create the Papahānaumokuākea (Northwest Hawaiian Islands) Marine National Monument. Many of these proclamations have resulted in litigation handled by the Division.

In 1981, as part of the reorganization undertaken by AAG Carol Dinkins, the Marine Resources and Wildlife Sections merged into the new Wildlife and Marine Resources Section (WMRS) and continued to prosecute wildlife offenses, but also took on the marine mammal and fisheries work of the former Marine Resources Section as well as defensive cases under the wildlife and fisheries statutes. This new Section was led by a series of chiefs in its first decade, including Ken Berlin (1981), Kathryn Fuller (1981-82), Vance Hughes (1982-83), Donald Carr (1983-88), and James Kilbourne (1989-94).

Significant cases brought in the 1980s included Operation Falcon, an investigation into the illegal taking and trading of falcons and other raptors on a domestic and international scale, and which resulted in the indictment of more than 40 individuals, including a Saudi Arabian prince. The Section also brought a series of indictments under Operation Trophy Kill, which involved illegal hunts in Yellowstone National Park and in Mexico which were uncovered when the hunters brought their trophies for taxidermy. Other affirmative work in the Section's early years included fishery enforcement actions, including the first enforcement cases against foreign fishing vessels utilizing the assertion of federal authority to 200 miles off the U.S. coastline. The Division established the United States' right to use seizure and forfeiture of foreign vessels as an enforcement tool, setting a critical precedent for future enforcement efforts.

In the late 1980s, the Wildlife and Marine Resources Section's efforts turned increasingly towards civil defensive work, primarily defending agency action as complying with the Endangered Species Act. Many of these cases involved threshold challenges of standing by citizen group plaintiffs, and resulted in Supreme Court cases such as *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and *Bennett v. Spear*, 520 U.S. 154 (1997). The growth in ESA defensive cases was reflective of the increasing number of species added to the list of threatened or endangered species. When the precursor to the ESA was passed in 1966 (The Endangered Species Preservation Act) there were 77 species protected under the Act. By 1973, there were 312 listed species. As of October 2009, there were 1,321 domestic and 576 foreign species listed as either endangered or threatened, with the vast majority listed as endangered.



DEPARTMENT of the INTERIOR

news release

OFFICE OF THE SECRETARY

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For Release June 29, 1984

"OPERATION FALCON" EXPOSES NORTH AMERICAN AND EUROPEAN BLACK MARKET IN BIRDS OF PREY

Secretary of the Interior William Clark and Attorney General William French Smith announced today that U.S. Fish and Wildlife Service special agents and State conservation officers arrested over 30 individuals in 14 States in a crackdown against illegal commercialization in birds of prey. Agents also seized a large number of live raptors (such as Arctic gyrfalcons and endangered peregrine falcons), as well as cars, trucks, and aircraft the Government charges were used in the violations.

This action culminates a 3-year undercover investigation which exposed a thriving international black market in federally protected birds. Altogether, more than 80 felony charges are now pending.

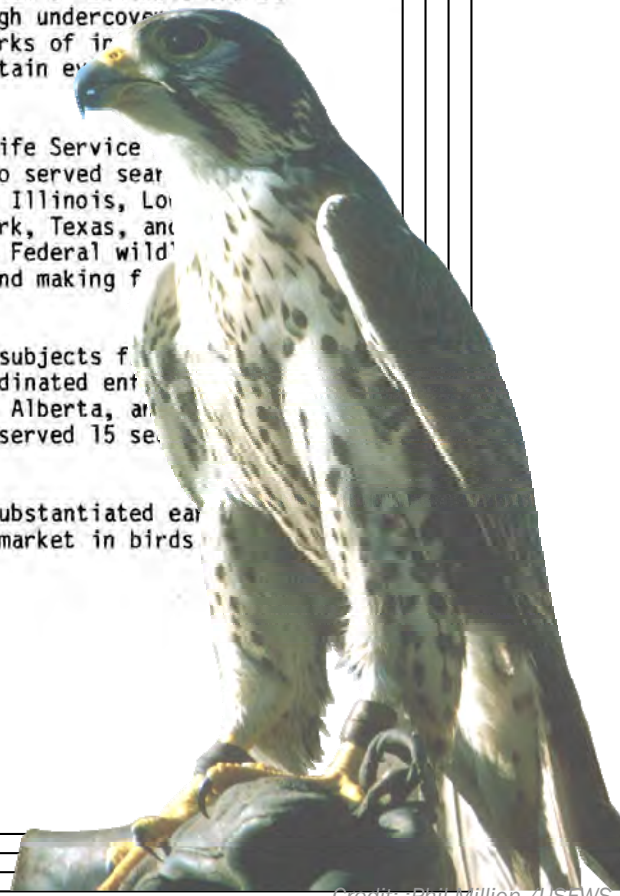
A number of United States Attorneys also helped to direct this multi-district investigation, which was centered in the office of the United States Attorney for the District of Montana. The United States Attorneys for Colorado, Central District of California, Northern District of Illinois and 12 other districts also participated in this effort. Through undercover techniques, the agents were able to infiltrate the networks of individuals involved in illegal raptor taking and trading, and to obtain evidence of violations by subjects throughout the United States.

The operation was carried out by 150 Fish and Wildlife Service agents and an equal number of State wildlife officers who served search arrest warrants in Arizona, California, Colorado, Idaho, Illinois, Louisiana, Minnesota, Missouri, Montana, Nevada, New Mexico, New York, Texas, and Wisconsin. Those arrested today were charged with violating various Federal wildlife statutes as well as smuggling, conspiracy, mail fraud, and making false statements.

Those arrested today in the United States included subjects from Germany and Canada. At the same time, in a closely coordinated effort, wildlife officials in Ontario, British Columbia, Alberta, and Saskatchewan, assisted by the Canadian Federal Department of Justice, served 15 search arrest warrants involving similar violations in Canada.

Government surveillance and undercover activities substantiated earlier information that the multi-million dollar illegal black market in birds of prey is a worldwide problem of serious proportions.

(more)



Credit: Phil Million / USFWS

As civil defensive cases dominated the Wildlife and Marine Resources Section's workload, the character of the cases changed, revealing the growing conflict across the country between species protection and resource development. The majority of species become protected due to loss of habitat, and for many species, resource development has been a major cause of habitat loss. ESA Section 7 requires federal agencies to consult with the National Marine Fisheries Service or the United States Fish and Wildlife Service if they are proposing an action that may affect a listed species or its designated habitat. Thus, WMRS's Section 7 docket grew to include cases involving conflicts between commercial interests and endangered species, such as

A Modern Day Walden

A park in Austin, Texas has been the focus of years of litigation over use and management of the spring-fed Barton Springs Pool. The pool is an untreated pool created when Barton Creek was dammed in the 1920s, and it has been a center of Austin recreation ever since. In 1946, an aquatic salamander was discovered living in the springs and pool and was named the Barton Springs Salamander. The species was listed as endangered in 1997.

In 1998, citizens seeking to protect the salamander brought suit against the City of Austin and the U.S. Fish and Wildlife Service (represented by the Division), seeking to enjoin pool use and related activities. District Court Judge Sam Sparks found that the City was protecting the species while allowing for regulated use, and denied the request – in verse:

*Barton Springs is a true Austin shrine,
A hundred years of swimming sublime.
Now the plaintiffs say swimmers must go
'Cause of "stress" to critters, 50 or so.*

*They want no cleaning 'cause of these bottom feeders
Saying it's the law from our Congressional leaders.
But really nothing has changed in all these years
Despite federal laws and these plaintiffs' fears.*

*Both salamander and swimmer enjoy the springs that are cool,
And cleaning is necessary for both species in the pool.
The City is doing its best with full federal support,
So no temporary injunction shall issue from this Court.*

*Therefore, today, Austin's citizens get away with a rhyme;
But, the truth is, they might not be so lucky the next time.
The Endangered Species Act in its extreme makes no sense.
Only Congress can change it to make this problem past tense.*

Hamilton v. City of Austin, 8 F. Supp. 2d 886, 888 (W.D. Tx. 1998).



Barton Springs Salamander

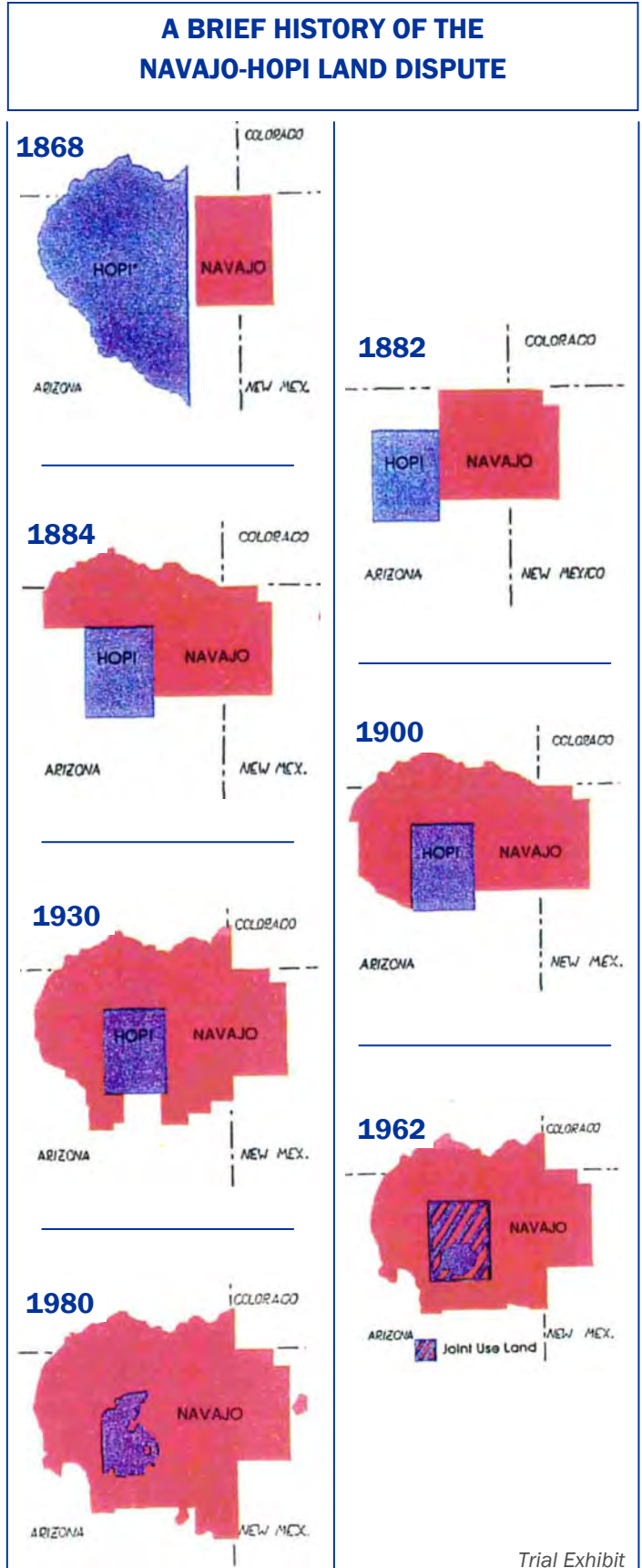
commercial fishing and bycatch of protected sea turtles, oil and gas leasing's impacts on various species, and highway development fragmenting habitat .

Indian Affairs – the Trust Responsibility

In 1974, as federal Indian policy moved toward engendering tribal sovereignty and self-determination, the Division created a new Indian Resources Section to represent the United States in its trust capacity for Indian tribes and their members. IRS started with 175 cases and 10 attorneys transferred from the General Litigation Section, and by late 1977 had 260 cases pending. In the 1970s and 1980s, the Section was led by Chiefs Myles Flint, Rembert Gaddy, and Hank Meshorer.

The Indian Resources Section specialized in defending the natural resources rights of Native Americans against state claims, particularly those dealing with water rights. In other cases, the Section functioned as *amicus curiae* on legal questions dealing with Native American rights. In 1986, the Section had active litigation with 10 states and negotiations with seven regarding water rights questions.

The Indian Resources Section was involved for many years in a longstanding land dispute between the Hopi and Navajo tribes of Arizona. Hopi complaints against Navajo expansion into their tribal lands had begun in the nineteenth century, and were exacerbated by a series of federal



From 1972-1976, the Department of the Interior and the Department of Justice filed “split briefs,” addressing “both sides” of an issue when there was a divergence between the interests of an Indian tribe and a federal agency. These briefs provided two conflicting sets of arguments: those of the Department of Justice, representing the federal interest, and those of the Department of the Interior, representing the Indian interest. The Justice Department filed split briefs in six cases; in all of them, the pro-Indian position eventually prevailed.

actions altering the boundaries of the Tribes’ reservations. In 1991, the Ninth Circuit, after hearing oral argument in a Division case involving Navajos living on land that had been partitioned to the Hopi Tribe under earlier legislation, ordered the United States, the Navajo Nation, and the Hopi Tribe into mediation regarding this 100-year old land dispute between the Tribes. A new Appellate Section attorney, Katherine Hazard, was assigned to the mediation, which became an intensive five-year process. Despite predictions that this

long-running and bitter controversy could never be settled, the parties (with personal participation by Attorney General Janet Reno) managed to reach the settlement which embodied in the Navajo-Hopi Land Dispute Settlement Act of 1996.

The Division was also involved in numerous other disputes regarding the scope of tribal land and jurisdiction, many of which reached the Supreme Court. In *Montana v. United States*, 450 U.S. 544 (1981), the Court limited, with two exceptions, tribal authority over non-Indians on non-Indian fee land within a reservation. In *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983), New Mexico claimed concurrent jurisdiction to regulate hunting and fishing by non-Indians on the Mescalero Apache Reservation. The Supreme Court held that concurrent jurisdiction by both the State and Tribe would interfere with the comprehensive tribal regulatory scheme and threaten Congress’ commitment to the encouragement of tribal self-sufficiency and economic development, and recognized “the Tribe’s unquestioned authority to regulate the use of its resources by members and nonmembers.”

In the 1980s, gaming became increasingly significant in Indian country, as various court cases tested the bounds of tribal and state sovereignty to authorize and regulate gaming enterprises. The Indian Gaming Regulatory Act was passed in 1988, providing a new regulatory framework for Indian gaming operations, but also generating disputes and litigation that would be handled by the Indian Resources and General Litigation Sections.

The Division continued to have an active docket defending Indian claims cases. Although it was originally chartered to expire in 1962, the Indian Claims Commission continued operations through 1978 because of the unforeseen volume and complexity of its cases. At that point, 546 cases had been completed, nearly every recognized tribe had filed at least one claim, and monetary awards exceeded \$800 million. In the last decade of the ICC, the resolution of claims proceeded at the same slow pace as in the 1960s. The Division reported in 1970 that between 1946 and 1970, court judgments totaling \$169 million had been reached for tribal land claims, covering a total of 341 million acres. The Commission also recognized Native American claims to an additional 145 million acres.

Between 1972 and 1977, the ICC rendered an average of 10 final decisions per year. In 1978, some 68 unresolved cases were transferred from the ICC to the U.S. Court of Claims, where the Indian Claims Section continued to represent the United States. The Division sought to settle remaining cases in the 1980s under Section Chiefs Richard Beal (1980-83) and James Brookshire (1983-85), and in 1986, the Division's Indian Claims Section was merged into the General Litigation Section. At the time, there were about 30 ICC cases remaining.

Water Rights Disputes

In the 1980s, the United States was increasingly a party to water rights adjudications in states in which the federal government owned significant parcels of land. Particularly in the water-starved West, states began bringing suits against the United States based on 43 U.S.C. 666 (the McCarran Amendment), which eliminated the sovereign immunity of the federal government for purposes of joinder to comprehensive general stream adjudications commenced by states contesting federal sovereignty over water resources. The General Litigation Section, which was led in this time period by Section Chiefs Myles Flint (1981-84), Jose Allen (1984-85), and William Cohen (1985-2000), represented federal non-Indian interests in such litigation. The Indian Resources Section represented federal Indian interests.

In 1976, in *Cappaert v. United States*, 426 U.S. 128 (1976), a case handled by the Division with the Solicitor General's Office, the Supreme Court held that when the United States reserves land for a public purpose, by implication it reserves the mini-

mal water rights sufficient to support the primary purpose of the reservation, including groundwater.

In *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), the Supreme Court affirmed the jurisdiction of state courts over the adjudication of all water rights claimed by the United States, whether on behalf of a particular federal agency or on behalf of tribes, so long as the action to which the United States was to be joined constituted a general stream adjudication. Because water conflicts



The Colorado River

USGS Photo

were often in the western United States, the Division's Denver field office came to defend U.S. interests in these general stream adjudications.

Aspects of the Arizona-California dispute over Colorado River water also continued through the last decades of the twentieth century.

In 1984 and 1987, the Supreme Court and the Ninth Circuit, respectively, reached decisions dealing with federal claims to Colorado River water rights for five Indian reservations in Arizona. In the late 1990s, the federal government claimed water rights for another 25,000 acres of land on behalf of the Fort Yuma Reservation in Arizona. The 2000 Supreme Court decision in *Arizona v. California*, 530 U.S. 392 (2000), partially supported the water claims, with a supplemental decree the same year specifying maximum amounts of water to be withdrawn. Although the Arizona Water Rights Settlement Act of 2004 resolved some of the remaining issues, the litigation did not conclude until 2006 when the Supreme Court issued its final decree in *Arizona v. California*, 547 U.S. 150 (2006).

Water rights disputes continued to occupy a significant portion of the Division's work throughout the 1990s and 2000s. During this period, the Snake River Basin Adjudication was one of the Division's largest cases in terms of hours spent.

It was commenced by the State of Idaho in 1987 and included 150,000 water rights claims. The Division worked with the Nez Perce Tribe, the State of Idaho, and various other water users to craft an historic settlement of the competing water rights claims. In 2004, Congress ratified the settlement in the Snake River Water Rights Act. The Division, in conjunction with the other parties to the settlement, successfully defended the settlement against judicial challenges.

The Division was also involved in the resolution of water claims to the Little Colorado River in Arizona. After years of negotiations – which included participation by representatives of the United States, the Zuni Indian Tribe, the State of Arizona, and neighboring non-Indian communities in the Little Colorado River Basin– the parties entered into a settlement agreement, approved by Congress, to resolve water rights claims in the Little Colorado Basin. The court issued the final judgment and decree approving the settlement agreement, which became effective in December 2006.

Land Acquisition Work Evolves

Although land acquisition work slowed from its peak in the 1930s through 1950s, it continued to be a significant part of the Division's caseload. During the 1980s, the Land Acquisition Section was led by Section Chief Gerald Levin, who was succeeded in 1981 by William Kollins. The largest federal land acquisition project of the late 1970s was the National Park Service's establishment of Big Cypress National Preserve in Florida, which Congress approved in 1974. The undertaking required the acquisition of 570,000 acres of land, including more than 50,000 individual

Washington METRO

In the 1970s, the Land Acquisition Section handled cases on behalf of the Washington Metropolitan Area Transit Administration to acquire property needed for the construction of the Washington Metro Rail System. Congress authorized the initial funding for the transit system in 1969 with the National Capital Transportation Act.



Subway construction in downtown Washington, DC. July 1972.

*Erik Calonius / EPA DOCUMERICA Collection
(National Archives)*

Redevelopment of Pennsylvania Avenue

*After the creation of the Pennsylvania Avenue Development Corporation in 1972, the Division aided in redevelopment efforts by representing the Corporation in both condemnation cases such as *Pennsylvania Ave. Development Corp. v. One Parcel of Land in District of Columbia* (D.C. Cir. 1981), and matters relating to historic preservation issues, such as *Don't Tear It Down, Inc. v. Pennsylvania Ave. Development Corp.* (D.C. Cir. 1980). By the end of the 1980s, the previously run-down area north of Pennsylvania Avenue was almost completely transformed by new and renovated buildings.*

tracts. Begun in 1976, the acquisition process continued into the 1990s, after Congress approved the addition of 146,000 acres in 1988. Some 3,800 tracts within the designated area of the preserve remained in private hands in 1991. The Land Acquisition Section worked with the U.S. Attorneys' Office and the Land Resources Division of the National Park Service on this project, which involved many years of litigation and negotiation over contested acquisition payments and ownership in the vast area.

The mid-1980s saw the conclusion of a long acquisition process of some 48,000 acres for the expansion of Redwood National Park in California. A lengthy commission hearing (1985-87) resolved the substantial difference between the appraised restitution values of the Division and of three large timber companies who owned the condemned land.

The reduction of federal lands also was a matter of policy discussion in the 1980s. The Division took an active role in the establishment of standards for the Public Land Sale Program, begun in 1980, to sell land under the jurisdiction of the Bureau of Land Management. This program, which continues today, aroused opposition among environmental groups because it moved large tracts of land from public to private ownership.

The Berlin Bar Association

In the late 1970s, Appellate Section Chief Peter Steenland travelled to Berlin to represent the Department of State in a NEPA case filed in the newly-created U.S. Court for Berlin. Peter was joined in Berlin by John Cruden (then a DoD attorney), Royce Lamberth (then Chief, Civil Division, U.S. Attorney's Office), and Hank Shulke (Assistant U.S. Attorney) to represent the United States. Each of these individuals was admitted to the Court before it was terminated, and they, along with the few other members of that short-lived court, have formed the Berlin Bar Association and meet annually.

THE MODERN ERA

THE ENVIRONMENT AND
NATURAL RESOURCES DIVISION

A photograph of a stone wall with a plaque that reads "DEPARTMENT OF JUSTICE". The wall is constructed from large, rectangular, light-colored stone blocks. The plaque is a darker, rectangular stone block set into the wall, featuring the words "DEPARTMENT OF JUSTICE" in raised, blue, serif capital letters. The text is arranged in three lines: "DEPARTMENT" on the top line, "OF" in the middle, and "JUSTICE" on the bottom line.

DEPARTMENT
OF
JUSTICE

In April 1990, the Division's name was changed to the Environment and Natural Resources Division, reflecting the growing workload of environmental cases. President George H.W. Bush nominated Richard Stewart to serve as AAG, a position he held from 1989-1991. AAG Stewart expanded the Division's mission to include additional international environmental activities, and added these responsibilities to the Policy, Legislation, and Special Litigation Section. George Van Cleve and Barry Hartman served as DAAGs during Stewart's tenure. Myles Flint was the career Deputy from 1984 to 1994, and served as Acting AAG for a portion of this time. Upon Richard Stewart's departure in 1991, Vicki O'Meara served as Acting AAG and Roger Clegg was a DAAG until the end of the Bush administration.

ENRD Goes Global

The Division's international environmental program took off in the early 1990s under AAG Richard Stewart. PLSL (now LPS) spearheaded the Division's involvement in international environmental policy and legislative matters, while litigating sections handled litigation involving international environmental issues in coordination with PLSL. On the policy front, PLSL attorney Annie Petsonk was a member of the U.S. Delegation to the UN "Earth Summit" in Rio de Janeiro, Brazil in 1992 that developed the Framework Convention on Climate Change. LPS attorneys have also actively participated in the negotiation of several free trade agreements (including the North American Free Trade Agreement (NAFTA) and the Central American/Dominican Republic Free Trade Agreement (CAFTA/DR)) and investment treaties, as well as in NAFTA arbitrations. LPS co-leads the United States' involvement in the Enforcement Working Group established under the environmental side agreement to NAFTA to coordinate enforcement issues among Canada, Mexico and the U.S. In an effort to assist other countries in improving compliance with their own environmental and natural resource laws, LPS and ECS attorneys have engaged in a wide variety of international capacity building activities including training and assistance to judges, lawyers, and law enforcement officials in Mexico, El Salvador, Costa Rica, India, Hungary, and Chile, among others. Enforcement assistance has been provided on issues such as wildlife trafficking in Southeast Asia, timber trafficking in Indonesia and South America, and marine pollution in Bahrain.

The Division has also been involved in many significant cases involving international environmental issues. For example, in 1990, attorneys from PLSL and the General Litigation Section successfully litigated Greenpeace v. Stone, a NEPA challenge to the U.S. Army's plan to transport nerve gas from Germany to Johnston Atoll for destruction. Other examples include the Division's successful defense against an effort to require the U.S. Trade Representative to prepare an EIS before submitting NAFTA to Congress for ratification, and more recent litigation related to environmental analyses on U.S. military operations in Japan.

During the Clinton administration, Lois Schiffer (a prior Chief of the General Litigation Section) served as DAAG, then Acting AAG, until her confirmation as AAG in 1994. Her politically-appointed DAAGs were Peter Coppelman and Jim Simon. In 1995, AAG Schiffer selected two career DAAGs: John Cruden and Nancy Firestone. In 1998, Nancy Firestone was selected to become a judge on the Court of Federal Claims, and she was replaced as DAAG by Eileen Sobeck, the Chief of the Wildlife and Marine Resources Section. During this period, Ignacia Moreno served as senior counselor to the AAG. From January 2001 to January 2002, John Cruden was Acting AAG.

Thomas Sansonetti was appointed by President Bush and became AAG in January 2002, and his politically-appointed DAAGs were Kelly Johnson and Jeffrey Bossert Clark. Sue Ellen Wooldridge became Assistant Attorney General in 2005, and Matthew McKeown and Ryan Nelson served as her Deputies.

Ronald Tenpas served as AAG from 2007 to 2009, and Michael Guzman and Jesse Witten were his politically-appointed Deputies.

The Environment and Natural Resources Division underwent a few structural changes under AAG Tom Sansonetti. The General Litigation Section was renamed the Natural Resources Section in 2005, and continued under the leadership of Jack Haugrud. The Policy, Legislation, and Special Litigation Section was renamed the Law and Policy Section in 2005 and placed under direct supervision of the AAG. Led by Pauline Milius, the Section provides counsel to the AAG, handles policy and cross-cutting issues, and coordinates the Division's legislative and international

AAGs in the Supreme Court

After the Division was rebuffed in the Sixth Circuit in its effort to hold a parent corporation liable for the



actions of its subsidiary at a hazardous waste site, the Supreme Court took the case. Oral argument for the government was presented by AAG Lois Schiffer. The Court held that parent corporations can in some circumstances be made to pay for

dumping by their subsidiaries, particularly where the parent is actively involved with the workings of the subsidiary's facility. United States v. Bestfoods, 524 U.S. 51 (1998).

In 2004, AAG Tom Sansonetti represented the United States before the Supreme Court in

Bedroc Limited v. United States, 541 U.S. 176 (2004). The case concerned whether commercially valuable sand and gravel were "valuable minerals" under the Pittman Act (1919) and thus subject to regulation by the



Bureau of Land Management. The Supreme Court ruled that sand and gravel were not commercially valuable in 1919 but that the Pittman Act was specific to Nevada and did not apply to 13 other public land states.

work. The Executive Office (which until 1983 had been known as the Administrative Section) also was placed under direct supervision of the AAG. Robert Bruffy continued to serve as Executive Officer. Criminal prosecutors in the Wildlife and

I'm Just a Bill...

Since its creation, a key role of the Law & Policy Section has been to lead the Division's review and analysis of legislation. As one notable example, LPS and EES attorneys labored throughout the 1990s on numerous legislative proposals to revise CERCLA. These efforts culminated in the adoption of the Small Business Liability Relief and Brownfields Revitalization Act of 2001 which, among other things, provided certain liability relief from Superfund's broad liability scheme for de minimis parties, parties unable to pay, and for bona fide prospective purchasers. Examples of other important legislation on which LPS attorneys played an active role include the Pipeline Safety Improvement Act of 2002, which included important civil judicial enforcement provisions, and 2008 Amendments to the Lacey Act, which provided new authority for combating illegal logging.

Marine Resources Section were also transferred to the Environmental Crimes Section in 2005. However, despite these changes, 2000-2009 was a period of relative stability among the career leadership of the Division, with two career DAAGs – John Cruden and Eileen Sobeck – serving throughout this time period and little turnover among section chiefs. John Cruden served as Acting AAG for nearly two years during this time period.

By 1995 the Division's budget had increased to \$92 million, compared with \$34 million in 1987; reimbursements from EPA for Superfund litigation expenses reached \$33 million, three times the total in 1987. In 2009, the Division's budget was nearly \$129 million, with approximately \$25 million in Superfund reimbursements.

The Division's Environmental Enforcement Work Matures and Grows

By 1999, the Clean Air Act portion of the Division's enforcement docket had escalated. Working with EPA, the Environmental Enforcement Section began enforcing the Clean Air Act's New Source Review provisions in a series of industry-wide initiatives that sought emissions reductions throughout a number of industries. The Division initially focused on the wood products industry and obtained major settlements with all the major companies in that industry. The Division then concentrated on enforcement actions against oil refineries, the steel industry, ethanol producers, cement plants, sulfuric acid manufacturers, and facilities that use ozone-

depleting chlorofluorocarbons. During the mid-1990s, under Section Chiefs John Cruden and Joel Gross, EES also sought Clean Air Act compliance by the nation's automakers, resulting in major national settlements with all the major manufacturers of heavy duty diesel truck engines. As part of this effort, in 1995, General Motors entered in a settlement under which it agreed to recall nearly 500,000 Cadillacs, pay an \$11 million fine, and establish a fund to replace older buses and fleet vehicles with less polluting vehicles. In 1998, the Division entered into a major settlement with diesel engine manufacturers which included an \$83 million penalty as well as requirements to introduce cleaner engines, recall some trucks, and conduct new emissions testing.

In 1999, the Division began a well-publicized initiative to reduce emissions from coal-fired power plants, which are the largest stationary sources of emissions of sulfur dioxide and nitrogen oxides in the country. The violations at issue arose from companies engaging in major life extension projects on their aging facilities without installing required pollution controls. When settlement overtures were not successful, the Division initially sued seven operators of coal-fired power plants, and subsequently sued additional operators. While many of these cases eventually settled, others are still being litigated in 2009. To date, settlements have resulted in commitments to install approximately \$11 billion worth of pollution controls, which will result in the removal of 2 million tons of pollution each year from the nation's air.

One such case resulted in the largest environmental settlement in history when, in 2008, the court entered the final consent decree in *United States v. American Electric Power* (AEP), resolving claims under the Clean Air Act's new source review/prevention of significant deterioration provisions. Under the decree's terms, AEP will install and operate \$4.7 billion worth of air pollution controls on 16 coal-fired power plants. When the consent decree is fully implemented, these air pollution controls and other measures will reduce air pollution by 813,000 tons a year compared with pre-settlement emissions, making this the largest reduction in air pollution achieved by any single settlement. AEP also paid a \$15 million civil penalty and will spend \$60 million on projects to mitigate the adverse effects of its past excess emissions. An unprecedented coalition of 8 states and 13 citizen groups joined the

United States in the settlement.

While achieving these significant results in the air arena, the Division has



Contaminated soil in Libby, Montana is covered with tarp

CDC Photo

continued to vigorously litigate Superfund recovery cases. This is evidenced by the Division's recovery in 2008 of \$252.7 million, the highest sum in the history of the Superfund program, in reimbursement of the United States' costs in connection with the cleanup of asbestos contamination in Libby, Montana. In the late 2000s, the Division also achieved a settlement of unprecedented size and scope with the General Electric Company

(GE) to provide for cleanup of contamination from polychlorinated biphenyls (PCBs) that two GE plants discharged for years directly into the upper Hudson River.

Under Section Chief Bruce Gelber, EES continued to achieve significant victories in its Clean Water Act enforcement work, including in 2008 the largest civil penalty for Clean Water Act wastewater discharge permit violations in the case of *United States v. Massey Energy Co.* The Division obtained a civil penalty of over \$20 million, and Massey, the fourth largest coal company in the United States, also agreed to take additional measures at its facilities nationwide to prevent an estimated 380 million pounds of sediment and other pollutants from entering the nation's waters each year. These compliance measures are unprecedented in the coal mining industry.

The Division's wetlands enforcement also expanded in the last two decades. The Environmental Defense Section brought numerous enforcement actions in connection with the unauthorized filling of wetlands, and also defended Army Corps of Engineers determinations regarding whether a particular area is a "water of the United States" under the Clean Water Act. This practice has resulted in nu-

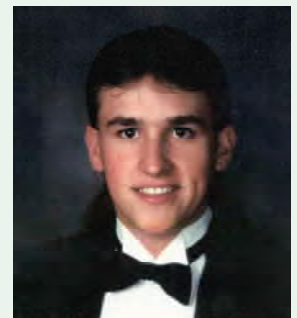
merous significant Supreme Court decisions, including *United States v. Riverside Bayview Homes*, 474 U.S. 121 (1985), *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (argued by Deputy Solicitor General Lawrence Wallace), and *Rapanos v. United States*, 547 U.S. 715 (2006).

Environmental Crimes Pursues New Initiatives

In the 1990s, the Environmental Crimes Section, under Section Chiefs Steven Solow (1997-2000) and David Uhlmann (2000-2007), undertook a vessel pollution initiative, prosecuting cases of illegal dumping at sea and the falsification of ship record books that are presented to the Coast Guard. For example, in 1999, the Division prosecuted Royal Caribbean Cruises Ltd. for illegally dumping waste oil and hazardous chemicals into the water and lying to the U.S. Coast Guard, resulting in a guilty plea to 21 felony counts and an \$18 million fine. The Division's vessel pollution initiative evolved into an established practice that continues to this day. The Division also launched other coordinated criminal enforcement initiatives, including

The Cost of Callous Disregard: United States v. Elias

In August 1996, Allan Elias, the ivy league-educated owner of a small fertilizer company, instructed four employees to clean out a tank that he knew had been used to store byproducts of a cyanide leaching process. Despite the men's complaints about the fumes and requests for safety equipment, Elias insisted that they continue cleaning out the tank. One of the men, 20-year old Scott Dominguez, collapsed within 45 minutes of entering the tank. Because of the lack of safety equipment, his co-workers and rescue workers had difficulty getting him out of the tank. Elias did not disclose that cyanide had been in the tank, and by the time doctors administered a cyanide antidote kit, Dominguez had suffered severe, irreversible brain damage.



Family Photo

Scott Dominguez

The subsequent criminal investigation revealed that Elias had been repeatedly informed by OSHA inspectors of the dangers of cyanide and the rules and precautions required when dealing with it. It also revealed that Elias had tried to cover up his disregard of the safety requirements by backdating permits and destroying the tank. Working with the Idaho U.S. Attorney's Office, ECS Assistant Chief David Uhlmann indicted Elias for illegally storing and treating hazardous waste and knowingly endangering employees, in violation of the Resource Conservation Recovery Act, and for making false statements. On May 7, 1999, after a two-and-a-half week trial, a federal jury took just five hours to convict Elias of all four felonies. Elias was sentenced to a prison term of 17 years – the longest sentence ever given in the United States for an environmental crime.

an effort to stop the smuggling of ozone depleting chlorofluorocarbons (CFCs), which resulted in a number of successful prosecutions.

An increasingly significant function of the Division was the interdiction of illegal smuggling of wildlife, which by 1997 was estimated to be worth \$5 billion per year. Until 2005, criminal wildlife prosecutions were handled by the Wildlife and

The Division's Unofficial Mascot

Outside the offices of the Assistant Attorney General stands the unofficial mascot of the Division – an Alaskan Grizzly. It was killed in Alaska by two hunters from the State of Florida on September 9, 1986, in violation of Alaska state permitting requirements. The trophy was subsequently transported back to Florida in violation of the Lacey Act. Both Florida hunters pled guilty to the Alaska state charges and received a \$3,000 fine, 60 days in jail (suspended), and one year of probation. They also forfeited the bear.

The bear is occasionally dressed in special attire to celebrate holidays and other significant occasions, and the story is told and not denied that Associate Deputy Attorney General David Margolis, when in the Criminal Division, was once involved in a temporary heist of the bear. Despite its light-hearted role, the bear also serves as a reminder to the Division and its visitors of one of the important missions of the Division – the protection of wildlife from illegal hunting.

Marine Resources Section, which was led by Section Chiefs James Kilbourne (1989-94), Eileen Sobeck (1994-99), and Jean Williams (1999-present). The criminal prosecutors in WMRS were transferred to ECS in 2005, thus placing all of the Division's criminal prosecutors into a single section.

In 1996-97, the Division prosecuted individuals apprehended by the Fish and Wildlife Service's Operation Renegade, a probe into international smuggling of protected exotic birds and eggs from South America that resulted in the conviction of 37 people. Operation Chameleon in-



volved a series of cases resulting from long-term undercover investigations of several international live reptile smuggling rings. These investigations resulted in the successful prosecution of about two dozen smugglers and reptile dealers in three countries, including smugglers of the highly endangered plowshare tortoise, Komodo dragon, and Madagascan tree boa.

In 2007, the Division participated in Operation Central, an investigation that uncovered four sea turtle smuggling rings – two based in Mexico and two in China. The investigation resulted in several successful prosecutions, as well as a coordinated effort with Mexican officials to prosecute Mexican nationals involved in the rings.

Also in 2007, the Environmental Crimes Section participated in the prosecution of British Petroleum (BP) for a 2005 explosion at the company's Texas City refinery that killed 15 people, as part of the Division's worker endangerment initiative. The settlement of the case called for a record fine of \$50 million for felony violations of the Clean Air Act. BP also paid penalties of \$20 million for felony violations of the Clean Water Act resulting from pipeline leaks in Alaska.

Defending Agency Actions

In the 1990s and 2000s, most significant agency regulations and actions affecting the environment were challenged in court, and the Division's Environmental Defense, Natural Resources, and Wildlife and Marine Resources Sections continued to devote significant resources to these defensive cases. In the early 1990s, the Division expended great effort to defend EPA's implementation of the 1990 Clean Air Act Amendments. Much of the litigation arose from the more than 175 deadlines for major regulatory action created by the Amendments. During this period, the Division also successfully defended EPA's National Contingency Plan, specifying the manner in which hazardous waste sites throughout the country are to be cleaned up. In the late 1990s and early 2000s, EDS, under Section Chief Letitia Grishaw, successfully defended EPA's standards for ozone (smog) and fine particulate matter (soot), upholding a critical part of EPA's Clean Air Act program to improve the nation's air quality. Another high-profile case handled by the Division

was *Massachusetts v. EPA*, 549 U.S. 497 (2007), in which the Supreme Court found that EPA can regulate greenhouse gases, such as carbon dioxide, as “air pollutants” under the Clean Air Act.

The Division has also defended the regulations and management programs of numerous other agencies in the last two decades. In the wildlife realm, the Division has defended the National Marine Fisheries Service’s actions to manage ocean commercial fishing under the Magnuson-Stevens Fishery Conservation and Management Act, including successful defenses of the Service’s emergency closure of a shark fishery where NMFS determined that overharvesting had occurred and the Service’s establishment of measures to end overfishing of a variety of fish species.

***Protecting Endangered Species
From Habitat Degradation***

Appellate Section Attorney Ellen Durkee got the honor of having the first published opinion in the new West F.3d Reporter, as a split panel of the D.C. Circuit upheld the Fish and Wildlife Service’s broad definition of “harm” as used in the Endangered Species Act to include habitat degradation. Sweet Home v. Babbitt, 1 F.3d 1 (D.C. Cir. 1993). Then, after rehearing was denied once, Judge Williams changed his mind and the panel substituted a new opinion finding that this broad definition contradicts the statute. The Supreme Court eventually agreed with the position of the United States, and held that including habitat degradation in the definition of harm is a permissible construction of the statute. Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995).

The Division’s Wildlife and Marine Resources Section also maintained a busy docket defending the Fish and Wildlife Service’s actions under the Endangered Species Act, including extensive litigation throughout the 1990s and 2000s concerning the recovery plan and eventual delisting of the Northern Rocky Mountain Gray Wolf. The Division’s Natural Resources Section also has had success in defending a variety of land management plans and decisions, from the Forest Service’s timber management plans to the Bureau of Land Management’s grazing plans and methods of operating reclamation projects.

The Environmental Defense Section also worked with EES to develop CERCLA’s legal standards through its defense of the Department of Defense and other agencies with re-

spect to site cleanups at federal facilities, including former defense facilities. In particular, the cleanup at the Hanford Nuclear Reservation in Hanford, Washington, stands among the most technically complex and legally challenging environmental cleanups in history. EDS has also developed the law governing CERCLA’s equita-

ble allocation of response costs among responsible parties. Most recently, in *United States v. Atlantic Research Corporation*, 551 U.S. 128 (2007), the Supreme Court gave other parties the ability to bring a CERCLA action.

CERCLA defendants have, of course, fought to limit the statute's reach. Most recently, in the litigation to clean up PCBs from New York's Hudson River, and in actions at other sites, the Enforcement, Defense, and Appellate Sections coordinated the Division's response to the argument that EPA administrative cleanup orders violate due process. In *General Electric v. EPA*, the U.S. District Court for the District of Columbia has held that EPA's administrative cleanup orders were constitutionally sound. An appeal is pending in the D.C. Circuit.

Never Cry Wolf

The grey wolf once roamed over nearly all of North America, but by the 1930s the wolves were facing extinction and had disappeared from the northern Rocky Mountain states of Montana, Idaho, and Wyoming. The Fish and Wildlife Service (FWS) extended Endangered Species Act protection to the wolf in 1974, and in 1987, FWS developed a wolf recovery plan to reintroduce the grey wolf experimentally in Central Idaho, and in and around Yellowstone National Park. In 1995, the first wolves were introduced into Yellowstone Park. Today grey wolves occupy nearly every suitable habitat in the northern Rocky Mountains. There are approximately 1,645 wolves in 217 packs, with 95 of those packs classified as breeding pairs. The reintroduction program succeeded beyond expectations, and represents a remarkable wildlife conservation success story.

*The Division has successfully defended the reintroduction program in several cases. When the District Court in Wyoming invalidated the program following a trial in an action brought by western farm bureaus and other groups, the Appellate Section obtained a key reversal in the Tenth Circuit in *Wyoming Farm Bureau v. Babbitt*. The Division also prevailed on a Fifth Amendment takings claim against FWS based on damages allegedly caused by reintroduced wolves, and has defended recent FWS rules to remove the reintroduced and stable grey wolf populations from protection under the Endangered Species Act.*



US FWS Photo

Land Acquisition Work Continues

Much of the Division's land acquisition work continues to support the nation's national security and military readiness. In the 2000s, under Section Chief Virginia Butler, the Land Acquisition Section brought suits to acquire land in support of a variety of national security functions, including the expansion of the National De-



Border fence under construction south of San Diego near Smuggler Gulch

fense University and Fort McNair and the acquisition of a security buffer for the U.S. Southern Command headquarters in Florida. In the late 2000s, working with several U.S. Attorneys' Offices, the Division initiated 400 eminent domain cases on behalf of the Department of Homeland Security to acquire permanent interests in privately-owned lands along the United States/Mexico border needed to meet a congressional mandate for fence construction.

Defending Tribal and Federal Interests

In the 1990s and 2000s, the Indian Resources Section under Section Chiefs James Clear and Craig Alexander continued to litigate a variety of cases involving Indian issues, including a series of significant cases addressing tribal fishing rights under treaties. Treaty rights disputes with the State of Washington have spanned more than two decades, involved more than 17 tribes, and have been to the Supreme Court numerous times. The Division also litigated Indian treaty rights disputes with the State of Michigan over more than three decades, resulting in a series of settlement agreements.

Most recently, the Division handled the treaty rights case of *United States v. Oregon*. Many years ago, the United States prevailed in establishing the treaty fishing rights of four Columbia River Basin tribes. The taking of those fish, however, im-

pacts anadromous fish species that are listed pursuant to the Endangered Species Act. The parties, after a decade of negotiations, concluded the Management Agreement for Fish Harvests on the Columbia and Snake Rivers in Washington, Oregon and Idaho for 2008-2017, consistent with the Endangered Species Act. This plan will improve fish habitat and allow the tribes to increase their catch as the populations of threatened species increase. The Division also intervened in a series of land claim cases on behalf of New York tribes, including the Cayuga, Oneida, Mohawk, and Seneca Indians. These cases resulted in several trials, the Supreme Court case of *City of Sherrill v. Oneida Indian Nation* (argued by Malcolm L. Stewart of the Solicitor General's Office, who has handled many of the Division's cases in the Supreme Court), and numerous appellate cases, and raised issues that are still pending before the federal courts.

With Indian gaming revenue at tribal casinos exceeding the combined revenue of Nevada and Atlantic City casinos, the Division continues to be involved in high-profile litigation defending the Secretary of the Interior's actions related to Indian gaming. In the 2000s, the Division successfully defended a challenge to the constitutionality of regulations implementing federal Indian gaming laws. In three separate actions, the Division successfully opposed emergency injunctive relief seeking to prevent a tribal-state compact from going into effect in the State of Florida and secured language that gives the Interior Secretary discretion and flexibility in the Department's sensitive role in approving tribal-state compacts.

The Division's Natural Resources and Indian Resources Sections also continue their work to secure critical water rights for the United States and on behalf of tribes. In 2008, the Division participated in the signing of the Truckee River Operating Agreement, the culmination of 15 years of negotiations. In addition to enhancing drought protection for the Cities of Reno and

Sometimes Division attorneys have had to take unusual tacks to win a case. For example, United States v. Alaska, 521 U.S. 1 (1996), an original action in the Supreme Court, determined the State-Federal boundary along the Arctic Ocean coast, including division of the vast Prudhoe Bay oil fields. One issue was whether an offshore feature, known as Dinkum Sands, qualified as an island. If it was, Alaska held title to it and the surrounding 28 square nautical miles. If it wasn't, those rights belonged to the federal government. \$67 million in cash paid for the underlying oil and gas leases, and possible future royalties hung in the balance. NRS attorneys Charles "Spinner" Findlay and Mike Reed hosted the Supreme Court's Special Master on a "view" of Dinkum Sands. On a calm Alaska day, 7 miles offshore in the Arctic Ocean, Spinner and his team of hearty compatriots safely navigated their fragile dinghy directly over Alaska's alleged island while the Special Master unsuccessfully tried to locate it with an oar. Following a total of six weeks of trial, and Supreme Court review, the federal government prevailed in all but two of the issues in contention and was awarded a total of \$1.5 billion in lease revenues and vast areas of submerged lands along the Arctic coast, including the lagoons of the Arctic National Wildlife Refuge.

Sparks and securing Congressional approval of the interstate allocation between Nevada and California of the waters of Lake Tahoe and the Truckee and Carson Rivers, the Agreement provides significant environmental benefits through more flexible and coordinated reservoir operations. This flexibility allows water to be stored and released for the benefit of threatened and endangered fish species in Pyramid Lake, water quality in the lower Truckee River, and instream flows on the Truckee River and tributaries under the California Guidelines.

A New Era of Tribal Trust Cases

In 1996, a group of individual Indian money (IIM) account-holders brought a case, *Cobell v. Babbitt*, in the U.S. District Court for the District of Columbia, demanding that the Departments of the Interior and Treasury provide a “full and complete” historical accounting of their IIM accounts. The *Cobell* case was handled by the Environment and Natural Resources Division until 2001, when it was transferred to the Civil Division, where it resides today.

Between January 2002 and December 2008, numerous tribes filed cases in the federal district courts in the District of Columbia and Oklahoma and in the U.S. Court of Federal Claims, demanding not only complete accountings of their trust funds and resources and but also damages for the government’s alleged mismanagement of these funds and resources. Since 2002, the government has settled a number of tribal trust cases or portions of thereof, and it has litigated a number of other cases. These cases are handled by the Natural Resources Section, and there are currently approximately 100 such cases pending.

The Rise of Interdisciplinary Cases

In the 1990s, the Division saw an increasing number of complex cases that implicated numerous statutes and issues and required coordination among sections, as well as with federal, state, local, tribal, nonprofit, and industry interests. Harvesting of old growth timber on public lands in the Northwest became a major issue for the Division in the early 1990s. By 1992, increased concern over biodiversity and endangered species such as the spotted owl yielded numerous lawsuits and court in-

junctions that blocked harvesting and aroused bitter feelings. The Clinton administration sought to formulate a new ecosystem-wide approach to these issues, with the goal of lifting injunctions and resuming commercial activity under acceptable environmental conditions, and attorneys from the Natural Resources and Wildlife Sections were regularly consulted to address the difficult legal issues involved with its development. The Northwest Forest Plan of 1994 established standards and guidelines to address the competing needs of forest habitat protection and commercial timber harvesting on 24.5 million acres managed by the Bureau of Land Management and the Forest Service. The Plan was successfully defended by a multi-section Division litigation team against challenges from both environmental and timber industry groups, a victory which AAG Lois Schiffer characterized as “a milestone in the Division’s history.”

Many of the Division’s water-related cases also involve complex issues regarding the interests of water users, tribes, and the protection of endangered species, and thus demand the attention of attorneys from multiple sections within the Division. For example, litigation regarding the Bureau of Reclamation’s management of

A Dinosaur Named “Sue”



In 1993, Appellate Section attorney Ed Shawaker persuaded the Eighth Circuit Court of Appeals that a remarkably complete Tyrannosaurus Rex fossil nicknamed “Sue,” which had been excavated from land held by the United States, still belonged to the United States, on the theory that the fossil was “land” rather than “personal property” before it was excavated. Black Hills Institute of Geological Research v. South Dakota School of Mines and Technology, 12 F.3d 737 (8th Cir. 1993).

Tyrannosaur “Sue” at the Field Museum, Chicago.

*Used with permission:
© The Field Museum, #GN89677_42c.*

the Klamath Project, a federal reclamation project at the southern end of the Klamath River along the Oregon and California border, as well as the operations of several dams on the river operated by PacifiCorp, has been ongoing for several decades. The river provides habitat for endangered salmon species, and its management has been the subject of recurring disputes between Indian tribes, environmentalists, farmers, fishermen, and others.

The protection of salmon species has been an issue in numerous other pieces of litigation handled by the Division from the 1990s through the present day, including challenges to the listing and management of salmon on the Columbia/Snake River systems and challenges to the management of the Central Valley Project in California.

The Division also defended the Navy's use of sonar in training exercises off the coast of California in a case involving alleged violations of the National Environmental Policy Act, the Endangered Species Act, and the Marine Mammal Protection Act. This case necessitated the work of attorneys from the Wildlife and Marine Resources Section, the Natural Resources Section, and the Appellate Section, and eventually resulted in a favorable

Defending the Constitutionality of the Endangered Species Act

The Supreme Court's decision in United States v. Lopez, 514 U.S. 549 (1995), reinvigorated challenges by property owners and others contending that Congress lacks power to regulate under the Commerce Clause based on the need to protect endangered or threatened species, where those species are not traded in interstate commerce. In a series of cases in different circuits, some over vigorous dissents, the Division managed to fend off these Commerce Clause challenges to the constitutionality of the ESA in protecting species ranging from the charismatic - Gibbs v. Babbitt, 214 F.3d 483 (4th Cir. 2000) (red wolf) - to the homely - Rancho Viejo, LLC v. Norton, 323 F.3d 1062 (D.C. Cir. 2003) (arroyo southwestern toad) - to the creepy - GDF Realty Investments, Ltd. v. Norton, 326 F.3d 622 (5th Cir. 2003) (various species of cave-dwelling bugs) - to the just plain weird - National Ass'n of Home Builders v. Babbitt, 130 F.3d 1041 (D.C. Cir. 1997) (Delhi Sands Flower-Loving Fly).

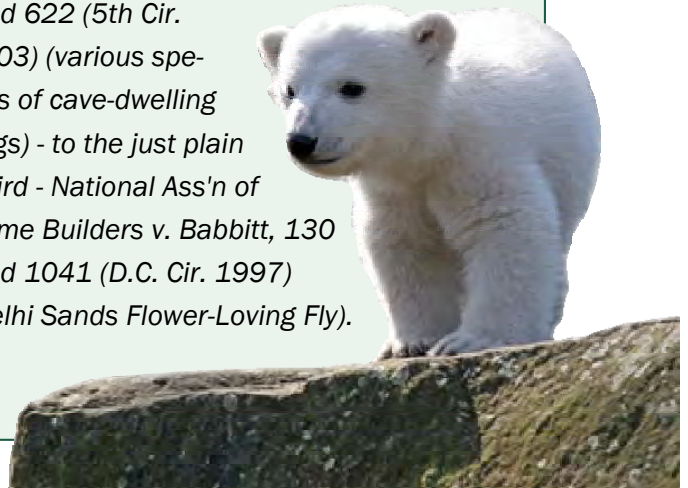


Photo: house.gov

In May 2008, polar bears were listed as threatened under the Endangered Species Act, due to the loss of sea ice threatening polar bear habitat.

Supreme Court decision in *Winter v. Natural Resources Defense Council, Inc.*, 129 S.Ct. 365 (2008).

On the enforcement side, the use of multi-media inspections and nationwide enforcement goals initiated by EPA resulted in enforcement actions with multiple statutes, numerous facilities, and involving many states. The Division has formed teams including representatives from both enforcement and defensive sections to coordinate Division litigation and legislative positions on emerging legal issues, such as the response to Supreme Court decisions interpreting CERCLA and wetlands jurisdiction.

Multi-statute, multi-agency cases often require the Division to use creative approaches, both in its internal management of cases that do not fit neatly within a single section's mission, and in dealing with the many issues and parties interested in the case. The Division has adapted by creating cross-section case teams in order to bring all of the Division's expertise to bear on a particular case. Through alternative dispute resolution and other methods, the Division has also sought to ensure that, where possible, the various federal and non-federal interests in the resolution of a particular case are harmonized in a way that produces a result that is in the best interests of the United States as a nation.

Conclusion

Throughout its history, the Division has been involved in nearly all of the important cases interpreting environmental, natural resources, lands, Indian, and wildlife law. The Division continues to litigate the most significant cases in these fields, with involvement in nine cases before the Supreme Court in the 2008 Term alone. The Division handles cases involving more than 150 different statutes, has more than 6,000 active cases, and represents virtually every federal agency in courts all over the United States and its territories and possessions. The current caseload of the Division is too expansive to be fully reflected in this document, but will surely influence the development of environmental, natural resources, and Indian law in the years to come.

Today, the Division is led by an Assistant Attorney General, assisted by four

Deputy Assistant Attorneys General, two of whom are career appointments (as of this writing, only one of these positions is filled, by John Cruden). The Division is organized into nine litigating sections: Appellate (led by James Kilbourne), Environmental Enforcement (led by Bruce Gelber), Environmental Defense (led by Letitia Grishaw), Indian Resources (led by Craig Alexander), Land Acquisition (led by Virginia Butler), Law and Policy (led by Pauline Milius), Natural Resources (led by Jack Haugrud), Environmental Crimes (led by Stacey Mitchell), and Wildlife and Marine Resources (led by Jean Williams), as well as an Executive Office (led by Robert Bruffy). It has offices in Washington, D.C., Anchorage, Boston, Denver, Sacramento, San Francisco and Seattle, and a staff of more than 600 people.

In 2009, the Division was ranked first among agency subcomponents by the Partnership for Public Service's Best Places to Work in the Federal Government survey, reflecting a high degree of satisfaction among its employees. This is attributable, in part, to the important mission of the Division and the commitment of its

The Division Remembers...

Several ENRD conferences rooms have been named in memory of individuals who contributed greatly to the work of the Division.



Anne Almy portrait

*The **Anne Almy** Conference Room, Main Justice 2333, is named for a former staff lawyer, Assistant Chief, and Deputy Chief of the Appellate Section who handled many court of appeals arguments, provided advice on countless other matters, and worked closely with the Solicitor General's Office on ENRD's Supreme Court cases. Anne*

joined the Appellate Section through the Attorney General's Honor Graduate program after clerking for First Circuit Chief Judge Frank

S. Coffin of Maine, and spent her entire career with ENRD. Anne unerringly could identify the dispositive issue in any appeal, and provided painfully candid and unvarnished case assessments to anyone with the nerve to ask. She was unique, incredibly colorful, and a visionary in predicting the major themes in environmental litigation. A 100% New Englander, Anne inspired, scared, and endeared herself to a generation of Appellate Section attorneys. After she passed away from cancer in 1997, members of the Section commissioned a portrait of Anne which hangs in the conference room.

*The Conference Room at Patrick Henry Building 8203 is named for **David W. Zugschwerdt**, an attorney in the Environmental Defense Section who switched to environmental law after what amounted to a complete career in EEO enforcement. Reveling in his iconoclastic demeanor, David loved to contest what*

employees to serving the interests of the United States and its citizens, particularly by protecting the nation's health, welfare, and natural resources.

Because of the Division's work, our nation has cleaner air to breathe, cleaner rivers and lakes in which to fish or swim, safer water to drink, and fewer toxic chemicals polluting the land. Treasures such as our national parks, national forests, and public lands and resources have been preserved for future generations. The nation's security has been enhanced, through defense of military programs and the acquisition of needed land. The United States' priorities and programs with respect to lands, Indians, and the environment, though evolving over time, have been defended and upheld by the Division.

The Division's priorities will doubtless continue to change as new needs and challenges arise in the United States and around the globe. The Division and its employees stand ready to meet these challenges as the Division enters its second century.

*he considered "conventional wisdom," and was often proved right in the end. "Zuggy" brought his considerable talents to any number of the Section's practice areas, with a particular focus on defending challenges to EPA's handling of radionuclides. David was recognized for his efforts on the Section's behalf on any number of occasions, including posthumously for his work on *United States v. Monsanto*. Ever the loyal workaholic, David collapsed in an airport while on Government business and passed away in June 1996 following heart surgery. He is missed by those who knew him here in the Division and by the two daughters who were always his pride, joy, and first priority.*

*An Environmental Enforcement Section Conference Room, Patrick Henry Building 8502, is named in memory of **Drenaye L. Houston**, a trial attorney and then senior attorney in the Section from 1989-1997*

*and 1999-2006. A graduate of the University of South Carolina law school, Drenaye joined the Section in 1989 through the Honor Graduate program. She litigated several ground-breaking RCRA, CERCLA, Clean Air Act, and Clean Water Act cases during her tenure, including the landmark *United States v. Colonial Pipeline*, a major Clean Water Act case against a pipeline company for devastating oil spills in several states. Drenaye and her team on Colonial received the John Marshall award for alternative dispute resolution for the outstanding settlement, which included a record-breaking \$34 million civil penalty and injunctive relief to prevent future spills. Drenaye was a brilliant attorney, a model of integrity and dedication to the Division's mission, a person of great kindness, and a very dear friend to her colleagues in EES. Drenaye died on January 3, 2006, at the age of 42, after a heroic struggle with cancer.*

Acknowledgements and References

About This History

This document is intended to provide some record of the history of the Environment & Natural Resources Division from 1909-2009. While every attempt has been made to verify facts, the accuracy of all of the statements herein should be independently verified. If you have any corrections to this History, or stories or other historical material that you would like to share with the Division, please e-mail us at enrd100@usdoj.gov or visit the Division's website at: <http://www.justice.gov/enrd/Anniversary/Memories.html>.

This document is intended to provide a general background and overview of the Division, and is not intended to be authoritative on any specific issue. It is not intended to provide policy or position statements or interpret case law, and should not be used in this manner. The statements herein do not necessarily represent the position of the Department of Justice or the United States. Furthermore, we recognized that there is a conflict of interest in the writing of one's own history, and this document may suffer from this and other limitations. As such, it is not intended to be a scholarly analysis or critique of the Division's work.

Due to space and other considerations, there are many significant cases, impor-



Since 2003, ENRD has teamed up with the non-profit Washington Parks & People to celebrate Earth Day with a community service project at Marvin Gaye Park in Washington, D.C. In 2009, almost 150 ENRD employees participated by planting trees, clearing trash from the park and Watts Branch Stream, pulling weeds, and preparing the community garden for planting. Attorney General Eric Holder planted a tree and dedicated a memorial to Martin Luther King, Jr., who visited the park in 1961.



tant individuals, and parts of the Division's history that are not reflected in this History. A more complete view of the work of the Division may be obtained by visiting the Division's Centennial website at <http://www.justice.gov/enrd/Anniversary/index.html>, where you will find biographies of former AAGs, in-depth histories of each section, and other information.

This document is the result of the work of many people. Former Deputy Assistant Attorney General Eileen Sobeck conceived of the Centennial project, and spearheaded it for many months, with the support of AAG Ron Tenpas. Acting AAG John Cruden has provided critical support for the project, as well as helpful comments on this History. The Executive Office, including Bob Bruffy, Donna Whitaker, Marcia Jordan-Burke, John White, Lisa Nasberg, Lisa Daniels, Gerardo



Despian, and Betsy Preston, provided critical support throughout the project. Betsy Preston deserves particular recognition for all her work on the Centennial celebration, including handling the layout of this document.

Much of the initial research and drafting of this document was done by Glenn Curtis and his colleagues at the Library of Congress. Within the Division, the text was prepared by the Law & Policy Section, principally Amber Blaha, Pauline Milius, Stacy Stoller, and Katie Duncan. Numerous individuals within the Division aided in this effort by providing additional text, comments, corrections, and other support: in particular, David Shilton; Section Chiefs Craig Alexander, Virginia Butler, Bruce Gelber, Letty Grishaw, Jack Haugrud, Jim Kilbourne, Stacey Mitchell, and Jean Williams; Division employees Wells Burgess, Sean Carman, Fred Disheroon, Andrew Goldsmith, Lisa Jones, Billy Lazarus, Andrew Mergen, Ray Mushal, Gayatri Patel, Andrew Satten, Justin Smith, Christopher Vaden, and Karen Wardzinski, as well as former Division attorney Richard Lazarus.

Former AAGs Ramsey Clark, Kent Frizzell, Wallace Johnson, Peter Taft, James Moorman, Carol Dinkins, Hank Habicht, Roger Marzulla, Richard Stewart, Lois Schiffer, Tom Sansonetti, and Sue Ellen Wooldridge, as well as Myles Flint, Peter Steenland, Dolores Steenland, Catherine Barbour, Diane Stone, Marcia Jordan Burke, Earl Thornton, Donald Carr, and Barbara Cantey generously gave of their time to participate in interviews regarding their recollections of the Division.

To all of you, the Division gives its thanks.



References

A critical source for this document, particularly regarding the early years of the Division, was the Annual Report of the Attorney General of the United States for the years 1908 through 1993. These reports include a section on the Division, and provided valuable insight into the priorities of the Division, its structure, and what its leadership viewed as its most important cases. For 1999-2008, the annual Accomplishments Report of the Division provided information about the Division's work.

This history also relies on documents related to the Division and the Department of Justice that are kept in the files of the National Archives, as well as the files maintained by the Division.

A third source of information that informed this history were interviews with each of the living former Assistant Attorneys General. They were generous with their time and provided helpful background information.



Other sources consulted or relied upon include:

Neal Devins and Michael Herz, "Government Lawyering: The Battle that Never Was: Congress, the White House, and Agency Litigating Authority," 61 *Law & Contemp. Prob.* 205, 220-22 (1998).

James Easby-Smith, *The Department of Justice: Its History and Functions*, W.H. Lowdermilk & Co., 1904.

Sewall Key and Francis A. LeSourd, *The Struggle of the Attorney General to Retain His Powers*, 1937.

Christopher McGrory Klyza, *Who Controls Public Lands? Mining, Forestry and Grazing Policies, 1870-1990*, University of North Carolina Press, 1996.

Richard J. Lazarus, *The Making of Environmental Law*, The University of Chicago Press, 2004.

Normal Littell, *My Roosevelt Years*, ed. Jonathon Dembo, University of Washington Press, 1987.



Norman Littell, testimony to House Appropriations Committee, 1940, document H855.

Nancy Oestreich Lurie, "The Indian Claims Commission," *Annals of the American Academy of Political and Social Science*, March 1978.

The National Parks: America's Best Idea website, <http://www.pbs.org/nationalparks/history/>

H.D. Rosenthal, *Their Day in Court: A History of the Indian Claims Commission*, Garland, 1990.

Lois Schiffer, "Statement of Lois J. Schiffer, Assistant Attorney General, Environmental and Natural Resources Division, United States Department of Justice, before the Committee On Environment And Public Works, United States Senate, Concerning Enforcement of Environmental Laws, June 10, 1997," http://epw.senate.gov/105th/doj_6-10.htm

U.S. Army, "Rocky Mountain Arsenal History," <http://www.rma.army.mil/site/hist1.html>



ENRD ASSISTANT ATTORNEYS GENERAL



Ernest Knaebel
1911-1916



Francis J. Kearful
1917-1919



Frank K. Nebeker
1919-1920



Leslie C. Garnett
1920-1921



William D. Riter
1921-1924



Ira K. Wells
1924-1925



Bertice M. Parmenter
1925-1929



Seth W. Richardson
1929-1933



Harry W. Blair
1933-1937



Carl McFarland
1937-1939



Norman Littell
1939-1944



David L. Bazelon
1946-1947

ENRD ASSISTANT ATTORNEYS GENERAL



Augustus Vaneck
1947-1951



William A. Underhill
1951-1952



James M. McNerney
1952-1953



Perry W. Morton
1953-1961



Ramsey Clark
1961-1965



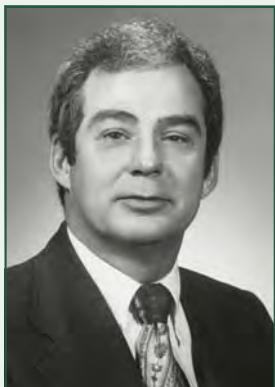
Edwin L. Weisl, Jr.
1965-1967



Clyde O. Martz
1967-1969



Shiro Kashiwa
1969-1972



Kent Frizzell
1972-1973



Wallace Johnson
1973-1975



Peter Taft
1975-1977

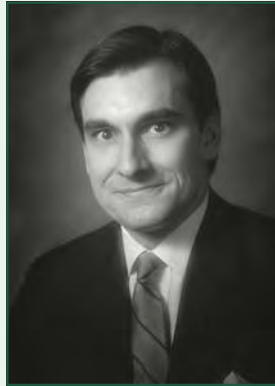


James W. Moorman
1977-1981

ENRD ASSISTANT ATTORNEYS GENERAL



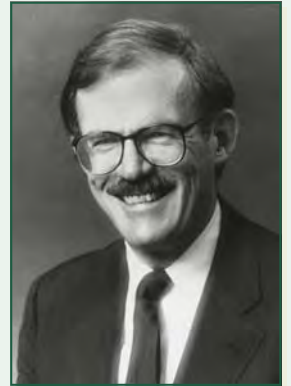
Carol Dinkins
1981-1983



F. Henry Habicht, II
1983-1987



Roger J. Marzulla
1988-1989



Richard B. Stewart
1989-1991



Lois Jane Schiffer
1993-2001



Thomas L. Sansonetti
2001-2005



Sue Ellen Wooldridge
2005-2007



Ronald J. Tenpas
2007-2009

MUSKIE—CHAFEE AWARD RECIPIENTS

The ENRD Muskie-Chafee Award honors a federal employee who has made significant contributions through government service to protecting the environment, public lands, and natural resources, and the fulfillment of our nation's responsibilities to Native Americans. The award is named for two leaders of the modern environmental movement, Senators Edmund S. Muskie and John H. Chafee.



Raymond Mushal
Senior Counsel, ECS



John Webb
Branch Chief, ECS

2008



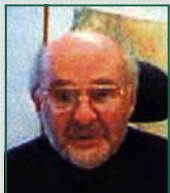
James Eaton
Senior Appraiser
Land Acquisition Section

2006



Elizabeth Mitchell
Staff Attorney
National Oceanic and Atmospheric Administration

2004



Andrew Walch
Senior Litigation Counsel
Natural Resources Section

2002



Charles W. "Spinner" Findlay, III
Assistant Chief
Natural Resources Section

2000

2009

Edwin Kneedler
Deputy Solicitor General
Solicitor General's Office



2007



Diane Stone
Unit Chief, EES
Catherine Barbour
Director, EO
Dolores Steenland
Director, EO

2005

Phillip Brooks
Special Counsel to the Chief
Environmental Enforcement Section



2003

Dianne Shawley
Senior Counsel
Environmental Enforcement Section



2001



Myles E. Flint
Deputy Assistant
Attorney General
ENRD

1999

Dinah Bear
General Counsel
Council on Environmental Quality





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