



By Richard Lazarus

Some Thoughts on ENRD's Centennial

Today, the Department of Justice's Environment and Natural Resources Division is the nation's largest environmental law firm, but when it commenced operations on November 16, 1909, the division consisted of only five attorneys and three stenographers. This past November, the unit's 700 lawyers and support personnel were joined by hundreds of alumni in celebrating the division's enormously rich history of public service.

The division's history tells no less a story than the history of the nation's aspirations. The division has been at the forefront of two of the most significant transformations of our nation's laws — beginning with those new laws responding to the closing of the western frontier at the turn of the 20th century and extending to those arising from the emergence of modern environmental law during the second half of that same century. The division's changing name itself hints at the story: beginning as the Public Lands Division in 1909, changing to the Lands Division in 1933, and then to the Land and Natural Resources Division in 1965 and, finally, becoming the Environment and Natural Resources Division in 1990.

The attorney general's 1910 annual report describes why a Public Lands Division was necessary: "For the purpose of properly attending to the enormous and increasing volumes

of business relating to the public lands of the United States and of Indian affairs." The nation had decided to dramatically transform its laws relating to the federally owned lands from statutes primarily designed to settle the nation as quickly as possible by turning over ownership of public lands to private parties to acts that would instead retain federal ownership and manage public lands and their natural resource wealth for the benefit of the entire nation.

The reason for the name change in 1933 to the Lands Division is no less related to historical events of that time. In the wake of the Great Depression, the federal government was once again redefining itself as the newly elected president, Franklin Delano Roosevelt, sought to rescue the nation's economy. The impact on the division's work was dramatic and wholly reversed 19th century policy. The federal government was now not just declining to sell public lands, but affirmatively buying lands. The New Deal depended on massive acquisitions to launch public works projects across the nation.

By 1937, the division was acquiring eight million acres per year, for government buildings, post offices, veterans hospitals, national parks, irrigation and reclamation projects, and dams. In Pearl Harbor's aftermath, the division litigated 18,000 cases for the acquisition of 20 million acres (the size of Massachusetts, Delaware, Connecticut, Rhode Island, and most of New Jersey) for airports, naval bases, and bombing fields in support of the war effort. The division's work now extended far beyond "Public Lands" to include "Lands" more generally.

The name change to Land and Natural Resources Division occurred in 1965 with the dawning of modern environmental law. At the time, Congress had yet to enact any of the modern pollution control laws. But the division's responsibilities were al-

ready shifting in response to the public's increasing desire to protect natural resources and to reduce industrial air and water pollution. That is why then-Assistant Attorney General Edwin Wiesel sought permission from the attorney general for the name change. Five years before EPA was founded, it was clear where the division's future mission lay.

The change to its current formulation, Environment and Natural Resources, is symbolically significant in two respects. First, it underscores the extent of the division's evolution by eliminating the term "Lands," which had been the only word shared by all prior names. The greater significance of the change, however, lies, of course, in the addition of the term "Environment." Environment serves as a ready reminder to those who work within

the division of the important values of green thinking underlying the laws that define the division's central mission.

The division can be proud of the tremendous and varying roles it has played during the past 100 years of the nation's history. Whether resulting from the closing of the American frontier, the Great Depression, world war, or the emergence of modern environmental law, the division has met the challenges that inevitably accompany the necessary changes in the nation's laws. The next 100 will be no less challenging. Climate change may ultimately require yet another dramatic shift of our nation's laws respecting the environment and natural resources. And, if it does, we can expect that the Environment and Natural Resources Division will once again serve as the steward for that transformation, defending the legitimacy of the necessary changes against legal challenge and enforcing the new law's strict terms.

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*From the closing of the
frontier to new frontiers
in environmental
protection*