

A black and white checkered flag is the background of the entire page. A dark blue curved banner is overlaid on the left side, containing the main title and event details.

19th Section Fall Meeting Onsite Guide

The ABA Section
of Environment,
Energy, and
Resources
Law Summit

October 12–15, 2011

**JW Marriott
Indianapolis, IN**

The premier forum on environme

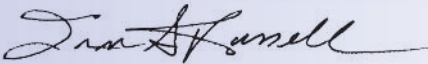
Greetings!

Welcome to the 19th Section Fall Meeting: The ABA Environment, Energy, and Resources Law Summit. This Fall Meeting provides an opportunity for lawyers involved in environmental, energy, and natural resources law to get together and delve into the legal issues and hot topics important to you. Whether you are attending for the first time or for the nineteenth, we are delighted you are able to be here.

The Section Fall Meeting also serves as a backdrop for the work of the Section, from our Keep Indianapolis Beautiful (KIB) tree-planting public service project to important council and committee meetings. These events are listed in this program guide and all are open to all registered attendees. Please thank our sponsors for their generous support of our programming as well as for the many enjoyable networking opportunities and social events.

Throughout these next several days you will have an opportunity to submit written critiques of the program and speakers, and to suggest topics you think are relevant and should be addressed in future conferences. Your comments are critical to our planning of this event, so please give us your feedback. The 20th Section Fall Meeting is scheduled for October 10–13, 2012 in Austin. Angela Morrison of Hopping Green & Sams, P.A., Tallahassee, Florida, is the program chair. If you have ideas, please visit with Angela here in Indianapolis, or contact her at (850) 425-2258 or at amorrisson@hgslaw.com.

While you are here, I hope you will take the opportunity to visit the many attractions within walking distance of our venue, including the NCAA Hall of Champions, the Indiana State Museum, the Indiana Historical Society, the Eitlejorg Native American Museum, the Indianapolis Zoo, and the White River Gardens. It is great to be together in Indianapolis, continuing our tradition of service to members and society. Enjoy!



Irma S. Russell, 2011–2012 Section Chair

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Indianapolis photos courtesy of Indianapolis Convention & Visitors Association

nt, energy, and resources law.

**Section Chair,
2011–2012**

Irma S. Russell

*Dean and Professor,
University of Montana
School of Law, Missoula, MT*

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Onsite Meeting Information

Registration

The registration fee for the 19th Section Fall Meeting includes tuition and course materials developed especially for this meeting that are available online and on a USB-drive. In addition, your fee covers Thursday's Technical Roundtables Luncheon and dinner at the NCAA Hall of Champions, Friday's Committee Get-Together Luncheon and Local Flair Reception, and Saturday's Section Chair's Farewell Reception. Continental breakfasts and networking breaks will take place on Thursday, Friday, and Saturday. Please see staff at the ABA Registration Desk in the White River Foyer if you have any questions.

Spouses, children, and guests of registered attendees are invited to participate in social functions including Friday's Local Flair Reception, and Saturday's Farewell Reception. Thursday's dinner at the NCAA Hall of Champions is not complimentary to spouse/guests. Non-registered spouse/guests may purchase a ticket to attend for \$75/person. Tickets may be purchased at the ABA Registration Desk in the White River Foyer. Continental breakfasts are provided for registered attendees of the program only.

Program Course Materials

Conference materials and related background information will be provided to participants online and via USB-drive to reduce the environmental impact of the program. For those who are interested in purchasing a hard copy of the course materials, please see the ABA Registration Desk. Please note, only pre-ordered hard copies will be available onsite.

ABA Registration Desk Hours

The ABA Registration Desk is located in the White River Foyer on the 1st Floor.

Wednesday, October 12 2:00 p.m. – 7:30 p.m.

Thursday, October 13 6:30 a.m. – 6:00 p.m.

Friday, October 14 6:30 a.m. – 7:30 p.m.

Saturday, October 15 7:30 a.m. – 12:30 p.m.

Please stop by the display tables of our Annual Section, Platinum, and Silver level sponsors and thank them for their generous support of the 19th Section Fall Meeting.

Internet Station

Sponsored by Platinum Level Sponsors

Computer terminals, as well as printers, are available in the White River Foyer. The Internet station is provided as a convenience for those wanting to print materials from the USB-drive, check e-mail, or do quick Internet research. We ask that you limit your time so that others can use this service. Wireless Internet access is available for this meeting. Please see the ABA Registration Desk for logon details.

JW Marriott Business Center

The hotel offers a Business Center located on the 2nd floor. Faxes can be sent through the Business Center. Outgoing fax pricing is as follows: Local \$2.00 per page, long distance \$3.00 per page, international \$10.00 per page. Faxes can be received through the hotel's Business Center on the 2nd Floor at (317) 974-0521. Incoming faxes are \$1.49 per page. Recipients of incoming faxes will be notified by a room message and faxes may be retrieved from the Business Center.

Telephone Messages

Telephone calls should be directed to your room through the hotel switchboard at **(317) 860-5800**. If necessary, calls may also be directed to the ABA Registration Desk at **(317) 860-6582**, and a message will be posted on the message board in the ABA registration area located in the White River Foyer. The ABA takes no responsibility for receipt of messages.

Name Badges

All registrants and guests are required to wear their name badges to all events. The Section does not prepare name badges for non-registered meeting attendees, but will have sticky badges available at social functions for guests.



Continental Breakfasts

Continental breakfast for registrants will be located in the White River Foyer on Thursday and Friday until 8:00 a.m. and Saturday morning until 9:00 a.m. Continental breakfasts are reserved for registered attendees only.

Cancellation Policy

There will be no refunds for cancellation of registration, meal functions, optional events, or extracurricular activities after September 26, 2011; no exceptions will be made.

Continuing Legal Education Credit

The ABA will seek 16.58 hours of CLE credit (including 1.50 of ethics credit) for this program in 60-minute-hour states, and 19.90 hours of CLE credit (including 1.80 hours of ethics credit) for this program in 50-minute-hour states. Credit hours are estimated and are subject to approval from each state.

Special rules apply to lawyers from the following states:

Nebraska: You may self-submit this program for CLE approval in Nebraska after attending the program by logging into your personal MCLE account with the Nebraska MCLE Commission. There is no fee for this submission and a response is generally received within 3–5 days.

New Jersey: You will be eligible for credit for this program under the NJ reciprocity provisions if another state grants credit for it.

New York: This transitional CLE program is approved for all New York-licensed attorneys in accordance with the requirements of the New York State CLE Board for 6.5 transitional MCLE credits (including 1.0 hours of ethics credit). Both experienced and newly admitted attorneys may earn New York credit with this program.

States with lawyer specialization programs have not been requested to certify this program. Certificates of attendance are available in the registration materials. For more information on the approved number of credit hours, please visit the ABA Registration Desk. For more information about your state requirements, please visit our Section Fall Meeting Web page at www.ambar.org/EnvironFM.

Achieving Carbon Neutrality

Calculated with great care, the Section estimates that the average Section Fall Meeting attendee's participation will generate approximately one metric ton of carbon emissions. For the first time, a Section Fall Meeting attendee can offset his or her carbon footprint by adding the cost of a one-ton carbon credit from NativeEnergy and help pay for tree plantings with Keep Indianapolis Beautiful.

If you haven't already done so, you may pay \$20 to offset your footprint and help a great cause. All funds raised through the carbon offset program will go to the "Iowa Farm Wind Project," a verified offset project that will reduce greenhouse gases by 9,000 tons per year through the installation of two 1.65 MW wind turbines (and bring maintenance and technical jobs to the local community). Meeting attendees who sign up to make their attendance at the Fall Meeting carbon-neutral will be entered into a drawing to win an autographed copy of *The Law of Clean Energy: Efficiency and Renewables*, Michael B. Gerrard, editor. Please visit the ABA Registration Desk for more details.

Evaluation Forms

You will be asked to complete an individual session evaluation form at each program session you attend. Moderators, speakers, the planning committee, and staff, all value your feedback and we use your comments in developing future programs. Individual session evaluation forms may be submitted at the ABA Registration Desk through Saturday at 12:30 p.m. After the meeting, an overall evaluation will be e-mailed to all attendees. If you complete this evaluation, you will be eligible for a drawing to win a free Section publication. We thank you in advance for sharing your thoughts and ideas.

Business Activities, Networking and Social Events, and Luncheons

Wednesday, October 12, 2011

- 9:00 a.m. – 1:00 p.m.
Public Service Project
Offsite – Transportation available, meet in the JW Marriott lobby.
- 2:00 p.m. – 5:00 p.m.
Council Meeting
White River GH
- 5:00 p.m. – 6:00 p.m.
Leadership Development Program Meet and Greet
Room 102
- 5:30 p.m. – 6:00 p.m.
Law Student Welcome Meeting
White River Foyer
- 6:00 p.m. – 7:30 p.m.
Welcome Reception (cash bar)
White River Foyer

Thursday, October 13, 2011

- 8:00 a.m. – 5:00 p.m.
Book Publishing Board
Room 109
- 12:00 p.m. – 1:30 p.m.
Luncheon Technical Roundtables
AlterEcho White River AB
BNA White River CD
de maximis, inc. Room 101/102
Geosyntec Consultants Room 103/104
- 5:15 p.m. – 6:15 p.m.
Committee Vice Chairs Working Groups
Committee Newsletters *Room 104*
Membership *Room 103*
Programs *Room 101*
Public Service *Room 102*
Technology *White River CD*
The Year in Review *Room 107*
- 5:15 p.m. – 6:15 p.m.
Committee Chairs Leadership Meeting
White River AB
- 7:00 p.m. – 10:30 p.m.
Dinner at the NCAA Hall of Champions
Offsite, 700 W. Washington St.

Friday, October 14, 2011

- 8:00 a.m. – 5:00 p.m.
Natural Resources & Environment Board Meeting
Room 109
- 9:00 a.m. – 4:00 p.m.
Trends Board Meeting
Room 201
- 12:00 p.m. – 1:30 p.m.
Committee Get-Together Luncheon
White River F
- 5:30 p.m. – 6:30 p.m.
Speed Networking for Young Lawyers and Law Students
Room 101/102
- 6:30 p.m. – 7:30 p.m.
Local Flair Reception
White River F
Sponsored by
Legal Leaders Sponsors

Saturday, October 15, 2011

- 8:00 a.m. – 12:00 p.m.
Natural Resources & Environment Board Meeting
Room 109
- 9:00 a.m. – 12:00 p.m.
Policy and Coordination Task Force Meeting
White River B
- 12:30 p.m. – 2:00 p.m.
2012 Section Fall Meeting Planning Committee
Room 102
- 2:00 p.m. – 5:00 p.m.
Council Meeting
White River CD
- 5:30 p.m. – 6:30 p.m.
Section Chair's Farewell Reception
Room 305/306

Schedule At-A-Glance

Thursday, October 13, 2011

7:00 a.m.–8:00 a.m.	Continental Breakfast	White River Foyer
7:45 a.m.–8:20 a.m.	Welcome and Opening Remarks/Keynote Address	White River E
8:20 a.m.–10:00 a.m.	Plenary Session: Nuclear Safety—Expecting the Unexpected	White River E
10:00 a.m.–10:30 a.m.	Networking Break	White River Foyer
10:30 a.m.–12:00 p.m.	Concurrent CLE Sessions	See page 8
12:00 p.m.–12:30 p.m.	Luncheon	White River Foyer
12:30 p.m.–1:30 p.m.	Technical Roundtables	See page 9
1:30 p.m.–3:00 p.m.	Concurrent CLE Sessions	See page 9
3:00 p.m.–3:30 p.m.	Networking Break	Grand Ballroom Foyer, 5th Floor
3:30 p.m.–5:00 p.m.	Concurrent CLE Sessions	See page 10
5:15 p.m.–6:15 p.m.	Committee Vice Chairs Working Groups	See page 12
5:15 p.m.–6:15 p.m.	Committee Chairs Leadership Meeting	White River AB
7:00 p.m.–10:30 p.m.	Section Dinner Event: NCAA Hall of Champions	Offsite, See page 12

Friday, October 14, 2011

7:00 a.m.–8:00 a.m.	Continental Breakfast	White River Foyer
8:00 a.m.–8:15 a.m.	2011 ABA Award for Excellence in Environmental, Energy, and Resources Stewardship Presentation	White River E
8:15 a.m.–10:00 a.m.	Plenary Session: The New Environmental Landscape: Legislation, Regulation, and Enforcement Collide	White River E
10:00 a.m.–10:30 a.m.	Networking Break	White River Foyer
10:30 a.m.–12:00 p.m.	Concurrent CLE Sessions	See page 12
12:00 p.m.–1:30 p.m.	Committee Get-Together Luncheon	White River F
1:30 p.m.–3:00 p.m.	Concurrent CLE Sessions	See page 13
3:00 p.m.–3:30 p.m.	Networking Break	White River Foyer
3:30 p.m.–5:00 p.m.	Ethics Session: Practical and Ethical Considerations for ALL Counsel in a New Environment for Legal Services	White River GH
5:30 p.m.–6:30 p.m.	Young Lawyers and Law Students Speed Networking	Room 101/102
6:30 p.m.–7:30 p.m.	Local Flair Reception	White River F
7:30 p.m.	Dinner on the Town	

Saturday, October 15, 2011

8:00 a.m.–9:00 a.m.	Continental Breakfast	White River Foyer
9:00 a.m.–10:30 a.m.	Litigation Workshop: Minnows, Monatawnee, and Blowhards Part 1	White River CD
10:30 a.m.–11:00 a.m.	Networking Break	White River Foyer
11:00 a.m.–12:30 p.m.	Litigation Workshop: Minnows, Monatawnee, and Blowhards Part 2	White River CD
12:30 p.m.–2:00 p.m.	Lunch On Your Own	
2:00 p.m.–5:00 p.m.	Council Meeting	White River CD
5:30 p.m.–6:30 p.m.	Section Chair's Farewell Reception	Room 305/306

Program Schedule

Thursday, October 13, 2011

7:00 a.m. – 6:00 p.m.

Speaker Ready Room

Room 108

7:00 a.m. – 8:00 a.m.

Breakfast

White River Foyer

7:45 a.m. – 8:20 a.m.

Welcome and Opening Remarks

White River E

Irma S. Russell, 2011-2012 Section Chair, Dean and Professor, University of Montana School of Law, Missoula, MT

Laura H. Kosloff, Planning Chair, Attorney at Law, Portland, OR

Keynote Address

Robert V. Percival, Director, Environmental Law Program, University of Maryland School of Law, Baltimore, MD

8:20 a.m. – 10:00 a.m.

Plenary Session: Nuclear Safety— Expecting the Unexpected

White River E

Nuclear energy is a vital element of America's electricity portfolio, producing power for one of every five homes and businesses. Recent tragic events in Japan have reinforced the importance of having a robust framework for assuring safety at existing (and proposed) nuclear facilities. This session will provide an overview of the events at Fukushima Daiichi and discuss the implications for U.S. locations. A panel will explore operational and regulatory issues affecting domestic reactors in areas such as protection against earthquakes, tsunamis, flooding, and hurricanes; station blackout and a degraded ability to restore power; severe accident mitigation; emergency preparedness; and combustible gas control.

MODERATOR:

Tison Campbell, U.S. Nuclear Regulatory Commission, Washington, DC

SPEAKERS:

Peter Bradford, Adjunct Professor, Vermont Law School, Peru, VT

Stephen G. Burns, General Counsel, U.S. Nuclear Regulatory Commission, Rockville, MD

Ellen Ginsberg, Vice President, General Counsel, and Secretary, Nuclear Energy Institute, Washington, DC

10:00 a.m. – 10:30 a.m.

Networking Break

White River Foyer

Sponsored by Silver Level Sponsors

10:30 a.m. – 12:00 p.m.

Concurrent CLE Sessions

• Climate Change Litigation after *American Electric Power Co. v. Connecticut*

White River IJ

On June 20, 2011, the U.S. Supreme Court decided the closely watched case of *American Electric Power Co. v. Connecticut* ("AEP"), in which several states, the City of New York, and several land trust organizations sued the nation's five largest fossil-fuel-burning electric utility companies to reduce their emissions of greenhouse gases. Plaintiffs argued that these emissions constitute a public nuisance under federal common law. The Supreme Court rejected this claim, reasoning that the Clean Air Act, when coupled with the Environmental Protection Agency's (EPA) authority and the actions EPA has taken to regulate greenhouse gas emissions, displaces federal common law nuisance causes of action for injunctive action addressing climate change. With its cornucopian issues extraordinaire—separation of powers, federalism, standing, displacement, political question, tort, and prudence—this case has something for nearly all legal tastes, temperaments, and talents. This panel will discuss the implications of this important decision going forward.

MODERATOR:

James R. May, Professor of Law, Co-Director, Environmental Law Center, Widener University Law School, Wilmington, DE

SPEAKERS:

Thomas M. Fisher, Solicitor General, State of Indiana, Indianapolis, IN

Machelle Lee Hall, F. Gerald Maples, P.A., New Orleans, LA

Karl Moor, Vice President and Associate General Counsel, Southern Company Services, Atlanta, GA

• E-Waste and Beyond: How Far Will and Should Product Stewardship Go?

White River GH

Recent years have seen a dramatic change in how solid waste and recyclable materials are managed. States are adopting "manufacturer responsibility" or "product stewardship" legislation that shifts the costs of managing solid waste/recyclable materials (such as computers and cathode ray tubes) from the end user to the manufacturer. Some states are seeking to extend the same product stewardship approaches to other materials, such as compact fluorescent lights, pharmaceuticals, and packaging materials. A panel will examine different approaches to product stewardship and their efficacy for different types of wastes. Questions to be considered include: How will these approaches impact businesses, customers, retailers, and recyclers; are the approaches appropriate for managing various types of materials; does the federal government have a role in ensuring national uniformity; and is there a point where we might go too far in pursuing product stewardship?

MODERATOR:

Linda Tsang, Beveridge & Diamond, P.C., Washington, DC

SPEAKERS:

Garth T. Hickle, *Product Stewardship Team Leader, Minnesota Pollution Control Agency, St. Paul, MN*

Chaz Miller, *Director, State Programs, National Solid Wastes Management Association (NSWMA), Washington, DC*

Mike Watson, *Director of Compliance, Dell Inc., Round Rock, TX*

• **The Question of Species Recovery Under the Endangered Species Act: To Be or Not to Be?**

White River AB

The question of what “recovery” means under the federal Endangered Species Act (ESA) and what its role is in several of the key decisions under the act has become a pressing issue. This session will present an interdisciplinary analysis of the biological and legal aspects of recovery. It will discuss whether a species “recovered” if it no longer exists in a “significant portion” of its historic range. Under Section 4 of the ESA, should recovery plans exert more influence over delisting a species as recovered? Is recovery a mandatory component of consultation on federal actions under Section 7(a)(2)? Also to be considered is whether Section 10 of the act allows non-federal entities to obtain “incidental permits” when they develop a Habitat Conservation Plan. Must these plans promote recovery of listed species?

MODERATOR:

Dale Goble, *Professor, University of Idaho Law, Moscow, ID*

SPEAKERS:

Dawn McIntosh, *Meyers Nave Riback Silver & Wilson, Los Angeles, CA*

Pat Parenteau, *Senior Counsel to the Environmental and Natural Resources Law Clinic and Professor of Law, Vermont Law School, South Royalton, VT*

Jason C. Rylander, *Defenders of Wildlife, Washington, DC*

• **So You Want to be a Mediator: Pathways to Becoming an Alternative Dispute Resolution Professional**

White River CD

Alternative dispute resolution (ADR) professionals are often asked how one becomes accredited or otherwise develops a practice as an ADR provider. A panel of experienced environmental ADR professionals will discuss the pathways and barriers to developing such a practice. They will draw from a deep reservoir of experience to answer questions such as: How did they develop a practice? How can one develop an ADR practice today? What training is necessary to become an effective mediator? What experience and credentials are important when clients and counsel are looking for an ADR professional? What do clients and counsel consider when contemplating the use of ADR in resolving a case? How does ADR look from the participants’ perspectives—do they see future growth in the use of ADR?

MODERATOR:

Daniel Preston Dozier, *Press, Potter & Dozier, LLC, Bethesda, MD*

SPEAKERS:

David C. Batson, *Senior ADR Specialist, U.S. Environmental Protection Agency, Washington, DC*

John F. Gullace, *Manko, Gold, Katcher & Fox, LLP, Bala Cynwyd, PA*

Kathleen M. Whitby, *Spencer Fane Britt & Browne LLP, Kansas City, MO*

12:00 p.m. – 12:30 p.m.

Luncheon

White River Foyer

Grab your lunch from the buffet and select a Technical Roundtable presentation. Beverages are located in the Technical Roundtable meeting rooms.

12:30 p.m. – 1:30 p.m.

Technical Roundtables

White River Foyer

These roundtables offer the opportunity to learn something new from some of the nation’s top environmental consultants and service providers. You will be able to listen to two roundtable presentations of your choice.

- **AlterEcho**—Fracking: What’s the Fuss? Weighing Risk Is Key in Complex Gas Exploration Efforts

White River AB

- **BNA**—Low Impact Development vs. Smart Growth: Navigating the Changing Tide of Water Law and Policy in an Urban Environment

White River CD

- **de maximis, inc.**—Documents, Data, and Dollars: Project Management Fundamentals

Room 101/102

- **Geosyntec Consultants**—Managing Contaminated Sediments: How to Keep Your Client from Getting Stuck in the Mud

Room 103/104

1:30 p.m. – 3:00 p.m.

Concurrent CLE Sessions

- **Social Cost of Carbon**

White River IJ

Presidents since Ronald Reagan have required that significant rules issued by the federal government be accompanied through their intra-governmental reviews by a cost-benefit analysis. The social cost of carbon (SCC) estimates the benefits part of a cost-benefit analysis. In early 2010, the Obama administration, through an interagency working group (including the U.S. Environmental Protection Agency and the U.S. Department of Energy), formulated a standardized approach to estimating the SCC for rules that would regulate carbon dioxide. This price calculation, aimed at limiting greenhouse gas emissions and meant to bring consistency across agencies, has proved to be a challenging endeavor. A panel will discuss the various steps in calculating the SCC, the weaknesses and strengths of those calculations, and how they are used to inform climate policy. They will also discuss some limitations that the special nature of climate change policy imposes on cost-benefit analysis and the SCC.

Program Schedule

MODERATOR:

Dianne Callan, *Independent Counsel, Green Tech Legal, Watertown, PA*

SPEAKERS:

Daniel H. Cole, *Professor of Law, Maurer School of Law, Indiana University, Bloomington, IN*

Ruth Bell Greenspan, *Senior Fellow, World Resources Institute (WRI) and Public Policy Scholar, Woodrow Wilson International Center for Scholars (WWC), Washington, DC*

Karl Hausker, *Vice President, ICF International, Washington, DC*

• Making Products Greener: What is the Lawyer's Role?

White River GH

Product manufacturers are challenged today as never before. Materials selection for consumer products invites a dizzying range of considerations—do they contain hormone disruptors, carcinogens, or PBTs? What toxicogenomic biomarkers might make the product the next celebrity tort case? What labeling requirements apply? What are the implications of genetic variations among the demographic to which the product is to be marketed? These considerations, in turn, invite legal, marketing, and ethical issues that go well beyond questions of core compliance with the law. What exactly is the lawyer's role? Given the global complexity of the issues and the high stakes involved, what must a lawyer do to remain professionally competent, socially aware, and scientifically proficient? This session will explore these thorny questions, not to resolve them as much as to flag them, and to urge lawyers to remain vigilant in recognizing the constantly shifting demands on them as professionals.

MODERATOR:

Charles L. Franklin, *Akin Gump Strauss Hauer & Feld LLP, Washington, DC*

SPEAKERS:

Lynn L. Bergeson, *Bergeson & Campbell, PC, Washington, DC*

Bob W. Hamilton, *Regulatory Policy Director, Amway/Access Business Group, Ada, MI*

Joe W. "Chip" Pitts, III, *Professor, Stanford Law School, Stanford, CA*

• Doing a Renewable Energy Project on an Indian Reservation: Top Ten Myths

White River AB

There are many myths surrounding doing business on an Indian reservation that serve to impair renewable energy development on tribal lands. A panel of professionals from both the tribal and developer perspectives will disclaim the top ten myths about doing a renewable energy project on an Indian reservation and instead present the realities on critical topics including: applicable regulatory laws, taxation of developer activities, dealing with tribes as governments, leases and rights-of-way within Indian country, contracting with tribes, and project water and other resource usage and supply. The panel will also discuss how brownfield sites located on reservations across the country could be redeveloped with renewable energy facilities for a "win-win" solution for all stakeholders, as the redevelopment of brownfield sites into new energy

facilities would not only provide a source of clean energy for the utility and customers, but could also be a source of economic development on the reservation.

MODERATOR:

Donald M. Clary, *Law Offices of Donald Clary, Pasadena, CA*

SPEAKERS:

Kimberly E. Craven, *Senior Project Leader, National Renewable Energy Laboratory, Golden, CO*

Douglas C. MacCourt, *Ater Wynne LLP, Portland, OR*

Pilar Thomas, *Deputy Director, Office of Indian Energy and Policy and Programs, U.S. Department of Energy, Washington, DC*

• How to Keep the Lights On: Is NEPA Up to the Challenge?

White River CD

The National Environmental Policy Act (NEPA) has played a central role for forty years—and should continue to do so—in setting energy policies that balance new information that approaches the limits of scientific knowledge and technology, with current needs and future policy goals. This session will provide an overview of NEPA and the Programmatic Environmental Impact Statement (EIS) process. In addition, a panel of NEPA expert practitioners will share insights on what initiatives and innovations are being adopted or considered to improve the NEPA programmatic EIS process and, effectively, to establish energy policy priorities, review complex scientific issues and regulatory alternatives, and establish regulatory programs that meet energy policy goals. They will focus on the application of programmatic EIS process to renewable energy projects.

MODERATOR:

Irma S. Russell, *2011-2012 Section Chair, Dean and Professor, University of Montana School of Law, Missoula, MT*

SPEAKERS:

Ted Boling, *Deputy Solicitor, U.S. Department of the Interior, Washington, DC*

Nada Wolff Culver, *Senior Counsel and Director, BLM Action Center, The Wilderness Society, Denver, CO*

Janice M. Schneider, *Latham & Watkins LLP, Washington, DC*

3:00 p.m. – 3:30 p.m.

Networking Break

White River Foyer

Sponsored by Silver Level Sponsors

3:30 p.m. – 5:00 p.m.

Concurrent CLE Sessions

• Navigating the Emerging National and International Patchwork of Biomass Legislation and Regulation

White River IJ

For a variety of reasons including national security, climate change, and sustainability, interest in non-fossil fuels is building at a tremendous pace. Given the increasing focus on alternate energy sources like biomass, agricultural producers, electricity suppliers, fuel refiners, and potential investors require counsel

who can navigate the disjointed, emerging patchwork of legislation, regulation, and litigation surrounding this potential energy alternative, both in the U.S. and European bioenergy markets. Accordingly, this panel will provide the latest, leading legal and policy developments in the regulation of renewable biomass from both a U.S. and EU perspective, including both greenhouse gas rules and sustainability provisions.

MODERATOR:

Jody M. Endres, *Senior Regulatory Associate, Department of Natural Resources, and Environmental Sciences, The University of Illinois Energy Biosciences Institute, University of Illinois, Urbana, IL*

SPEAKERS:

Barbara J. Bramble, *Senior Advisor, International Climate and Energy Program, National Wildlife Federation, Washington, DC*

Stephen Kaffka, *Director California Biomass Collaborative, Extension Specialist Department of Plant Sciences, University of California, Davis, CA*

David D. Streicker, *Polsinelli Shughart PC, Chicago, IL*

• **When the Walls Come Tumbling Down—
The Impact of Coal Ash Regulation
and Emerging Litigation**

White River GH

When the Kingston, Tennessee, coal ash impoundment burst in December 2008, more than just the landscape over the Emory River had changed. The U.S. Environmental Protection Agency (EPA) ramped up its review and evaluation of coal ash as a solid waste and threw the thirty-year process into high gear, spurred on by a new presidential administration focused on environmental issues like none over the prior four decades. What has followed will affect regulation, litigation, and administrative law for years to come. This session will provide an overview of EPA's June 2010 proposed rules to regulate coal combustion products. A panel will discuss EPA's two alternate regulatory frameworks, the potential costs of compliance with the proposed regulations, and how these regulations could affect environmental activities for energy companies going forward. Litigation involving coal combustion products and topics related to defending or pursuing such claims will also be discussed.

MODERATOR:

Kim Ferraro, *Legal Environmental Aid Foundation, Inc., Valparaiso, IN*

SPEAKERS:

Steven T. Moon, *Rogers Townsend & Thomas, PC, Columbia, SC*

Jeff Stant, *Director, Coal Combustion Waste Initiative, Environmental Integrity Project, Indianapolis, IN*

John N. Ward, *Chairman, Citizens for Recycling First, Denver, CO*

• **How the United States, Canada, and Mexico Are (and Aren't) Cooperating to Address a New Era of North American Environmental Issues**

White River AB

In recent years, cross-border North American environmental issues have grown in scope, complexity, and profile. With the lowering of trade barriers under

the North American Free Trade Agreement, and the increasing potential for the environmental laws of one nation to cross the border into another, the concerns and debates relating to such issues are a key focus area for the U.S., Canadian, and Mexican governments. Such cross-border issues are as diverse as climate change, energy development, oil sands extraction, low carbon fuel standards, pipelines and infrastructure, extraterritoriality of domestic laws, invasive species, inconsistent environmental standards, imposition of environmental standards at the border, enforcement against imported products, and constitutionality of state environmental laws with international reach. A panel will discuss the cutting-edge issues emerging at the border and what the governments are and are not doing right to address them.

MODERATOR:

Dennis E. Mahony, *Torjys LLP, Toronto, ON, Canada*

SPEAKERS:

Kathleen Roussel, *Senior General Counsel and Executive Director, Environment Canada Legal Services, Justice Canada, Gatineau, QC, Canada*

Leopoldo Burguete Stanek, *Gonzalez Calvillo SC, Lomas de Chapultepec, Mexico City, Mexico*

Carol Ann Siciliano, *Associate General Counsel, U.S. Environmental Protection Agency, Washington, DC*

• **Emissions Control Requirements and Impacts: EPA's Power Plant, Boiler, and Solid Waste Combustion Regulations under the Clean Air Act**

White River CD

The U.S. Environmental Protection Agency's (EPA's) emission control rulemaking activity continues to generate strong views among members of Congress and stakeholders as new requirements are developed and implemented for power plants, industrial boilers, incinerators, and other facilities. Collectively, new pollution control obligations will apply to more than 10,000 facilities and will achieve substantial emissions reductions. Successful litigation overturning prior regulations preceded many of these rules. Heightened concern regarding the effects of these new initiatives on electric reliability and the economy is certain to trigger even more litigation. This session will provide an update and perspectives on EPA's Clean Air Act initiatives including implications to public health and affected industries, legal challenges, and Congressional oversight.

MODERATOR:

Lisa Heinzerling, *Georgetown University Law Center, Washington, DC*

SPEAKERS:

Faith Bugel, *Senior Attorney, Environmental Law & Policy Center, Chicago, IL*

Janet McCabe, *Principal Deputy Assistant Administrator, Office of Air and Radiation, U.S. Environmental Protection Agency, Washington, DC*

Steven Meyers, *General Electric, Stamford, CT*

Program Schedule

5:15 p.m. – 6:15 p.m.

Committee Vice Chairs Working Groups

Committee vice chairs will meet with their peers who share the same committee leadership role: committee newsletters, membership, programs, public service, technology, and *The Year in Review*. Leadership responsibilities will be outlined and there will be time for questions and group discussion.

- **Committee Newsletters** Room 104
- **Membership** Room 103
- **Programs** Room 101
- **Public Service** Room 102
- **Technology** White River CD
- **The Year in Review** Room 107

5:15 p.m. – 6:15 p.m.

Committee Chairs Leadership Meeting

White River AB

Committee chairs will join the Section Chair and other leaders to discuss strategies for the year. This is an excellent opportunity to meet other Section committee chairs and plan cooperative initiatives.

7:00 p.m. – 10:30 p.m.

Dinner at the NCAA Hall of Champions

700 W. Washington St.

(Located across the street from the JW Marriott)

Put on your favorite team's jersey and join your fellow meeting attendees for a casual evening of food, drink, and sports at the world-renowned NCAA Hall of Champions. You will have the opportunity to practice your favorite sports at the Hall's interactive exhibits—learn how to ski, play virtual golf, or play real basketball on the Hall's half-size court!

Friday, October 14, 2011

7:00 a.m. – 6:00 p.m.

Speaker Ready Room

Room 108

7:00 a.m. – 8:00 a.m.

Breakfast

White River Foyer

8:00 a.m. – 8:15 a.m.

2011 ABA Award for Excellence in Environmental, Energy, and Resources Stewardship

White River E

The award will be presented to James M. (Jim) Redwine and David R. Berz for their work with Motors Liquidation Company, formerly General Motors Corporation, in reaching a settlement with the U.S. government, numerous state governments and the St. Regis Mohawk Tribe in connection with

the environmental remediation of General Motors' old plant sites and other property. Redwine currently serves as senior environmental counsel at RACER Trust in Baton Rouge, Louisiana. Berz is a partner with Weil Gotshal & Manges in Washington, DC.

8:15 a.m. – 10:00 a.m.

Plenary Session: The New Environmental Landscape: Legislation, Regulation, and Enforcement Collide

White River E

This session examines the environmental protection landscape and the approaches being taken by various institutional actors, focusing on the new Congressional majority as it draws to a close in its first year and the U.S. Environmental Protection Agency (EPA) as it passes the mid-point of the Obama administration's term. This will include a review of EPA's enforcement efforts and the ways in which legislative, regulatory, and enforcement efforts are supporting and conflicting with each other, with particular emphasis on greenhouse gas regulation and environmental enforcement.

MODERATOR:

David M. Uhlmann, *Director, Environmental Law and Policy Program, University of Michigan School of Law, Ann Arbor, MI*

SPEAKERS:

David T. Buentge, Jr., *Sidley Austin LLP, Washington, DC*

John M. Cassady, *Senior Principal, Legislative Advocacy, National Rural Electric Cooperative Association (NRECA), Arlington, VA*

Cynthia Giles, *Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, Washington, DC*

10:00 a.m. – 10:30 a.m.

Networking Break

White River Foyer

Sponsored by Silver Level Sponsors

10:30 a.m. – 12:00 p.m.

Concurrent CLE Sessions

- **Promoting Clean Energy at the State Level: The Role and Relevance of Feed-In Tariffs**

White River JJ

States face many challenges in attracting—and sustaining—the development of clean sources of distributed electricity generation. One tool available to states seeking to increase such development is the “feed-in tariff.” A feed-in tariff can be established under state law as a standard offer to purchase the output of clean generators that is delivered to the grid from both established and emerging clean sources of power supply. Feed-in tariffs have triggered some controversy in the past year, as the seams between state and federal jurisdiction are being tested and pushed. A panel will discuss the current jurisdictional issues and status of feed-in tariffs, their place in the power supply portfolio of regulated public utilities, and their value in attracting and incenting investment in new and emerging clean generating technologies.

MODERATOR:

Frederick Jackson Stoddard, *Manatt, Phelps & Phillips, San Francisco, CA*

SPEAKERS:

Scott Hempling, *Executive Director, National Regulatory Research Institute, Silver Spring, MD*

Jennifer L. Key, *Steptoe & Johnson LLP, Washington, DC*

Frank Lindh, *General Counsel, California Public Utilities Commission, San Francisco, CA*

• **Hydraulic Fracturing: The Legal Landscape**

White River GH

The use of hydraulic fracturing to enhance recovery of natural gas in shale formations has expanded dramatically. This technology, which has great potential to increase domestic supplies of energy, has raised environmental concerns including possible hazardous air emissions, harmful effects on drinking water, and substantial water use, and even concerns about possibly triggering earthquakes. Federal and state environmental regulatory agencies are paying greater attention to hydraulic fracturing but the enforcement and regulatory landscape is in a state of flux. A panel will share a variety of perspectives on this technology and discuss the evolving federal and state regulatory approaches to address the potential environmental impacts.

MODERATOR:

Carrick Brooke-Davidson, *Guida, Slavish & Flores, PC, Austin, TX*

SPEAKERS:

Bernadette Rappold, *Director, Special Litigation and Projects Division, Office of Civil Enforcement, U.S. Environmental Protection Agency, Washington, DC*

Amy Sinden, *Professor, Temple University School of Law, Philadelphia, PA*

Stephanie R. Timmermeyer, *Chesapeake Energy, Oklahoma City, OK*

• **Legal Currents: The U.S. Supreme Court and Inter-State Water Disputes**

White River AB

Water does not abide by state boundaries, challenging a legal system which, for purposes of water, commonly does. A panel will analyze how inter-state water disputes are resolved through that rarest of judicial animals, the U.S. Supreme Court's original jurisdiction. They will explore a host of water cases that have found their way to the Court, including an allocation dispute between North Carolina and South Carolina, a dispute argued this term between Wyoming and Montana concerning the impact of increased water efficiency on agricultural runoff, an effort by Michigan to obtain a preliminary injunction against Illinois with respect to the advance of Asian carp into Lake Michigan, and a dispute between Utah and Nevada that threatens to draw the Court's attention to allocation of scarce groundwater resources, a significant source of potable water in the arid West.

MODERATOR:

John B. Draper, *Montgomery & Andrews, PA, Santa Fe, NM*

SPEAKERS:

Lawrence J. MacDonnell, *University of Wyoming, Laramie, WY*

Kristin Linsley Myles, *Munger, Tolles & Olson LLP, San Francisco, CA*

Stuart A. Raphael, *Hunton & Williams LLP, McLean, VA*

• **Reforming Chemicals Regulation: Balancing Science and Fear in the Reform of the Toxic Substances Control Act**

White River CD

An estimated 65,000 chemicals have been manufactured for commercial use and people come into contact with these chemicals at an ever increasing rate. Some of these chemicals can have harmful effects on health and the environment that often go unnoticed until the chemical has been widely used for many years. Examples include endocrine disruptors such as bisphenol A and triclosan. This problem is exacerbated by limitations in the Toxic Substances Control Act (TSCA) of 1976, which does not accommodate either the current state of the science nor the need for response to public reaction. Current recommendations for TSCA reform include decreased product confidentiality, increased information sharing, and evaluation of aggregate/lifecycle exposures. A panel will discuss TSCA reform recommendations and the challenges faced by industry and regulators in balancing science and public perceptions of safety in light of the lessons learned from the issue of endocrine disruption.

MODERATOR:

Kathleen Neuber, *Senior Scientist, Integral Consulting Inc., Annapolis, MD*

SPEAKERS:

Julia A. Hatcher, *Latham & Watkins LLP, Washington, DC*

Steve Owens, *Assistant Administrator, U.S. Environmental Protection Agency, Washington, DC*

Michael P. Walls, *Vice President, American Chemistry Council, Washington, DC*

12:00 p.m. – 1:30 p.m.

Committee Get-Together Luncheon

White River F

1:30 p.m. – 3:00 p.m.

Concurrent CLE Sessions

• **Real Estate Transactions in the New Economy: New Requirements, New Standards, and Climate Risks**

White River IJ

The practical reality of closing real estate transactions has changed. Lenders are imposing new environmental requirements on borrowers. Some states are requiring more or different financial assurance for participation in brownfield programs. At the same time, the insurance market continues to change rapidly, with constantly evolving underwriting procedures and more insurance companies providing environmental coverage. Industry standards related to real estate transactions are also changing. State and federal agencies are realizing that brownfield redevelopment is frequently synonymous with economic redevelopment and job growth, spurring interest in brownfields and the creation of new grant programs, the retooling of some existing grant

Program Schedule

programs, and the development of other incentives for brownfield developers. In addition, climate risks are now becoming a consideration in many real estate transactions. This session will provide the latest information for you to help clients finance, insure, and close their transactions.

MODERATOR:

Alan S. Miller, *International Finance Group, Washington, DC*

SPEAKERS:

Dennis M. Anderson, *Vice President, FM Global Research Campus, West Gloucester, RI*

Tina St. John Bryan, *Chief Environmental Risk Officer, Regions Bank, Birmingham, AL*

Pamela K. Elkow, *Robinson & Cole, LLP, Stamford, CT*

• Is It Really Toxic? How Would I Know?

White River GH

Many toxic pollutants cannot be detected by available methods. Conversely, the toxicity of many chemicals is unknown even when they can be detected, and regulators and dischargers alike agree that different chemicals combined in the same effluent can have unknown effects. In response to increased concern about the discharge of potentially harmful “emerging contaminants,” the U.S. Environmental Protection Agency (EPA) has attempted to convince states to promulgate “toxicity policies” that rely on the whole effluent toxicity or “WET” test to measure toxicity. Trouble is, critics say, the WET sampling protocol creates a sufficient percentage of “false positives,” so that no discharge subjected to WET testing over time can escape being labeled toxic. The panel will offer diverse perspectives on EPA’s direction to adopt this testing standard, the states’ responses, and the legal and policy questions that arise when the precautionary testing principle is seemingly at odds with observed phenomena.

MODERATOR:

Timothy Moore, *President, Risk Sciences, Rockvale, TN*

SPEAKERS:

Peggy Glass, *Principal & Executive Vice President, Alan Plummer Associates, Inc., Austin, TX*

Andrew Neuhart, *Colorado Department of Public Health and Environment, Denver, CO*

Melissa A. Thorne, *Downey Brand LLP, Sacramento, CA*

• Your Client, Your Project: What You Must Know about Greenhouse Gas Regulation

White River AB

In 2010, U.S. Environmental Protection Agency (EPA) achieved the completion of its initial actions to regulate greenhouse gas (GHG) emissions from mobile and stationary sources. Despite over eighty lawsuits filed by more than thirty-five petitioners, these rules are now being implemented, with full implementation scheduled to begin this July. In September 2011, all impacted entities and their lawyers faced impacts from these new regulatory programs. The panel will provide a quick update on the legal status of the EPA’s GHG regulations, and then focus primarily on lessons learned from this new layer of regulation, and implications for all environmental lawyers and their clients. Finally, the panel will provide an update on GHG litigation

and implications for other areas of practice such as transactions and disclosures.

MODERATOR:

Bernie Hawkins, *Nelson Mullins Riley & Scarborough LLP, Columbia, SC*

SPEAKERS:

Steven Dunn, *New Source Review Team Leader, Bureau of Air Management, Wisconsin Department of Natural Resources, Madison, WI*

Carl Edlund, *Director, Multimedia Planning and Permitting Division, Region 6, U.S. Environmental Protection Agency, Dallas, TX*

Sharon F. Rubalcava, *Alston & Bird LLP, Los Angeles, CA*

• Lessons from Chevron in Ecuador and the DBCP Litigation—Enforcement of Foreign Judgments in Environmental and Mass Torts

White River CD

Over the past decade, U.S. plaintiff lawyers have increasingly targeted multinational corporations for environmental and toxic torts allegedly arising from non-U.S. operations. Traditionally, the standard approach for a U.S. company sued for alleged foreign torts was a motion to dismiss on the grounds of forum non conveniens. But what used to be a safe path to avoiding litigation risk has turned into a morass, as certain plaintiff lawyers have discovered the opportunities of exploiting judicial systems in foreign countries through fraud, manipulation, and political influence. For defendants who have followed the forum non conveniens path, the battleground has shifted from the almost impossible task of defending the claims in foreign courts to a worldwide battle to prevent enforcement of multibillion dollar judgments. Our panel will share their first-hand experiences as academicians, private investigators, and outside counsel on how to best prepare corporate defendants to respond to this new world order.

MODERATOR:

Eric Lasker, *Hollingsworth LLP, Washington, DC*

SPEAKERS:

Montré Carodine, *Professor, University of Alabama School of Law, Tuscaloosa, AL*

Michael Crimmins, *Investigative Research, Inc., Denver, CO*

D. Ferguson McNeil, III, *Vinson & Elkins LLP, Houston, TX*

3:00 p.m. – 3:30 p.m.

Networking Break

White River Foyer

Sponsored by Silver Level Sponsors

3:30 p.m. – 5:00 p.m.

Ethics Session: Practical and Ethical Considerations for ALL Counsel in a New Environment for Legal Services

White River GH

Ethical standards can clash as never before with methods of delivering legal services and business

metrics for both lawyers and clients. The economic collapse of 2008 focused clients upon innovative ways of procuring legal services. Those same economic pressures incentivized law firms to become more creative in devising new legal services delivery models. Trends include fixed-fee pricing, bidding on portfolios of cases, so-called “convergence” initiatives that reduce the number of outside counsel serving a company, unbundled legal services, and outsourcing of legal services, including overseas. A panel will explore the practical and ethical implications of these trends and will impart insights into how corporate counsel, outside counsel, and government counsel can navigate the challenges of this new environment.

MODERATOR:

John C. Cruden, *President, Environmental Law Institute, Washington, DC*

SPEAKERS:

William D. Henderson, *Professor, Indiana University, Maurer School of Law, Bloomington, IN*

Lucian Pera, *Adams and Reese LLP, Memphis, TN*

5:30 p.m. – 6:30 p.m.

Speed Networking for Young Lawyers and Law Students

Room 101/102

You’ve probably heard of “Speed Dating,” but what about “Speed Networking”? Young lawyer and law student attendees will meet one-on-one with several seasoned environment, energy, and resources law practitioners over the course of an hour. This is the place to network and seek general advice from your colleagues and potential mentors and to discuss Section activities and initiatives that may be of interest.

6:30 p.m. – 7:30 p.m.

Local Flair Reception

White River F

Sponsored by Legal Leaders Sponsors

Experience a taste of Indianapolis with fellow meeting attendees, representatives from local law firms, and guests before heading out to dinner.

7:30 p.m.

Dinner on the Town

After the Local Flair Reception, Section Fall Meeting attendees and their guests take the opportunity to sample Indy’s dining venues together. Please check the message board in the meeting registration area for group sign-up sheets. This is an excellent way to meet people.

Saturday, October 15, 2011

8:00 a.m. – 9:00 a.m.

Breakfast

White River Foyer

9:00 a.m. – 10:30 a.m.

Litigation Workshop: Minnows, Monatawnee, and Blowhards Part 1

White River CD

Lawyers assisting clients in the development of renewable energy need to know how to identify and clear the hurdles between siting new source of power generation, constructing and operating it, and delivering power to the consumer. This two-part mock trial session will feature a fleet-footed team of veteran litigators demonstrating their nimbleness in the advocacy arena, clearing the hurdles of National Environmental Policy Act reviews, Endangered Species Act concerns, and the crossing at state, federal, and tribal lands. In our scenario, Blowhard Energy, in the wind-rich state of Albion, seeks to place high voltage transmission lines into the neighboring state of Xanadu. With the necessary permits, Blowhard can compete effectively in the electricity market given Xanadu’s high energy generation costs. Blowhard’s transmission lines will have to cross Monatawnee tribal land and the natural habitat of the loach minnow, a federally listed endangered species—factors contributing to an unenviable, but lucrative task ahead.

MODERATOR:

Scott J. Sachs, *Atkinson, Andelson, Loya, Ruud & Romo, Cerritos, CA*

SPEAKERS:

Willard R. Burns, *Burns Law Firm, LLC, Marianna, PA*

Anders Johnson, *Bonneville Power Administration, Vancouver, WA*

David Macgregor, *Post & Schell, Philadelphia, PA*

The Honorable Jane Magnus-Stinson, *U.S. District Court, Southern District of Indiana, Indianapolis, IN*

Donald R. Wharton, *Senior Attorney, Native American Rights Fund, Boulder, CO*

10:30 a.m. – 11:00 a.m.

Networking Break

White River Foyer

Sponsored by Silver Level Sponsors

11:00 a.m. – 12:30 p.m.

Litigation Workshop: Minnows, Monatawnee, and Blowhards Part 2

White River CD

12:30 p.m. – 2:00 p.m.

Lunch on Your Own

2:00 p.m. – 5:00 p.m.

Council Meeting

White River CD

5:30 p.m. – 6:30 p.m.

Section Chair’s Farewell Reception

Room 305/306

Don’t miss the opportunity to gather with your friends and colleagues at the last event of the 19th Section Fall Meeting.

Meeting Concludes

Save the Date!



The premier forum on environment, energy, and resources law.

The ABA Section of Environment, Energy, and Resources Law Summit

20th Section Fall Meeting

October 10–13, 2012
Hilton Austin
Austin, TX

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