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RENEWABLE ENERGY

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Features

Electric Transmission Infrastructure: A Key Piece of the Energy Puzzle

The Honorable John R. Norris and Jeffery S. Dennis

Perhaps no issue is more central to the nation's progress toward a clean energy system than the development of a robust electric transmission grid. The substantial changes and challenges facing our electric industry squarely implicate transmission. These challenges appear daunting but not insurmountable. Choices need to be made and action needs to be taken sooner rather than later if we are to manage a rapidly changing electric industry as efficiently and as cost-effectively as possible.

Energy Efficiency and Conservation: New Legal Tools and Opportunities

John C. Dernbach, Robert B. McKinstry, Jr., and Darin Lowder

Many new and ambitious energy-efficiency and conservation laws are being enacted at all levels of government—and with greater financial incentives than provided previously. These innovations are intended to overcome or minimize market barriers, such as principal-agent problems, information and transaction costs, high internal discount rates, and up-front capital needs that discourage cost-saving investments. Innovations such as public-private partnerships also require significant legal input and creativity for the client to reap the often remarkably large energy and cost savings. This article reviews a range of these tools, especially financial legal mechanisms, that could help significantly reduce U.S. energy consumption.

Green Energy Tax Policies: State and Federal Tax Incentives for Renewable Energy and Energy Efficiency

Jerome L. Garciano

This article takes a broad look at the tax incentives for renewable energy and energy efficiency at the federal and state levels. This article also surveys state programs and analyzes popular policy objectives and trends. Current and future challenges to the efficacy of these tax incentives are described, as well as some suggested general policy changes.

State Renewable Portfolio Standards and the Commerce Clause

Stephen C. Braverman

Encouraged by favorable tax treatment at the federal level and the enactment of mandatory renewable portfolio standards (RPS) by many states, the renewable energy industry has grown from being virtually nonexistent in 2000 to an important producer of electricity today. This growth is expected to accelerate. This article focuses on a common requirement in state RPS statutes—the specific location of the generating facilities. This is where energy policy objectives meet the goal of economic development. It is also where state legislatures' desire to promote in-state development may conflict with the principles that states may not discriminate against interstate commerce under the Commerce Clause of the United States Constitution or enact regulations that unconstitutionally burden interstate commerce.

Commercial-Scale Renewable Energy Projects on Tribal Lands

Donald M. Clary

This article addresses the current development of renewable energy resources on Native American lands. Why have commercial-scale renewable energy projects not been developed as aggressively on reservations as other locations? Are there reasons to believe that the tide may soon turn and that there may be a trend toward the development of new projects on tribal lands? While these and similar questions are difficult to answer definitively, recent developments indicate positive momentum building in this area and enhanced prospects for the future of renewable energy development on tribal lands. Obstacles remain, however, and full realization of the potential will require a better understanding of these impediments and of the efforts being undertaken to address them.

Offshore Wind Energy in the United States: A Legal and Policy Patchwork

Katherine A. Roek

Growing federal and state interest in development of the U.S. offshore wind industry has resulted in a patchwork of state and federal regulatory regimes and incentives. Regulatory certainty is crucial if the industry is to thrive. As federal and state agency processes evolve, in tandem with one another, a more predictable, but highly complex, regulatory framework for offshore wind is likely to emerge.

Emulating Europe: Setting a Course for Offshore Renewable Energy

Benjamin Nussdorf

After a nine-year battle between local, state, and federal regulators against private interests and Native American tribes who claimed to be affected by the development, Cape Wind gained approval by the U.S. Department of the Interior to become the first U.S. offshore wind farm. The approval process for Cape Wind is starkly contrasted with the experience of similar wind farms in the European Union, where more than 830 turbines in thirty-nine wind farms currently generate more than 2,000 megawatts of electricity. These contrasting examples show how far behind the United States has fallen in comparison to Europe with respect to renewable energy. This article aims to discuss various methods by which the United States can catch up.

The New Federal Renewable Fuel Standard Program Rules and Potential Obstacles for Implementation

Angela R. Morrison

While the new federal Renewable Fuel Standard Program (RFS2) was intended by Congress to result in a significant increase in renewable biofuel usage (ethanol and biodiesel), case-by-case greenhouse gas (GHG) lifecycle assessments will be needed for new feedstocks and fuel "pathways." EPA's new rules implementing the 2007 Energy Independence and Security Act address only existing facilities and traditional feedstocks as "renewable" fuels for purposes of this program. Newer, more innovative feedstocks and fuel pathways must undergo a petitioning process with full GHG lifecycle analyses before being considered "renewable" and eligible to be counted toward the ambitious 36 billion gallon per year (BGY) goal to be reached by the year 2022 (a significant increase above the current 13 BGY of ethanol currently being produced). This article discusses what assessments have been performed and the type of information needed for future assessments which will be critical for Congress' goals to be achieved. This article also discusses EPA's feedstock production requirements that help insure renewable sources and sustainable practices are used for producing the renewable biofuels.

Water Requirements for Utility-Scale Concentrating Solar Power Facilities: Are We Robbing Peter to Pay Paul?

L. William Staudenmaier

As our nation moves forward with plans to significantly expand renewable energy resources, we must be mindful of the potential adverse effects on our water resources. This dilemma should prompt careful consideration of the best approach to developing concentrating solar power (CSP) facilities. In all likelihood, one size will not fit all. For example, a dry-cooled CSP facility may be viable in a location with moderate summer temperatures, while a hybrid or even a wet-cooled facility may be the best choice in the hottest parts of the desert Southwest. Planning a conventional CSP facility should involve careful evaluation of alternative cooling technologies, such as dry or hybrid cooling. If engineering or economic considerations make these options problematic, alternative water supplies (such as treated wastewater or brackish groundwater) should be evaluated when planning a wet-cooled CSP facility.

The U.S. Electrical Grid: Surviving Cyber-Terrorism and Solar Flares

Robert J. Lambrechts

The grid has evolved from its simple local connections of about a century ago to the current “smart grid” configuration. There is growing concern, however, over the grid’s vulnerability to attack as well as damage through natural phenomenon. The article provides a brief history of the legal and regulatory evolution of the grid and the inherent vulnerabilities that have precipitated that evolution. It explores the efforts of the federal government to improve security of the grid through the advancement of critical infrastructure protocols and concludes by considering the impact a major solar storm could have on the grid’s ability to operate.

Departments

Vantage Point

Interview: Cathy Zoi

Insights:

Lender Liability for Clean Water Compliance

Patrick J. Paul and Christopher P. Colyer

Foreclosing lenders increasingly face environmental liabilities under the Clean Water Act arising from the compliance status foreclosed property. Although a small minority of states has started to address this issue, the overwhelming majority of states and EPA have failed to take measures warning lenders of this potential risk. Failure to take proactive steps to prevent or mitigate this liability can expose lenders and their counsel to substantial fines, civil claims, and criminal action. Lenders and their attorneys need to ensure that extensive due diligence occurs prior to foreclosing on a property to ensure that lenders do not become liable for the previous owner’s environmental noncompliance.

Park Service Free Speech

Craig T. Donovan

On August 6, 2010, the United States Court of Appeals for the D.C. Circuit reversed a decision of the federal district court, finding that the National Park Service’s (NPS) regulations for general demonstration and literature distribution under 36 C.F.R. §§ 2.51 and 2.52 were unconstitutional. The Court struck down the regulations in their entirety because the regulations required permits for small groups and individual demonstrations and leafleting in NPS-designated “free speech” areas. This decision may impact other federal land management agencies and their regulations concerning leaflet distribution and public demonstration activities on federal or public lands.

Sources of European Environmental Law

Isabelle Laborde

The European Union (EU) has been a major source of environmental law for the Member States over the last forty years. Although some legal instruments of EU law are directly applicable, directives, the principal source of EU environmental law, must be transposed into domestic law thus giving the Member States some scope for discretion in their implementation. Noncompliance has always been one of the main weaknesses of EU environmental law, although it is now the subject of greater attention.

Firms Using Sustainability for Long-Term Success

William R. Blackburn

Leading law firms and some smaller firms, too, are using values-driven management focused on sustainability—the so-called triple bottom line of social, economic, and environmental responsibility—to build and sustain their practices over the long term. They are finding ways to use this concept to align their businesses with a growing number of clients and potential clients who are also embracing it. Fourteen firms are using the American Bar Association Section of Environment, Energy, and Resources’ *Sustainability Framework for Law Organizations*, a model policy and implementation tool supported by the influential CERES coalition, to summarize and communicate their sustainability approach, often in response to client requests.

Resource Property Rights

Laurie Ristino

This article explores the relationship of property law to resources; how the thoughtful assignment of rights in resources is necessary to manage resources for the public good; and how this assignment evolves over time to meet society's changing needs. As examples, the article discusses emerging demand for carbon sequestration and renewable energy adoption and the related need for foundational legal frameworks as essential to support such policies.

The Sage Grouse Rebellion

Elizabeth A. Schulte

This article provides an overview of the administrative history and some of the judicial proceedings related to the listing of the greater sage grouse under the Endangered Species Act (ESA). The article also discusses the mounting tension between energy development projects and conservation efforts to protect declining populations of sage grouse and briefly considers various state and federal efforts currently underway to address these issues.

Literary Resources

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