Committee Newsletter | Fall 2016

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MESSAGE FROM THE CHAIR

The ABA YLD EER Committee strives to keep our members up-to-date on interesting issues related to the environment, energy, and natural resources. With this issue of the newsletter, we would like to introduce ourselves, Alexandra Campbell-Ferrari and Christina Reichert, as your new Chairs, and Vickie Adams, Adam Orr, Ravay Smith, and Suzanne Sutherland, as your new Vice-Chairs. We are excited to take on these positions and look forward to engaging with Committee Members.

As always, our newsletter depends on contributions from our members. We would love to collaborate with you on newsletters, events, and resolution proposals. Please contact Alexandra at acampbellferrari@gmail.com or Christina at christina.reichert@duke.edu if you want to be more involved.

We will also be hosting monthly committee calls every third Wednesday of the month and impromptu “café calls,” where one of us will be available for more informal, in-person conversations about committee activities and developments in our field. We would love to have you join these calls so we can continue to build a strong community of young environmental, energy, and resources lawyers.

We look forward to hearing from you and hope you enjoy our Fall Issue.

ARTICLES

ENVIRONMENTAL JUSTICE IN 2016: THE TENSION BETWEEN EXECUTIVE ORDER 12898 AND TITLE VI
By: Ravay Smith

It has been twenty-two years since the phrase “environmental justice”, or “EJ”, was attached to the adverse human health and environmental challenges that plague minority and low-income communities. The United States Environmental Protection Agency (EPA) defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” Many organizations, committees, and programs have been developed to address EJ issues and to help facilitate the dialogue. However, the primary mechanisms through which EJ is addressed in the law remain the same.

In 1994, former President William J. Clinton issued Executive Order (EO) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations. EO 12898 is the directive for the manner in which federal agencies should address EJ issues within their control. Specifically, the EO directed federal agencies to develop strategies to address various EJ issues that fell under their purview. This more expansive approach to EJ provided by EO 12898 helped to give lawmakers and policy influencers a broader view of issues outside of the specific context of “environmental racism” that was often the term used in prior years.

EJ encompasses environmental racism issues and typically utilizes Title VI of the Civil Rights Act of 1964 as the mechanism to address them. The presidential memorandum that accompanied EO 12898 used the Title VI statute as the legal foundation to “ensure that all programs or activities receiving Federal financial assistance that affect human health or the environment do not directly, or through contractual or other arrangements, use criteria, methods, or practices that discriminate on the basis of

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race, color, or national origin.”

Through Title VI, the EPA is able to prohibit recipients of federal funds from discriminating on the basis of race, color, or national origin.

Environmental Justice and Current Events

Although EJ is not widely known or understood outside of the environmental professional realm, recent issues are hitting home for everyday people. For example, in 2015 a national spotlight was cast on lead contamination after the water crisis in Flint, Michigan. In 2011, state officials made an executive decision to switch the city’s water source from Lake Huron to the notoriously contaminated Flint River in an effort to save money and resources. During that time, the highly corrosive water was funneled through old lead pipes. By late 2014, the entire water supply headed to Flint’s population was heavily contaminated with lead.

For decades, federal, state, and local governments have enacted policies to combat the presence of lead in drinking water. Nearly every state in the country has a program that was formed in accordance with federal lead laws, such as the Toxic Substances Control Act (TSCA), Residential Lead-Based Paint Hazard Reduction Act of 1992 (Title X), Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Resource Conservation and Recovery Act (RCRA), and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Although the Center for Disease Control has deemed lead poisoning in children “the most preventable environmental disease”, children in urban and low socioeconomic communities continue to fall victim to elevated lead levels today, as they did in the early 1990’s.

Unfortunately, Flint is not the only community in the United States with a significant lead contamination problem. In a March 2016 article, USA Today reported that over 2,000 water systems in the country have consistently shown excessive lead contamination levels since 2012. States such as Texas, Pennsylvania, New York and California have systems that funnel water to public schools that exceed the EPA’s 15 parts per billion safety level by as much as 45 times that amount. This alarming rate of contamination is critical to children’s cognitive development, attention span, and behavioral development. New studies have also shown that lead exposure increases kidney problems, high blood pressure, and cardiovascular issues in adults.

Moving Forward: Proactive Over Reactive Legislation

The problem with lead contamination is evident but the manner in which it will be remedied and eradicated remains a constant issue. As citizens adversely affected by these crises have filed civil suits against state and local government officials, a major issue remains: What substantial action will the federal government take in preventing this problem?

The federal government appropriates funds through various avenues to the states to implement and facilitate environmental programs. However, the manner in which the federal government, namely

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4 42 U.S.C § 2000d.
EPA, addresses issues such as lead contamination determines the corresponding action that takes place from the top down.

A vast majority of the lead contaminated water problems in the United States take place in urban cities such as Flint, Baltimore, and Washington D.C. These cities are home to large minority and low-income populations, and it is their children that most often suffer the effects of lead contamination. Often inhabitants of areas of low-incomes feel negative environmental effects because they cannot afford defenses against them. Currently, states are charged with the responsibility of reporting and remediating lead and toxic contamination issues, often with the help of EPA through CERCLA, or “Superfund.” However, the lackadaisical approach that states have taken to rectify the lead crisis could be changed substantially depending on the mechanism the federal government utilizes when addressing the issues.

As noted above, EO 12898 provides the federal government with a directive to develop strategies to address “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies.” Although the functional definition of EJ through EO 12898 promotes the implementation of strategies to remedy the problem, it arguably falls short of promoting the requisite action necessary for eradication. Additionally, EO 12898 is not a law. While it has been the influencing force behind some notable laws that address EJ issues, none of them directly address the race, national origin, or income aspect of the problem as was specifically intended by EO 12898.

The alternative legal mechanism available to address lead contamination and the EJ implications that flow from the issue is Title VI of the Civil Rights Act. At first blush, using Title VI, which contrary to EO 12898 is actual legislation, seems like the favorable option. However, Title VI only permits claims of discrimination on the basis of race. This fact coupled with the United States Supreme Court’s slow and steady dismantling of Title VI’s power by invalidating the disparate impact analysis, leaves Title VI in its current state as merely a theoretical tool for combating EJ. Although Title VI is not a strong litigation tool for environmental justice cases, it is one of the most viable options for pursuing EJ claims through the EPA.

The more minority and low-income communities are educated on what EJ is and the resources that are available to them (e.g., an administrative complaint through EPA), the less EJ remains a barrier for minority communities. Effective grassroots action will influence policy changes and increase community morale nationwide. On the cusp of change in the presidential administration, numerous Congressional vacancies, and the recent national attention given to EJ issues amid the Flint crisis, we can only hope that lawmakers will propose legislation in the near future that will provide EJ advocates with a current and effective tool to fight for citizens in environmentally depressed communities.

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11 CEQ, supra note 10, at 4.

12 See Alexander v. Sandoval, 532 U.S. 275 (2001). In Alexander, the United States Supreme Court held that, even assuming that the regulations were statutorily authorized and resulted in discriminatory impact, there was no private right of action to enforce the regulations. Title VI prohibited only intentional discrimination, and the remedies available for violations of Title VI could not be extended by regulation to remedy disparate impact discrimination that did not violate the implementing statute.
PROTECTING VULNERABLE COMMUNITIES: MAKE THE PENALTY REFLECT THE IMPORTANCE
By: Andrew Yamanaka Belter

Environmental Justice as a Penalty Factor

Violations of environmental laws where environmental justice (EJ) is triggered necessitates adjusting a penalty upward under the Resource Conservation and Recovery Act (RCRA).¹ When determining a penalty amount, the Administrator of the United States Environmental Protection Agency (EPA) must account for the “seriousness of the violation.”² Undoubtedly, when risks are aggregated in vulnerable communities and have inequitable impacts on those communities, the risks should correctly be construed as “serious” and, thus, a reasonable and necessary factor for the Administrator to consider adjusting a RCRA penalty upward. Adjusting a RCRA penalty upward for a violation that inequitably impacts a vulnerable community is reasonable because it rationally and reasonably relates to the level of a violation’s “seriousness.”

Historically, EJ supporters charge that the penalties for violations in vulnerable communities have been inadequate because the fines served “not as a deterrent but merely [as] a small ‘cost of doing business.’”³ To remedy the gap between the fines and the “seriousness of the violation,” EJ supporters correctly argue that RCRA mandates the EPA to target violators who take advantage of vulnerable communities.⁴ This mandate necessitates the EPA to act because EJ supporters explain that “[i]n many circumstances, EJ concerns could relate to the ‘seriousness’ of a particular violation, such as when the associated risks are particularly aggregated, disproportionate or inequitable, or when the risks are imposed on an especially sensitive community.”⁵ Thus, factoring in EJ and, accordingly, adjusting a penalty upward is not only necessary but also reasonable.

Factoring in EJ and adjusting a penalty upward is especially necessary because “penalties against pollution law violators in minority areas are lower than those imposed for violations in largely white areas.”⁶ This disparity, as evidenced by a National Law Journal’s analysis, amounts to a 506% difference between fines in white areas and those in minority areas.⁷ The hard data corresponded to an average fine against violators in white areas of $335,566 and an average fine in minority areas of $55,318.⁸ These differences are logically easy to understand because vulnerable and minority communities are traditionally politically weak and lack access to their elected representatives. These communities simply

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¹ See RCRA, RCRA CIVIL PENALTY POLICY (2003), https://www.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf (Factors used to determine the seriousness of potential contamination include but are not limited to: quantity and toxicity of wastes potentially released; probability of environmental transport; existence, size, and proximity of receptor populations (including people); and sensitivity of environmental media. Additionally, the environmental sensitivity of receptor populations is included as a sub-factor).
⁵ Id.
⁷ Id.
⁸ Id.
lack the protection of more affluent and white communities that can assert political force to impose larger penalties on violators.\(^9\) Therefore, factoring EJ into penalties will help protect vulnerable communities.

Recognizing that factoring EJ into a penalty determination is morally and rationally important to protect vulnerable communities, the Obama administration has made EJ one of its environmental priorities.\(^10\) This prioritization necessitates that EJ be “factored into every agency decision.”\(^11\) In turn, factoring EJ into every agency decision necessitates including EJ in penalty determinations. Thus, similar to EPA Administrative Law Judge, Stephen J. McGuire, who reasoned that his penalty assessment “further[ed] the goals and objectives of the Environmental Justice Initiative,” other penalty assessments should also reason that furthering the objectives of the Environmental Justice Initiative is a factor to consider in determining a penalty amount.\(^12\)

The following section provides sample language that an attorney can use to support including EJ in a penalty calculation.

**Sample Language for a Prehearing Exchange**

RCRA section 3008(a)(3) requires that EPA consider the seriousness of the violation in assessing a penalty for the violation. RCRA’s penalty policy measures the seriousness of a violation by determining a “gravity-based component” that includes two factors: (1) the potential for harm; and (2) the extent of deviation from a statutory or regulatory requirement.

RCRA’s penalty policy further states that to determine “potential for harm,” two factors must be analyzed:

1. The risk of human or environmental exposure to hazardous waste and/or hazardous constituents that may be posed by noncompliance; and
2. The adverse effect noncompliance may have on statutory or regulatory purposes or procedures for implementing the RCRA program.

EJ factors into this analysis because violations in vulnerable and minority communities pose a greater risk of human exposure. These communities lack the protection of more affluent and white communities that can assert political force to impose larger penalties on violators. Additionally, EJ factors into this analysis because violations in vulnerable and minority communities have historically been penalized at lower amounts compared to penalties for violations in “white areas.” That disparity in assessing penalties for noncompliance adversely affects the regulatory purposes or procedure for implementing the RCRA program because of drastically inequitable penalty assessments. Lastly, EJ must be factored into every Agency decision.

Therefore, using EJ concerns as a factor in penalty calculations is reasonable and necessary for two reasons. First, vulnerable and minority communities generally lack the resources necessary to protect them from “the risk of human or environmental exposure to hazardous waste and/or hazardous constituents that may be posed by noncompliance.”\(^13\) Second, “the adverse effect noncompliance may have on statutory or regulatory purposes or procedures for implementing the RCRA program”\(^14\) will be great if violators consistently receive lower penalties in vulnerable and minority communities in contrast to the penalties corresponding with more affluent communities.

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\(^9\) See id.
\(^11\) Id. (citing to U.S. EPA, EPA’S ACTION DEVELOPMENT PROCESS 1, 3 (2010)).
\(^13\) RCRA, *supra* note 1.
\(^14\) Id.
Conclusion

The EPA is delegated the authority to and is required to protect human health and the environment, which includes protecting the human health of the most vulnerable communities. Moreover, the EPA prioritizes protecting the most vulnerable communities through its EJ policies; thus, factoring EJ into penalty calculations is necessary. Historical data demonstrates that penalties in EJ communities do not reflect the seriousness of environmental violations. Hence, in addition to necessary, factoring EJ into penalty calculations is reasonable. Finally, attorneys can adopt language for prehearing exchanges to justify using EJ as a penalty factor. Attorneys must recognize that using EJ in penalty calculations is reasonable and necessary and should assert such to ensure that penalties are not just “a small cost of doing business,” but are imposed to protect human health and the environment.\footnote{This article is not endorsed by EPA and does not change any applicable law or regulations or EPA guidance. It does not create any rights in third parties. It is created for informational purposes and should not be relied upon.}

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Tribal Sovereignty Walks into A Pipeline:
Tribal Environmental Sovereignty after the Dakota Access Pipeline
By: Daniel R. Cooper

“Since the founding of this nation, the United States’ relationship with the Indian tribes has been contentious and tragic. America’s expansionist impulse in its formative years led to the removal and relocation of many tribes, often by treaty but also by force.”

Introduction

The gross understatement quoted above by Judge David B. Sentelle of the United States Court of Appeals for the District of Columbia Circuit provides the backdrop not only of Native American tribes’ history with both the federal government and the states, but also for the challenges facing tribes in safeguarding and reaping the benefits of their natural resources, protecting their reservations’ environmental health, and, in short, controlling their own environmental destiny.

Ironically, the case from which this quote springs, Cobell v. Norton, dealt with other instances in which the federal government wholly failed in its duty to ensure that tribal natural resources were used to the benefit of Indian tribes. In any event, the quote above has been employed in one of the two main federal court cases currently at bar in the federal courts over the now famous (or infamous, depending on one’s point of view) pipeline project, the Dakota Access Pipeline – the main subject of this article. The Dakota Access Pipeline has engendered two federal cases, a dramatic reversal by the federal government, and the largest multi-tribal public protest by Native American groups in a generation. To be sure, it has become quite the debate.

What is the Dakota Access Pipeline?

The Dakota Access Pipeline (also called the Bakken pipeline) is not yet a pipeline at all. Rather, it is an underground pipeline route proposed by Dakota Access LLC. If completed, the pipeline would run 1,134 miles, costing approximately $3.7 billion, and potentially transporting up to 470,000 barrels of oil per day from the Bakken Shale in western North Dakota to central Illinois.

Proponents of the pipeline argue that not only will the project create 8,000-12,000 jobs but also that an underground pipeline would provide a cheaper method of transporting oil in an era of declining oil prices and reduce accidental derailments carrying Bakken Shale crude, such as the train derailment in Quebec in 2013. Opponents, especially the Standing Rock tribe, see the pipeline as a major environmental hazard and threat to the tribe’s cultural heritage. They are joined by other environmental

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4 The crude that would flow through the pipeline is extracted through the controversial procedure known as hydraulic fracturing, which is primarily responsible for turning the United States into a net exporter of crude.
groups and nonprofits who are concerned over the potential environmental and pollution impact of a
thousand-mile underground pipeline crossing several Midwestern states.

What does the Pipeline Have to do with the Tribe Anyway?

It is important to note that the proposed pipeline route will not cross onto any tribal land.\(^8\) The
pipeline route does, however, come within half a mile of the Standing Rock reservation in North Dakota,
and will run through sacred Standing Rock burial grounds.\(^9\) More importantly, the tribe believes that there
is a high potential for contamination of area groundwater from pipeline construction and operation. This
latter concern goes to the heart of the ability of the tribe to protect both reservation resources and the
health of the population. These are concerns that go to the heart of any nation’s sovereignty and territorial
integrity, especially for Indian nations like Standing Rock.

However, tribal jurisdiction and regulatory authority stops at the reservation’s border. Tribes
generally have no jurisdiction over activities occurring on non-Indian land or, indeed, over fee simple
land owned by non-tribal members or non-Indians, even if that land is within reservation boundaries.\(^10\)
Even inside their borders tribes lack jurisdiction when such regulation concerns non-Indians or non-
Indian fee land unless some major exception going to tribal integrity applies.\(^11\) So while the potential
exists for groundwater contamination emanating from a project outside reservation boundaries, the
negative effects of such contamination would be felt by a sovereign entity with no regulatory jurisdiction
to prevent or interdict such effects. In theory it is the federal government’s responsibility to ensure that
such things are prevented and protect the integrity, sovereignty and viability of Indian nations,\(^12\) but the
federal government’s responsibility is exercised more in a breach than in before or during implementation.\(^13\)

Tribal Sovereignty and the Indian Trust Doctrine’s Impact on the Dakota Access Pipeline

Given the fact that: (a) the Dakota Access pipeline does not touch, cross, or run through Indian
Country, but runs so close to it as to be a threat to the tribe; (b) tribes like Standing Rock are unable to
exercise regulatory or civil jurisdiction outside their borders; and (c) the United States has performed its

\(^8\) *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, Case No. 1:16-cv-01534-JEB.
\(^9\) *Id.*
nonmembers of the tribe on lands no longer owned by the tribe “bears no clear relationship to tribal self-government
or internal relations.”); see also *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 209 (1978) (holding that by
virtue of their incorporation into the U.S., tribes had lost the power to govern “person[s] within their limits except
tribe had no civil regulatory jurisdiction over an off-reservation bank that owned fee land on an Indian reservation).
\(^11\) *Montana*, 405 U.S. at 566 (laying out the “*Montana* exceptions” to the general rule that tribes cannot regulate
non-member conduct).
\(^12\) *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (promulgating the status of tribes as “domestic
dependent nations”); *Worcester v. Georgia*, 31 U.S (6 Pet.) 515, 552–55 (1832) (holding that the incorporation of
tribes into the American system meant that the tribes had allied with the national government for their protection);
*Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) (holding that the United States had a “distinctive
obligation of trust” towards tribes that encompassed protection of their lands and resources, which must be held to
“exact[ing] fiduciary standards.”). The origins of the federal trust doctrine are complex and beyond the scope of this
article. For a good summation, see, Judith V. Royster, *Equivocal Obligations: The Federal-Tribal Trust
\(^13\) For history of judicial enforcement of the federal trust relationship to the tribes, see, Royster, *supra* note 25, at
334–63. See also Reid Peyton Chambers, *Judicial Enforcement of the Federal Trust Responsibility to Indians*, 27
STAN. L. REV. 1213 (1975); John W. Ragsdale, Jr., *Indian Reservations and the Preservation of Tribal Culture:
fiduciary obligations as trustee for Indian Country phlegmatically at best, the massive protests by Native Americans of all tribes is unsurprising. Tribes must rely exclusively on the federal government to protect their sovereign interests in areas such as environmental and natural resource protection from off-reservation actions that negatively affect the environment and natural resources of the tribe. This is especially the case when, as in the Dakota Access Pipeline controversy, state leaders in North Dakota are very much in favor of pipeline construction and vehemently object to the protests by Standing Rock and others.

At one point the federal government did step in and halt the project, at least temporarily. But the federal government’s intervention came in dramatic fashion only after the District of Columbia District Court’s denial of the preliminary injunction against the approval of the project by the United States Army Corps of Engineers. Nevertheless, the federal government did carry out its fiduciary obligation to Standing Rock and temporarily blocked construction of the pipeline (or at least the part abutting the reservation). However, it is likely unnerving for tribes that the federal government steps in to protect tribal interests only after the fact and abjures a proactive approach to protection of fundamental interests—like environmental security—which go to the heart of the sovereignty of the tribe.

Conclusion

The potential for environmental damage and contamination of tribal water resources fulfills all the criteria for regulation of non-Indians laid out in Montana v. United States. The problem is, tribes are unable to regulate conduct of non-Indians for off-reservation conduct, even if that conduct results in a threat of environmental damage to the reservation and tribe itself. The only recourse a tribe has is to trust in and rely on the federal government to carry out its responsibilities.

A more robust consultation regime between tribes and the federal government may help matters. But, as we see in the D.C. Circuit case over the pipeline, required consultations with tribes are not always done. At bottom, however, the Dakota Access Pipeline issue puts into sharp focus the flaws inherent in federal Indian law which renders tribes powerless to interdict potentially harmful off-reservation conduct that threatens the environmental integrity, health and welfare of Indian nations. Going forward, when it involves environmental and water resource matters, the “consent paradigm” in delineating the boundaries of tribal sovereignty (i.e., that tribes can only civilly regulate non-Indian on-reservation conduct with the consent of the non-Indian individual) should apply to non-Indian off-reservation activities affecting tribal land as well. If there is conduct that can fairly be proven to have a negative

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14 For instance, the main issue in Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers, currently on appeal to the D.C. Circuit, is the alleged failure of the Corps to consult the tribe prior to approvals for the pipeline being given to Dakota Access, in contravention of Executive Order 13175.

15 State agencies such as the North Dakota State Historic Preservation Office have asserted that no culturally significant Native American sites would be impacted by the project. Amy Dalrymple, Confused about Dakota Access controversy? This primer will get you up to speed, THE FORUM OF FARGO-MOORHEAD, Sept. 24, 2016, http://www.inforum.com/news/4122538-confused-about-dakota-access-controversy-primer-will-get-you-speed


17 Montana, 450 U.S. at 566 (the Montana exceptions: allowing regulation of non tribal member conduct when the conduct threatens or has a direct effect on the political integrity, economic security or health and welfare of the tribe).

18 See, Katherine J. Florey, Indian Country’s Borders: Territoriality, Immunity, and the Construction of Tribal Sovereignty, 51 B.C. L. REV. 595, 603 (observing that the Supreme Court “increasingly looks at tribal sovereignty through the lens of consent.”).
effect on tribal political integrity, economic security or health and welfare, then the non-Indian individual or entity (e.g., a state) must get *tribal* consent first.

Daniel Cooper practices intellectual property law in Stamford, Connecticut, with scholarly interests in federal Indian law and the law of indigenous peoples globally. Attorney Cooper received his B.A. and M.A. from Clark University in Worcester, Massachusetts in 2002 and 2004, respectively. He received his J.D. from the University of North Dakota School of Law in 2009 and his L.L.M. in International Law from the University of Edinburgh School of Law in 2010.

**RECENT LEGAL DEVELOPMENTS**

1. Under the Clean Power Plan, the U.S. Environmental Protection Agency included a Clean Energy Incentive Program which will allow states to offer incentives for investment of energy efficiency and renewable energy in low-income communities.¹

2. California lawmakers failed to approve legislation which would add three state-appointed environmental justice members to the South Coast Air Quality Management District. The district is charged with reducing air pollution for 17 million people throughout southern California, including many environmental justice communities.²

3. Earlier this year the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) promulgated significant changes to the designation of critical habitat under the Endangered Species Act (ESA). FWS and NMFS issued revised criteria for designation of critical habitat, and at the same time issued a revised definition of “destruction or adverse modification” of critical habitat and adopted a final policy regarding the exclusion of areas from critical habitat designation.³

**NEWS AND ANNOUNCEMENTS**

**Solicitation for Articles for Winter Newsletter**

If you are interested in writing an article on an environmental, energy, or resources issue, please submit an article by November 25, 2016, to adam.orr@science.doe.gov. Or if you are feeling more artistic, please submit a cartoon or a photo (taken by you). We will publish our Winter Newsletter in February 2017.

**Environmental and Workplace Safety Criminal Enforcement Conference**

On October 26, 2016 the ABA’s Section of Environment, Energy and Resources will present a one-day CLE conference on criminal enforcement of environment and workplace safety. Along with several top government officials, crisis management expert Judy Smith will lead discussions on noteworthy topics such as expansion of criminal enforcement under the workers safety initiative, defensive strategies in the

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face of DOL and DOJ cooperation, and management of legal risks and communication during a crisis. The conference will be held at the Westin City Center in downtown Washington, DC. For more information and how to register, visit: http://shop.americanbar.org/ebus/ABAEVENTSCalendar/EventDetails.aspx?productID=253554237

YLD Environmental, Energy and Resource Committee Panel on Flint, MI

The ABA’s YLD is hosting the 2016 Fall Conference from October 20-22, 2016 in Detroit, MI. As part of the conference, the YLD EER Committee is presenting a panel discussion on violations of the Safe Drinking Act in Flint, MI, the ensuing litigation, and the long-term health consequences of lead exposure in children. Panelists Dr. Douglas Ruden, Oday Salim and Tammy Helminski will discuss the effect of lead exposure on the long-term health of children, the dozens of lawsuits filed against municipalities, public officials and corporations and the likely results, and the violations of the Lead and Copper Rule and legal and regulatory revisions being pursued by the EPA to prevent another Flint crisis. The panel will talk on Friday, October 21 from 9:00 – 10:00am. For more information and how to register, visit: http://www.americanbar.org/groups/young_lawyers/events_cle/2016_Fall_Conference.html

EPA Awards $1.2 in Environmental Justice Problem-Solving Agreements

On October 5, 2016, the U.S. Environmental Protection Agency (EPA) announced competitive cooperative agreements with several community-based organizations working to address environmental justice (EJ) issues across the nation. Each of the 10 organizations will receive up to $120,000 from the EPA to support projects that will address EJ issues through activities such as green infrastructure, stormwater management, and recycling. The organizations will use EPA’s Environmental Justice Collaborative Problem-Solving model to execute numerous project plans with a focus on EPA’s EJ priorities. Read more about the new agreements, here: https://www.epa.gov/newsreleases/epa-awards-12-million-environmental-justice-collaborative-problem-solving-cooperative