



**LAW SEMINARS
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The 15th Annual "Santa Fe" Advanced Conference on
Natural Resource Damages

*Impacts of federal jurisdictional decisions by the Supreme Court and other
major developments in NRD claims, defenses, and remedies*

July 14 & 15, 2022

Live at the Historic La Fonda in Santa Fe Hotel and Online

Agenda—Day 1

9:00 Mountain Time: Introduction & Overview

Sarah Peterman Bell, Esq., *Program Co-Chair*
Farella Braun + Martel ~ San Francisco, CA
William J. Jackson, Esq., *Program Co-Chair*
Kelley Drye & Warren ~ Houston, TX

9:10 Special Opening Addresses: A View from Washington on Biden Administration Policies and Powers of the Executive

The Administration's environmental priorities, separation of powers impacts and limits without congressional support, potential rule making efforts, attacks, timelines, and informed guesses on what can be accomplished before the 2022 and 2024 elections

John C. Cruden, Esq.
Beveridge & Diamond ~ Washington, DC
Jordan Diamond, President
Environmental Law Institute ~ Washington, DC

10:20 Special Congressional Address

The interplay between Natural Resource Damage recovery, infrastructure funding, and funding for recovery from hurricanes and other natural disasters

The Hon. Garret Graves, (R) Louisiana
U.S. House of Representatives ~ Washington, DC

10:40 Break

10:50 Anticipating the Impacts of a More Conservative United States Supreme Court on Environmental Law & Policy: Cases Relating to Separation of Powers and Federal Agency Jurisdiction

SCOTUS authority to implement a power shift away from federal agencies, the Sackett "Waters of the US" case and implications for regulation of, and recovery of damages to, wetlands, broader implications for Clean Water Act and Oil Pollution Act authority

James H. Colopy, Esq.
Farella Braun + Martel ~ San Francisco, CA
Tanya C. Nesbitt, Esq.

Marten Law ~ Seattle, WA
Craig R. O'Connor, Esq.,
Special Counsel for Natural Resources
National Oceanic and Atmospheric Administration
Seattle, WA

12:15 Lunch Break

1:15 The Supreme Court's Ruling in West Virginia v. U.S. Environmental Protection Agency

Background and summary of the case and decision, implications on the US EPA's ability to regulate carbon and climate change, broader implications for environmental protection as new pollutants come to light, and impacts on climate change litigation

Lindsay S. See, Esq., *Solicitor General*
Office of the West Virginia Attorney General
Charleston, WV

Michael B. Gerrard, Esq.,
Director of Sabin Center for Climate Change Law
Columbia Law School ~ New York, NY

Corrie Yackulic, Esq.
Sher Edling ~ San Francisco, CA

Kevin Poloncarz, Esq.
Covington & Burling ~ San Francisco, CA

3:15 Break

3:30 The Emerging Role and Increasing Powers of States and Tribes

Implications of shrinking federal jurisdiction: State AGs, Tribes, and private practitioners driving litigation on key environmental matters; NRD Trustees and their role in NRD claims if there is a federal retreat from "Waters of the US" and air emissions

William J. Jackson, Esq., *Program Co-Chair*
P. Cholla Khoury, Esq.,

Chief Deputy Attorney General
Office of Attorney General ~ Santa Fe, NM

Kelly Wood, Esq., (inv)
Section Chief of Ecology Division
Washington State Attorney General's Office
Olympia, WA

Thomas A. Zeilman, Esq.
Law Offices of Thomas Zeilman ~ Yakima, WA

5:00 Reception for Faculty and Attendees

Sponsored by Farella Braun + Martel LLP and Kelley Drye & Warren LLP

Agenda—Day 2

9:00 PFAS Regulation: Impacts on Litigation Strategies and NRD Claims

Impacts of Federal action on PFAS (regulation, litigation, infrastructure funds), state actions on PFAS (regulation, litigation), and how hazardous material designation and regulation changes under RCRA, CERCLA, SDWA, and CWA

Robert A. Bilott, Esq.
Taft Stettinius & Hollister ~ Cincinnati, OH

Ashley Campbell, Esq.
SL Environmental Law Group ~ Concord, NH

Kristin R. Robrock, Ph.D., P.E.,
Managing Engineer

Exponent Inc. ~ Oakland, CA

Lauren H. Shah, Esq.
Kelley Drye & Warren ~ Houston, TX

10:45 Break

11:00 A Closer Look: NRD Damage Assessment, Remedies, and Restoration Projects for Human Use and Cultural Damages

Overview

Sarah P. Bell, Esq., *Program Co-Chair, Moderator*

Los Alamos National Laboratory's programmatic agreement for a variance from Section 106 of the NHPA; the role of government-to-government consultation; technical assistance that the lab provides to neighboring Pueblos

Maxine McReynolds, Esq.,
Associate General Counsel - ESH
Los Alamos National Laboratory
Los Alamos, NM

Technical perspectives on the best approaches for addressing culturally significant sites including damage assessment and selection of remedies

Theodore Tomasi, Ph.D., *Managing Principal*
Integral Consulting Inc. ~ Moorestown, NJ
Robert E. Unsworth, Principal
Industrial Economics, Incorporated
Cambridge, MA

Trial practice tips

Brian D. Israel, Esq.
Arnold & Porter ~ Washington, DC

12:30 Evaluations & Adjourn

Who Should Attend

In-house and private attorneys, consultants, corporate managers, Tribal and governmental representatives, and others who are involved in natural resource damage claims

About the Conference

The past few years have seen important shifts in the Supreme Court which, along with the Biden Administration's environmental priorities, gives us much to address at this year's Santa Fe conference.

We will open with John Cruden, Beveridge & Diamond, and Jordan Diamond, ELI, discussing the changing landscape of environmental law and executive powers within the Biden Administration. From there, we have two panels evaluating the impact of the Supreme Court's shifting majority on environmental cases and the broader implications for NRD matters and matters arising under the CWA, OPA and federal jurisdiction broadly.

Another panel is dedicated to the landmark case of West Virginia v. U.S. Environmental Protection Agency, sometimes described as the case about nothing where everything is at stake. You will have an opportunity to hear from Lindsay See, West Virginia Solicitor General, who presented West Virginia's arguments at the Supreme Court, and Kevin Poloncarz, who argued for the Power Companies Climate Coalition and a number of individual utilities supporting the EPA.

Turning from the Supreme Court, Co-Chair Bill Jackson will be joined by state and Tribal representatives to discuss the increasing powers and roles of states and Tribes for addressing natural resource damages. Robert Bilott, and other leading PFAS practitioners, will offer perspectives on the latest PFAS regulations, litigation of PFAS claims, and the intersection of PFAS contamination and NRD.

Finally, you will hear from Maxine McReynolds with the Los Alamos National Laboratory on their approach to government-to-government Tribal consultation and the Laboratory's work pursuant to the National Historic Preservation Action. She will be joined by Co-Chair Sarah Bell, Ted Tomasi with Integral and Bob Unsworth with IEC to update you on the latest technical tools for addressing cultural resource damages plus NRD assessment, remedies, and restoration projects for human uses, along with Brian Israel, who will offer the latest perspectives on trying an NRD case

Covid permitting, this will be a hybrid in-person conference and live interactive online broadcast. We hope you will join us for what promises to be an exceptionally interesting and informative day and a half.

The historic La Fonda hotel is holding a block rooms for our participants. Register soon to make your reservation at the special conference rate.

~ Sarah P. Bell, Esq. of Farella Braun + Martel LLP and William J. Jackson, Esq. of Kelley Drye & Warren LLP, Program Co-Chairs

Registration & Other Conference Information

Tuition: Regular tuition for this program is \$995 with a group rate of \$895 each for two or more registrants from the same firm. For government employees, we offer a special rate of \$745. For Tribal members, public interest NGO's, students, and people in their job for less than a year, our rate is \$497.50. All rates include admission to all program sessions and course materials.

Make checks payable to Law Seminars International.

As a bonus, you will receive access to audio and video recordings of the program at no extra charge.

Financial aid is available to those who qualify. Contact our office for more information.

In-Person Location: The conference will be held at the La Fonda Santa Fe Hotel at 100 E. San Francisco Street in Santa Fe, NM 87501. Call the hotel directly at (505) 982-5511 Option # 1 for reservations at the specially negotiated rate of \$279.00 and mention either Group Code 1050154 or that you are attending a Law Seminars International conference. Rooms are on a first come, first served basis.

Substitution & Cancellation: You may substitute another person at any time. We will refund tuition, less a \$50 cancellation fee, if we receive your cancellation by 5:00 p.m. on Friday, July 8, 2022. After that time, we will credit your tuition toward attendance at another program or the purchase of an audio or video replay.

Continuing Education Credit: Live credits: This program qualifies for 9.40 NM, 9.50 WA, 9.75 CA, and 9.50 TX MCLE credits plus 9.50 ABCEP environmental professional credits. Upon request, we will help you apply for CLE credits in other states and other types of credits.

Time Shift Your Content: Audio and video replay files, with course materials, are available for download or on a flash drive at the same price as live attendance. Files are available for downloading five business days after the program or from the date we receive payment. Flashdrive orders are sent via First Class mail within seven business days after the program or from the date we receive payment. The course materials alone are available for \$100.

Faculty

Sarah Peterman Bell, Program Co-Chair, is a partner at Farella Braun + Martel focusing on environmental and natural resources litigation in federal and state courts. Her practice includes environmental enforcement actions, cost recovery, citizen suits, water quality, and complex toxic tort matters.

William J. Jackson, Program Co-Chair, is co-chair of the National Environmental Law practice group at Kelley Drye & Warren. He is currently serving as counsel for a dozen states and territories, in addition to private-sector clients, in significant remediation and natural resource damages across the country.

The Hon. Garret Graves, (R) Louisiana, Special Address, represents Louisiana's Sixth Congressional District in the U.S. House of Representatives. He has been very active in remediation efforts after Deepwater Horizon.

Robert A. Bilott, a partner in the Cincinnati and Northern Kentucky offices of Taft Stettinius & Hollister, has practiced in the Environmental and Litigation Practice Groups for over 30 years. During that time, Rob has handled and led some of the most novel and complex cases in the country involving damage from exposure to per- and polyfluoroalkyl substances ("PFAS"), including the first individual, class action, mass tort, and multi-district litigation (MDL) proceedings involving PFAS, recovering over \$1 billion for clients impacted by the chemicals.

Ashley Campbell, SL Environmental Law Group, represents public entities in litigation concerning environmental contamination of public resources, such as water, land, natural resources, watersheds, basins and airports. She currently is lead contact for all the firm's per- and polyfluoroalkyl substances (PFAS) contamination cases. She also represents over 40 water providers, airports and public entities in a multidistrict litigation suit (MDL No 2873) relating to PFAS contamination from aqueous film-forming foams (AFFFs). In that capacity, she serves as the co-chair for the water providers committee and is a member on the sovereign committee.

James H. Colopy is a partner in Farella Braun + Martel's Environmental Law Department. He represents industry and government in complex environmental litigation in federal and state courts across the country.

John C. Cruden is a principal at Beveridge & Diamond. For more than two decades, he served as a senior leader on environment and natural resource matters at the United States Department of Justice (DOJ), where he supervised some of the department's most significant litigation, including the Exxon Valdez oil spill, Love Canal, and Bunker Hill litigation.

Jordan Diamond is President of the Environmental Law Institute. She previously served as Executive Director of the UC Berkeley Center for Law, Energy, & the Environment where she launched initiatives including GrizzlyCorps and the California-China Climate Institute. Throughout her career, she has focused on ensuring environmental governance is based on the best information available, developed through inclusive and transparent processes, and implemented through adaptive and accountable systems.

Michael B. Gerrard is Andrew Sabin Professor of Professional Practice at Columbia Law School. He also is the Founder and Director of Sabin Center for Climate Change Law. A former partner and current Senior Counsel to Arnold & Porter, he is an advocate, litigator, teacher, and scholar who has pioneered cutting-edge legal tools and strategies for addressing climate change.

Brian D. Israel is a partner at Arnold & Porter and Chair of the firm's Environmental Practice Group. He served as lead counsel to BP in relation to the Deepwater Horizon NRD claim and as one of the trial attorneys at the Deepwater Horizon Clean Water Act penalty trial.

P. Cholla Khoury is Chief Deputy Attorney General at the New Mexico Office of Attorney General. She previously served as the Office's Director for Consumer and Environmental Protection.

Maxine McReynolds, Associate General Counsel - ESH at the Los Alamos National Laboratory, counsels management and Laboratory organizations regarding compliance with federal and state Environmental, Safety, and Health requirements, including permitting actions. She also manages the Lab's environmental litigation.

Tanya C. Nesbitt is a partner at Marten Law. Her environmental and natural resource practice includes representing public and private clients under a multitude of federal and state laws. Prior to joining Marten Law, she served as a Trial Attorney for the U.S. Department of Justice's Natural Resources Section of the Environment and Natural Resources Division.

Craig R. O'Connor is Special Counsel for Natural Resources at the National Oceanic and Atmospheric Administration. He has dealt with NRD issues since the Exxon Valdez oil spill.

Kevin Poloncarz is a partner at Covington & Burling where he co-chairs the firm's Environmental and Energy Practice Group, Energy Industry Group and ESG Practice. He represents electric utilities, financial institutions, investors and companies in policy, litigation and transactional matters concerning power and carbon markets, carbon capture, utilization and storage (CCUS), sustainable aviation fuel, green and blue hydrogen and carbon offsets projects.

Kristin R. Robrock, Ph.D., P.E. is a Managing Engineer in Exponent's Environmental Sciences practice. She specializes in biodegradation, and the fate and transport of chemicals in the environment, with expertise in flame retardants, including polybrominated diphenyl ethers (PBDEs), chlorinated solvents, specifically PCE and TCE, perchlorate, metals, PCBs, and petroleum hydrocarbons in soil and groundwater.

Lindsay S. See is Solicitor General for the State of West Virginia. Before joining that Attorney General's Office, she worked in private practice.

Lauren H. Shah, Kelley Drye & Warren, is currently serving as counsel for states, territories, and private-sector clients in both litigation and administrative actions related to contamination and natural resource damages from Per- and polyfluoroalkyl substances (PFAS). Before entering private practice, she served with the Harris County Attorney's office focusing on environmental enforcement and with the Texas Attorney General's Office where she represented the Texas Commission on Environmental Quality.

Theodore Tomasi, Ph.D., is a Managing Principal at Integral Consulting Inc. and is a Managing Principal at Integral Consulting Inc., is a natural resource economist specializing in the valuation of natural resources and environmental changes, risk management in the context of use decisions regarding resource use, and benefit-cost analysis. He has served as an advisor and economic expert for NOAA's Damage Assessment Center and sat on expert review panels for the Type-A natural resource damage assessment (NRDA) model for both the Great Lakes and the coastal and marine environments.

Robert E. Unsworth, Principal and former President of Industrial Economics, Inc. (IEc), is an economist specializing in the valuation of adverse changes in the environment and natural resources. His work includes monetization of a broad range of harms due to wildland fire, groundwater contamination, and international military conflicts, as well as impacts to indigenous communities from the release of hazardous contaminants.

Kelly Wood is Section Chief of the Ecology Division at the Washington State Attorney General's Office. Before joining the Attorney General's office, he was in private practice focusing on toxics, water quality, air quality, shoreline management, and natural resource damages.

Corrie Yackulic is Of Counsel to Sher Edling focusing on climate damage and deception cases. She has brought cases yielding results totaling in the tens of millions of dollars for her clients.

Thomas A. Zeilman, Law Offices of Thomas Zeilman, has represented the Yakama Nation for 24 years, both as an in-house attorney and in private practice. He has been a past Chair of both the Portland Harbor and Hanford Natural Resource Trustee Councils and has represented the Yakama Nation in many other federal and state-led remediation sites throughout the Columbia Basin.