



LAW SEMINARS INTERNATIONAL

The power of information®

The Eighth Annual Comprehensive Seminar on Tribal Natural Resource Damages Assessments

*Making effective use of consultation requirements, technical analysis,
negotiations with other trustees and PRPs, and early restoration
to make the Tribe whole after natural resource losses*

February 16, 2023

Live via Interactive Online Broadcast

Agenda

9:00 Introduction & Overview

Jack Bell, *Program Co-Chair, ERWM Director*
Nez Perce Tribe ~ Lapwai, ID
Connie Sue M. Martin, Esq., *Program Co-Chair*
Schwabe Williamson & Wyatt ~ Seattle, WA

9:10 Invocation

Anthony Smith, *Environmental Specialist*
Nez Perce Tribe ~ Lapwai, ID

9:15 A Brief History of Tribal Natural Resource Damage Assessments in CERCLA and Other Contexts

A view from the trenches on the evolution of NRDA processes for the Hanford Nuclear site focusing on consultation requirements, and Tribal relationships with DOJ when the federal government is a PRP; lessons for when the next federal site comes along

Jack Bell, *Program Co-Chair*

10:00 Environmental Justice (EJ) Considerations as a New Overlay for Tribal NRDA Development

Alternatives for incorporating EJ in NRDA: Tribes as disadvantaged communities under new EJ guidelines; procedural and substantive solutions to consider; how EJ works when a Tribe is an NRD trustee; models for incorporating EJ into NRD calculations

Theodore Tomasi, Ph.D., *Managing Principal*
Integral Consulting ~ Moorestown, NJ

10:30 Break

10:45 Thinking Outside of the Box: Unconventional Ways to Move the CERCLA Process Forward

"Because that's the way we've always done it" can mire down the CERCLA process: How to take advantage of underused, and sometimes little-known, provisions to compel action and move the CERCLA process forward and better protect Tribal interests

Jeff R. Keohane, Esq.
Schwabe Williamson & Wyatt ~ Mountain View, CA

11:15 Effective Use of Technical Consultants

Pros and cons of hiring a consultant to guide the trustee council; tips for finding a qualified contractor and coordinating the efforts of contaminant and economic consultants

Richard A. Du Bey, Esq.
Ogden Murphy Wallace ~ Seattle, WA
Robert E. Unsworth, Principal
Industrial Economics, Incorporated ~ Cambridge, MA

12:15 Lunch Break

1:15 NRDA Negotiations

How to deal with uncertainty in the science when negotiating: Baseline and other issues where the science does not produce a clear result

Deirdre Donahue, Esq., Attorney-Advisor
U.S. Department of the Interior ~ Portland, OR

Mediation: How mediation works settling environmental causation and damages issues and tips for developing an effective approach to mediation as part of the NRDA negotiation process

Connie Sue M. Martin, Esq., Program Co-Chair

Allocation relating to financial responsibility among multiple PRPs on a single site: Understanding the allocation process and how Allocators divide up liabilities can help trustees frame their NRD assessment approach

Kathleen M. Whitby, Esq.
Spencer Fane ~ St Louis, MO

2:45 Break

3:00 The Pros and Cons of Starting Restoration before Completing the Damage Assessment

Balancing the advantages of early restoration against the need to complete the damage assessment to ensure that the restoration accomplishes the goal of making the public whole again by compensating for all of the losses

Kaylene Ritter, Ph.D., Principal Scientist
Abt Associates ~ Boulder, CO

Jeremy Bekis, Remedial Project Manager
Navajo Nation Environmental Protection Agency
Window Rock, AZ

4:00 Ethical Issues for Lawyers

Ethical issues arising from participation by multiple trustee bodies and technical experts during NRDA negotiations

Joshua A. Bloom, Esq.
Joshua Bloom Mediation ~ Oakland, CA

5:00 Evaluations & Adjourn

Who Should Attend

Tribal, in-house and private attorneys, consultants, corporate managers, governmental representatives, Tribal water system managers, and others who are involved in Tribal natural resource damages assessments

About the Conference

This year's edition of the Tribal Natural Resource Damages Assessments seminar starts with a look at how Tribal NRD assessments processes have evolved over time, including consultation requirements, Tribal relationships with the Department of Justice, and the growing importance of Environmental Justice considerations. For assessments being conducted in the CERCLA context, we'll look at creative ways to move the process forward through underappreciated provisions in the statute to compel action.

In an ideal world, the parties would complete the damage assessment before developing and executing a restoration plan to ensure that the Tribe is fully compensated for the losses. In reality, there often are benefits to early restoration even though it may fall short of the full compensation goal. You will hear tips for balancing the advantages of early restoration against the need to fully determine the nature and extent of the losses.

For successful resolution of NRDA issues, it helps to start with a solid factual basis. You will hear practical tips for selecting qualified technical consultants and coordinating their efforts. You also will hear about ways to deal with uncertainty in the science as you negotiate with potentially responsible parties. When there are multiple PRPs for a site, it also helps to understand the approaches allocators use in dividing up liabilities. Mediation often is useful for moving towards resolution of NRDA issues and you will hear tips for effectively approaching assisted settlement processes.

We conclude this year's program with the ethical issues for lawyers arising from participation by multiple trustee bodies and technical experts during NRDA negotiations. This is important information for both lawyers and their clients as they pursue resolution of NRDA issues.

We hope you will be able to join us for this important interactive broadcast.

~ Jack Bell, of Nez Perce Tribe and
Connie Sue M. Martin, Esq. of Schwabe Williamson & Wyatt,
Program Co-Chairs

Registration & Other Conference Information

Tuition: Regular tuition for this program is \$695 with a group rate of \$625 each for two or more registrants from the same firm. For government employees, we offer a special rate of \$520. For public interest NGO's, students, and people in their job for less than a year, our rate is \$347.50. All rates include admission to all program sessions and course materials.

Make checks payable to Law Seminars International. As a value-added 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.

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, February 10, 2023. 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 6.25 (1 Ethics included) WA MCLE and 6.25 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 \$75.

Faculty

Jack Bell, Program Co-Chair, is the Environmental Restoration and Waste Management (ERWM) Director for the Nez Perce Tribe. The Tribe is a trustee in Hanford's remediation and restoration process that helps determine injuries and values.

Connie Sue M. Martin, Program Co-Chair, is a shareholder at Schwabe Williamson & Wyatt and helps Indian Tribes and companies address environmental contamination and restore injured natural resources. She is one of the country's most experienced practitioners of environmental Native American law, with over 20 years of experience representing Tribes.

Jeremy Bekis is Remedial Project Manager for the Navajo Nation Environmental Protection Agency. He works with remediation of abandoned uranium mines in the Western AUM Region.

Joshua A. Bloom, Joshua Bloom Mediation, specializes in all aspects of environmental, land use, and natural resources law. He has had a robust transactional and pro bono practice, working in private practice, public interest, and government. He has negotiated settlements and closed transactions in scores of complicated and multi-party cases.

Deirdre Donahue is an attorney-advisor with the Department of the Interior, Office of the Solicitor, Division of Parks and Wildlife, Environmental Restoration Branch. She also has served as Senior Legal Counsel at the White House Council on Environmental Quality.

Richard A. Du Bey serves as chair of the Tribal Government Practice Group at Ogden Murphy Wallace. He focuses on environmental and natural resources law and Tribal government matters, with an emphasis on environmental regulation and litigation, water and natural resource law, Native American law, administrative law, and inter-governmental negotiations.

Jeff R. Keohane is Of Counsel to Schwabe Williamson & Wyatt. He counsels corporations, Tribal governments, and individuals on environmental and natural resources issues, including water rights, redevelopment, and energy matters, as well as all the major federal and California environmental statutes.

Kaylene Ritter, a Principal Scientist at Abt Associates, is an environmental chemist. She has worked at Superfund and other contaminated sites across the country, including mine-impacted sites contaminated with metals and radionuclides, industrial sites contaminated with dioxins, polychlorinated biphenyls (PCBs) and other organo-chlorine compounds, and oil spill sites contaminated with polycyclic aromatic hydrocarbons (PAHs).

Anthony Smith is an Environmental Specialist for the Nez Perce Tribe. He works to protect, preserve, and perpetuate retained Treaty Rights and resources in aboriginal lands of the Tribe.

Theodore Tomasi is a natural resource economist and Managing Principal at Integral Consulting. He specializes 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 previously served as an advisor and economic expert for NOAA's Damage Assessment Center.

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.

Kathleen M. Whitby focuses her practice at Spencer Fane on environmental law, the environmental aspects of real estate transactions, and complex environmental litigation and dispute resolution. She combines her expertise in federal and state environmental laws with her experience as a third party neutral to come up with cost-effective, workable solutions that meet her clients' needs.