



SPECIAL INSTITUTE ON

Advanced Public Land Law – The Continuing Challenge of Managing for Multiple Use

January 26-27, 2017

Eldorado Hotel, Santa Fe, New Mexico

As Professor Patty Limerick observed in 2006, “So we take our ever-expanding list of what we want from the public lands—natural resources and national security, economic prosperity, recreation, nature and spiritual well-being—and we then instruct the Secretary of Interior to manage those lands to satisfy all these desires. This qualifies, strictly speaking, as a set-up...”

The Institute will review the complex legal framework for management of federal lands, focusing on how it has changed and where it is headed. Current perspectives from agencies and the Hill, analysis of the new BLM planning rules and mitigation policies, and practical tips for project permitting will be presented. The Institute will consider issues of federal preemption from the perspectives of a former Governor and Solicitor and the nature of property rights granted by federal permits, and will explore ways to work collaboratively and ethically with different stakeholders on public land issues.



Experienced attendees will benefit from deeper insights into critical, cutting-edge topics, while resource professionals who are relatively new to the practice will benefit from the experience of our distinguished speakers. We hope you can join us in Santa Fe to continue the tradition of valuable educational and networking opportunities provided by our Advanced Public Land Law Institute.

Course materials and audio recordings are available in various formats if you are unable to attend. See inside for details.

DAY 1 - Thursday, January 26, 2017

7:15 am: Registration

8:15 am – 8:30 am: Introduction and Opening Remarks

STEVIA M. WALTHER, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO

JONATHAN A. HUNTER, President, Rocky Mountain Mineral Law Foundation; Shareholder, Liskow & Lewis, New Orleans, LA

REBECCA W. WATSON, Program Co-Chair, Shareholder, Welborn Sullivan Meck & Tooley, P.C., Denver, CO

NORA R. PINCUS, Program Co-Chair, Of Counsel, Parsons Behle & Latimer, Salt Lake City, UT

8:30 am – 9:20 am: Evolution of Federal Public Land and Resource Law in the 21st Century

What is the legal context for the development of public land and resource laws, and how do these laws continue to play a role today? This presentation will discuss the evolution of laws, regulations, and court decisions including 19th and 20th century laws that create 21st century conflict. How do current environmental conditions, new science/technological capabilities, and modern values impact public land management? Do our land management laws meet the challenges of the 21st century or is it time for a reevaluation and revision?

ROBERT B. KEITER, Wallace Stegner Professor of Law; University Distinguished Professor; Director, Wallace Stegner Center of Land, Resources, and the Environment, University of Utah S.J. Quinney College of Law, Salt Lake City, UT

9:20 am – 10:10 am: Landscape-Level Land Use Planning: BLM Planning 2.0

During the last eight years, BLM has implemented land use planning changes including the concept of “zoning” the public land for certain uses, landscape-level planning, and the 2016 Planning 2.0 proposed rule. Significant court decisions have been handed down. What are the implications of Planning 2.0 on mineral and energy development as well as state and local interests? What does this new landscape planning lens mean for the land use planning processes and natural resource development, and how will it work in practice? Why, when, and how should developers, communities, and the public engage in land use planning?

NADA CULVER, Director and Senior Counsel, BLM Action Center, The Wilderness Society, Denver, CO

LAURA K. GRANIER, Partner, Davis Graham & Stubbs LLP, Reno, NV

10:10 am – 10:30 am: Hosted Refreshment Break

10:30 am – 12:00 pm: Views from the Federal Agencies and the Hill

- Interior: MATTHEW J. MCKEOWN, Regional Solicitor, U.S. Department of the Interior, Office of the Solicitor, Denver, CO
- Forest Service: KENNETH D. PAUR, Deputy Regional Attorney, Office of General Counsel, U.S. Department of Agriculture, Denver, CO
- The Hill: KAREN BILLUPS, Partner, Balch and Bingham LLP; former U.S. Senate Energy and Natural Resources Committee Staff Director; Washington, DC

12:00 pm – 1:40 pm: Lunch – On Your Own

1:40 pm – 2:30 pm: How to Put a Price on Nature

What are the economics of valuing impacts to or replacement of natural resources? Various federal statutes and agency mitigation

policies require that impacts to natural resources be compensated. The appropriate mitigation valuation and mechanisms often depend on the nature of the resource and differing legal requirements. Executive Orders and agency policy direct the use of a standard of mitigation to a “net conservation benefit” or “net conservation gain.” What is the legal basis for that standard across agencies, and how is that standard measured and monetized? The speakers will discuss mitigation standards, valuation methods, and circumstances for which different methods and mechanisms may be most appropriate.

KATHLEEN C. SCHRODER, Partner, Davis Graham & Stubbs LLP, Denver, CO

NELS C. JOHNSON, North America Energy Program Director, The Nature Conservancy, Bozeman, MT

2:30 pm – 2:50 pm: Hosted Refreshment Break

2:50 pm – 3:40 pm: The Changing Nature of Property Rights to Federal Resources

The Bundy standoff at Malheur posed questions on the nature of a federal grazing permit, and the Ninth Circuit in 2016 addressed a federal takings claim for grazing-related water rights. BLM proposed a rule to create solar and wind leases instead of rights-of-ways. BLM has also asserted that federal oil and gas leases can be cancelled years later for errors at the time of issuance. It and other federal land management agencies have imposed an array of conditions limiting surface disturbance for mining and mineral leasing. Concessionaires and ski resorts fear their operations will be restricted. What are the property interests in federal resources, and how and when can they be terminated?

SANDRA B. ZELLMER, Robert B. Daugherty Professor of Law, University of Nebraska College of Law, Lincoln, NE

3:40 pm – 5:00 pm: Keynote Address Federal Preemption: Challenges to Federal Management of Federal Lands and Interests

From the “Give Us Back Our Land” movement, to arguments for state management of sage-grouse and fracking, to the “keep it in the ground” movement to stop development of federal fossil fuel resources, challenges to federal management of lands and resources under existing law continue to grow. This panel will address how the history of U.S. public lands laws has created tension in the way Americans view our public lands, including a discussion of state versus national decision making involving public lands and resources.

DAVID D. FREUDENTHAL, former Wyoming Governor; Senior Counsel, Crowell & Moring LLP, Cheyenne, WY

JOHN D. LESHY, Harry D. Sunderland Distinguished Professor of Law Emeritus, University of California, Hastings College of Law, San Francisco, CA; former Solicitor, U.S. Department of the Interior

5:00 pm – 6:00 pm: Hosted Reception for Speakers, Registrants, and Guests

DAY 2 - Friday, January 27, 2017

8:00 am – 9:00 am: Collaborative Processes on Public Land Issues: What’s New and What’s Working or Not?

Are there collaborative solutions to the inherent tensions in multiple-use management in a federalist system of governance? Over the last decade, initiatives have sought resolution to long-simmering issues. For example, the U.S. Forest Service 2012 Planning Rule seeks to bring new voices to the table to plan management of forests, and in Indian Country the Osage Nation used a “negotiated rulemaking”

to develop oil and gas regulation. What do such processes teach us about collaboration as a tool to bring certainty to difficult public land management issues?

JIM KENNA, former California State Director, U.S. Bureau of Land Management, Medford, OR.

SALLY COLLINS, Rights and Resources Group, LLC, Lyons, CO; former U.S. Forest Service Deputy Chief

LYNN SCARLETT, Global Managing Director for Public Policy, The Nature Conservancy; former Acting Secretary and Deputy Secretary & Chief Operating Officer, U.S. Department of the Interior, Washington, DC

Moderator: MATTHEW J. MCKINNEY, Director, Center for Natural Resources & Environmental Policy and Chair, Natural Resources Conflict Resolution Program, University of Montana, Missoula, MT

9:00 am – 9:50 am: Cultural Resource Permitting— The Intersection between NHPA and NEPA

The intersection between NEPA and the National Historic Preservation Act can confound practitioners and federal agencies. These two “look before you leap” processes can be coordinated to better integrate consideration of historic and cultural resources in NEPA review and streamline the permitting process by reducing duplication. In 2013, CEQ and the Advisory Council on Historic Preservation issued “NEPA and NHPA, A Handbook for Integrating NEPA and Section 106.” This presentation will address the interplay between the two statutes in the context of project permitting, and provide practical tips on how to work with federal agencies to better manage the requirements of these two procedural statutes.

STAN N. HARRIS, Partner, Modrall Sperlberg, Albuquerque, NM

9:50 am – 10:10 am: Hosted Refreshment Break

10:10 am – 11:00 am: New Developments on Access to Courts: Standing, Injunctive Relief, and Remedies

Current case law regarding challenges to and defense of federal agency permitting actions on public lands addresses the issues of standing/ripeness, injunctive relief, and available remedies. This session will examine cases concerning nationwide injunctions issued by district courts, the propriety of injunctions, and the appropriate scope of district court remedies. The presentation will discuss the circumstances in which judges have been willing to allow parties to go outside of the administrative record, how to build an effective administrative record, and the differences between the Ninth, Tenth, and D.C. Circuits on these issues.

MICHAEL FREEMAN, Staff Attorney, Rocky Mountain Regional Office, Earthjustice, Denver, CO

JOEL MINOR, Associate Attorney, Rocky Mountain Regional Office, Earthjustice, Denver, CO

11:00 am – 11:50 am: Federal Wetlands Permitting Challenges and the Changing Regulatory Framework

This presentation will focus on practical approaches to Clean Water Act 404 wetland jurisdictional and permitting challenges. It will also include an overview of the EPA’s “Waters of the United States” rule, status of litigation, and the U.S. Supreme Court’s 2016 decision on jurisdictional determinations. The speaker will discuss best practices in working with the Corps, agency resource specialists, and consultants on mitigation plans, with a particular emphasis on these issues for projects on public lands. How are mitigation requirements and the use of mitigation banks being implemented on a project-specific basis? Can non-federal lands be used as mitigation for project impacts occurring on federal lands? How best can you use mitigation banks and functional assessment models to predict project impacts, and how can you adapt those models to areas where modeling has not yet been developed to fit the region?

LISA A. KIRSCHNER, Shareholder, Parsons Behle & Latimer, Salt Lake City, UT

11:50 am – 1:30 pm: Lunch – On Your Own

1:30 pm – 2:20 pm: Clean Power Plan Litigation/ Implementation Update

The Clean Power Plan (CPP) was announced in August 2015 to establish “guidelines for states to follow in developing plans to reduce greenhouse gas emissions (GHG) from existing fossil fuel-fired” power plants. The “guidelines” for each state differ, but the goal is the same—to reduce use of fossil fuels and increase use of renewable energy. Twenty-seven states and multiple industry groups have filed 39 lawsuits in the D.C. Circuit. Shortly before the death of Justice Scalia, the U.S. Supreme Court took the unusual step of staying the CPP until the challenges work their way through the courts. Some states have stopped work on their compliance plans while others are moving ahead. This presentation will describe the CPP and its potential impact on public land fossil fuel development and use, issues addressed in the legal challenges, and the status of CPP implementation, and will discuss related actions by the Obama administration.

THOMAS A. LORENZEN, Partner, Crowell & Moring LLP, Washington, DC

2:20 pm – 2:40 pm: Hosted Refreshment Break

2:40 pm – 3:40 pm: How Industry Can Plan Ahead for More Efficient Permit Times on Public Lands

Industry, states, and Congress complain about lengthy and redundant permitting processes. In an era of tight budgets for both companies and agencies, this issue is more acute. This presentation will examine how operators can satisfy environmental statutory requirements in a coordinated manner, including: (1) identification of environmental resource issues/constraints/public concerns, (2) development of tools to screen for project constraints and identify solutions, (3) strategies to plan for future development and permitting, and (4) case studies. Speakers will provide practical advice to reduce permit preparation and environmental review and utilize new BLM and Forest Service programs and strategies to move projects forward.

CAROL-ANNE GARRISON, Project Manager, PMP, CA Associates, LLC, Denver, CO

ERIC PETERSON, Senior Biologist/Technical Leader, Olsson Associates, Glenwood Springs, CO

CHRISTINA REED, U.S. Bureau of Land Management, Project Manager, Federal Coal Leasing Programmatic EIS, Denver, CO

Moderator: NORA R. PINCUS, Of Counsel, Parsons Behle & Latimer, Salt Lake City, UT

3:40 pm – 4:40 pm: Ethics: Why We Must Play Well With Others (and Why We Don't)

As we look to collaboration as a way to address natural resource disputes, what ethics rules, including the ABA Model Rules of Professional Conduct, come into play? Attorneys sometimes fall into ethical traps because they have a difficult time finding ways to collaborate productively. This session will explore why people (especially groups of people) tend to behave the way that they do despite ethical requirements, and will suggest ways of changing the incentives that trigger less-than-ethical behavior.

NANCY B. RAPOPORT, Special Counsel to the President, University of Nevada-Las Vegas; Garman Turner Gordon Professor of Law, William S. Boyd School of Law; Affiliate Professor of Business Law and Ethics, Lee Business School, Las Vegas, NV

4:40 pm Course Adjournment

Can't attend? You can still order the course materials.

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NORA R. PINCUS, Program Co-Chair, Of Counsel, Parsons Behle & Latimer, Salt Lake City, UT

STEVE BLOCH, Legal Director, Southern Utah Wilderness Alliance, Salt Lake City, UT

ROBERT B. KEITER, Professor; Director, Wallace Stegner Center of Land, Resources, and the Environment, University of Utah S.J. Quinney College of Law, Salt Lake City, UT

MATTHEW J. MCKEOWN, Regional Solicitor, U.S. Department of the Interior, Office of the Solicitor, Denver, CO

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Advanced Public Land Law



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SPECIAL INSTITUTE ON

Advanced Public Land Law

January 26-27, 2017 Eldorado Hotel, Santa Fe, New Mexico

General Information

Room Reservations: The Eldorado Hotel, 309 W. San Francisco St., Santa Fe, New Mexico 87501, has blocked rooms for this Special Institute until January 11 at the rate of \$139 (single/double) per night. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants. For reservations, contact the Eldorado at:

- Online <http://tinyurl.com/rockym117>
- Toll Free 800-955-4455 (Group Code 5151)
- Direct 505-988-4455 (Group Code 5151)

A limited number of government rate rooms are also available – email info@rmmlf.org for details. Trouble making room reservations? Contact us at info@rmmlf.org.

Car Rental: Hertz is offering special discounts by referencing Meeting CV#03NJ0012 and Rocky Mountain Mineral Law Foundation. Make reservations at <http://tinyurl.com/hertz2017> or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (International).

Registration Fees: Include course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

Registration Cancellations: Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Thursday, January 5, 2017. No refunds will be given thereafter, although substitution of attendees may be made by contacting the Foundation. Cancellations must be made in writing or email to info@rmmlf.org. Registrants not entitled to a refund will receive a link to the written materials. For questions on refunds, complaints, and/or program cancellations, please contact our office at 303-321-8100.

CLE Credit: This course consists of approximately 12.5 hours of continuing education, including 1 hour of ethics. You must let us know, at least 45 days in advance of the conference, the states or organizations for which you will need credit (see registration form). Credit hours for states will vary and are subject to each state's approval and credit rounding rules. Foundation conferences are typically accredited by all mandatory CLE states and Canadian provinces, NADOA and NALTA, and other professional organizations. Attorneys from certain states may be required to pay an additional fee. The Foundation is a State Bar of California MCLE-approved provider.

Recording: Audio and video recording, streaming, or other types of live or stored dissemination are not permitted without express authorization from the Foundation.

Special Needs: If you have special needs addressed by the ADA, please notify us at least two weeks before the program.