



**ROCKY MOUNTAIN**  
MINERAL LAW FOUNDATION

**VIRTUAL 67<sup>TH</sup> ANNUAL**

# **ROCKY MOUNTAIN MINERAL LAW INSTITUTE**

July 19 - 26, 2021



# VIRTUAL 67<sup>TH</sup> ANNUAL ROCKY MOUNTAIN MINERAL LAW INSTITUTE

Join us from wherever you are on July 19-26, 2021, for the 67th Annual Rocky Mountain Mineral Law Institute, being held virtually again this year due to ongoing risks associated with the pandemic. We will hold a complete Annual Institute program, with 33 presentations by over 60 distinguished and emerging speakers, planned by our 12-person program committee with the help of hundreds of volunteers who submitted topics or attended planning meetings. The Annual Institute will include a General Session followed by separate sections on Oil & Gas, Mining, Public Lands, Water, Environmental, International Law, Corporate Counsel, and Landman's Issues. Although we are sad we will not be meeting in person, registrants may also attend one or more of several online networking events to renew old friendships and build new relationships in the natural resources, energy, and environmental law community.

The 67th Annual Institute will be FREE to Foundation members and includes up to 32 CLE credits (26.5 hours in 60-minute states) including 1 hour of ethics. Scholarly papers will accompany most of the presentations. If you are not a member, please join to take advantage of this incredible member benefit. The institute will be spread out over more than a week so that none of the presentations will overlap, and participants will be able to attend all presentations of interest.

Complimentary registration for members! Only \$149 for nonmembers and \$89 for government/nonprofits. Nonmembers from outside the U.S. can attend just the International Section and International Networking Event for only \$39.



# GENERAL SESSION

MONDAY, JULY 19, 2021

DAY ONE

**9:00 am - 9:15 am**

## **Introductions and Special Recognitions**

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**9:15 am - 10:15 am**

## **America's Public Lands – A Look Back and Ahead**

The public lands are the product of political decisions by Congress and the Executive Branch that stretch back more than a century. Over that time, the general trend has been to protect more and more of those 600 million acres from intensive development. The Trump administration's nearly exclusive focus on exploiting these resources, particularly fossil fuels, was a sharp break with that trend. With a new administration in place alongside a closely divided Congress, it is a good—if dicey—time to take a quick look back, to see what history might suggest about what is to come. This presentation examines themes developed in the presenter's comprehensive political history of America's public lands, *Our Common Ground* (Yale University Press, forthcoming late 2021 or early 2022), as well as contemporary political and other conditions, and lays out possible futures.

JOHN D. LESHY, Emeritus Harry D. Sunderland and Distinguished Professor of Real Property Law, UC Hastings College of the Law, San Francisco, CA

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**10:15 am - 11:15 am**

## **The Importance of the State-Owned and Private Oil Sector for Successfully Implementing the Energy Transition**

An energy transition where renewable energy plays a larger role in the global energy mix is believed inevitable. Many aspects of such a transition are characterized by uncertainty, which may make implementation extremely complex. An energy transition presents particular challenges for the oil and gas sector. While some oil companies have started diversifying their production and focusing on renewable energy sources and petrochemicals, in resource-rich countries where socioeconomic structure is closely linked to the extraction and export of oil, the situation needs a different approach. To be successful, an energy and economic transition demands consideration of the complexities that resource rich countries face, and creation of viable and effective strategies to manage the different situations and needs of countries and stakeholders around the world. This discussion will address the general challenges and potential policy, financial, and legal strategies to overcome them, including modernizing fiscal regimes, fostering private sector investment, and enhancing job creation, among others. COVID-19 pandemic impacts will also be discussed, as they may accelerate the energy transition.

LEONARDO SEMPETEGUI, General Legal Counsel, Organization of the Petroleum Exporting Countries, Vienna, Austria

KATE HARDIN, Managing Director, Research Center for Energy and Industrials, Deloitte Services LLP, Cambridge, MA

IAIN FERGUSSON, General Counsel, OCGI Climate Investments, London, England

FRÉDÉRIC G. SOURGENS, Senator Robert J. Dole Distinguished Professor of Law, Washburn University School of Law, Topeka, KS

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**11:15 am - Noon - Break**



# GENERAL SESSION

MONDAY, JULY 19, 2021

DAY ONE

**Noon - 1:00 pm**

## **The Proliferation and Implications of Climate Litigation**

Stymied by policy inaction, advocates for addressing climate change in the U.S. and across the world are pushing a growing list of lawsuits blaming governments and energy companies for the planet's predicament. Even if many of such suits are long shots, rest on novel legal theories, and often lose in court, they are influencing public opinion and lawmakers and creating new risks not only for the defendants but also for wider industries. In the U.S., cases such as the fraud lawsuits by the New York and Massachusetts Attorneys General alleging companies misled investors on their handling of climate-change costs, the Juliana children's trust lawsuit (losses in a similar state court suit led to changes in Colorado law), and common law tort lawsuits are proliferating. Climate litigation has also exploded internationally in recent years. Many non-U.S. courts have been more receptive to climate-related claims in certain cases, with far-reaching implications for national policies, industries, and international cooperation. This presentation will highlight selected litigation and claims and discuss their direct and indirect effects and where the law may be going.

DAVID B. SPENCE, Baker Botts Chair in Law, University of Texas at Austin School of Law, Austin, TX  
MARIA L. BANDA, Associate Attorney, Gibson, Dunn & Crutcher LLP, Washington, DC

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**2:00 pm - 3:00 pm**

## **Virtual Networking Receptions**

- **Portia's Reception for Women in Natural Resources and Energy**
- **Natural Resources Law Teachers Reception**
- **Corporate Counsel Reception (must be in-house to attend)**

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**3:30 pm - 4:30 pm**

## **Virtual Networking Receptions**

- **Young Natural Resources Professionals Reception (must be within first 10 years of practice to attend)**
- **Oil and Gas Practitioners Reception**
- **Public Lands and Mining Practitioners Reception**
- **Environmental and Water Practitioners Reception**

# OIL AND GAS SECTION

TUESDAY, JULY 20, 2021

DAY TWO

**9:00 am - 9:30 am**

## **Oil and Gas Law Update – Texas and the West**

This Oil and Gas Law Update will summarize the key legislative, administrative, and judicial developments in oil and gas law in Texas and the western U.S. since the 2020 Annual Institute.

ANN COX TRIPP, Associate, Hinkle Shanor LLP, Roswell, NM

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**9:30 am - 10:00 am**

## **Oil and Gas Law Update – Louisiana and the East**

This Oil and Gas Law Update will summarize the key legislative, administrative, and judicial developments in oil and gas law in Appalachia and Louisiana since the 2020 Annual Institute.

KATHERINE M. GAFNER, Partner, K&L Gates, Pittsburgh, PA

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**10:00 am - 10:50 am**

## **Production in Paying Quantities in These Times – How Much Stress Can Your Lease Withstand?**

This presentation will examine the “habendum clause” of the mineral lease, specifically as it pertains to the requirement that production must be in “paying quantities.” Particular emphasis will be on the impact of historically low commodity prices on the standard for lease maintenance under market conditions (worldwide supply and demand) such as the economic slowdown resulting from the COVID-19 pandemic. The presentation will examine the underpinnings of the standard by which paying quantities is determined under the Texas Supreme Court case of *Clifton v. Koontz* “whether or not under all the relevant circumstances a reasonably prudent operator would, for the purpose of making a profit and not merely for speculation, continue to operate a well in the manner in which the well in question was operated.” The presentation will also relate paying quantities issues that arise during down markets to other provisions of the lease and provide an analytical framework for addressing such issues, including attempts at regulatory relief.

PATRICK S. OTTINGER, Founding Partner, Ottinger Hebert, L.L.C., Lafayette, LA, and Adjunct Professor of Law, Paul M. Hebert Law Center, Louisiana State University, Baton Rouge, LA

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**10:50 am - 11:00 am - Break**



# OIL AND GAS SECTION

TUESDAY, JULY 20, 2021

DAY TWO

**11:00 am - 11:50 am**

## **Water in the Desert – Alternative Means for Raising Capital for Cash Starved Exploration and Production Companies**

In the age of unconventional resources, successful oil and gas producers must continually drill and complete new wells to keep ahead of the decline curve and replace reserves. All of this drilling makes oil and gas production a capital intensive industry, requiring billions of new capital annually. But in today's market, Wall Street has seemingly abandoned the industry, pressuring producers to reduce their capital spending and pay dividends while simultaneously chastising them for failing to replace production. At the same time, lenders that traditionally provided funding have ceased or significantly curtailed their oil and gas lending. Those oil and gas lenders that continue to remain active are lowering their advance rates and otherwise tightening their lending criteria. Where is a producer to turn for capital? This presentation will discuss various alternative transaction structures for raising cash, including participation agreements, net profits interests, term overriding royalty interests, and "drillcos." The panel will discuss the motivations of the investor in these structures, and the advantages and disadvantages and key contract and legal considerations for the producer.

LAWRENCE A. HALL, Partner, Baker Botts L.L.P., Dallas, TX

GERALD A. MORTON, Special Counsel, Baker Botts L.L.P., Houston, TX

JEFFREY A. ZLOTKY, Partner and General Counsel, NGP Energy Capital Management, LLC, Dallas, TX

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**11:50 am - 12:30 pm - Break**

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**12:30 pm - 1:20 pm**

## **The Modern Day Gold Rush: The Race for Helium and Why You Should Care**

"Liquid helium is a quiet engine of American research and business. It is essential to a broad range of technologies, from cutting-edge quantum computing to M.R.I. scanners in hospitals. . . In short, it is crucial to innovation." Dr. Joseph DiVerdi, NY Times Op-Ed (Sept. 4, 2019). Yet the Helium Stewardship Act of 2013 directed the closure of the BLM-managed Federal Helium Reserve, the world's only helium storage facility, by 2021. Pursuant to Executive Order No. 13817, the USGS identified helium as one of 32 minerals deemed critical to U.S. national security. This presentation will discuss exploration and production issues related to helium, including where helium accumulates, exploration tools used to find helium, how helium is produced and why the helium market is so unstable. The presentation will also examine the legislative framework governing helium (including federal statutes and regulations) and will discuss lease issues that arise in connection with helium exploration and production.

AMY E. SENESHEN, Managing Partner, Welborn Sullivan Meck & Tooley, P.C., Denver, CO

DAVID SENESHEN, President, Geochemical Insight, Denver, CO

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**1:20 pm - 2:10 pm**

## **Affiliate Transactions in Royalty Litigation – Don't Judge a Lessee by Its Relatives**

With the current focus in both single plaintiff and class action oil and gas cases on whether lessors are receiving the correct amount of royalties, the concept of affiliate transactions—for both the sale of oil and gas and the amount paid for post-production activities—has been given closer scrutiny. This presentation will examine how the simple fact that a deal is done with an affiliate impacts the analysis by the courts, the scope of the meaning of "affiliate," and the effect in various jurisdictions of affiliate transactions on the scrutiny given to the calculation of royalties. The speakers will provide an update on the existing case law, pending litigation, and practical advice as to drafting considerations, royalty calculations, and negotiated solutions.

NICOLLE SNYDER BAGNELL, Partner, Reed Smith LLP, Pittsburgh, PA

MARK C. RODRIGUEZ, Partner, Beck Redden LLP, Houston, TX

# OIL AND GAS SECTION

*TUESDAY, JULY 20, 2021*

DAY TWO

**2:10 pm - 2:30 pm - Break**

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**2:30 pm - 3:20 pm**

## **Exculpatory Clauses for Operators – When Do They Apply and What Do They Mean?**

Exculpatory clauses are common in JOAs and other types of oil and gas contracts. Typically, these clauses specify that the operator is liable only for losses that result from “gross negligence” or “willful misconduct.” Exculpatory clauses have been the subject of significant litigation, some of which has raised the question of whether such clauses even apply. Depending on their terms, exculpatory clauses may apply only to an operator’s operational decisions, or if phrased broadly, may apply to all of an operator’s decisions, including accounting, management, or marketing decisions. Other litigation has raised the question of what is “gross negligence” or “willful misconduct.” A few courts have suggested that those terms are synonymous and require some element of subjective intent; others have held differently. A surprising number of states have not yet addressed the issue in an oil and gas context. This presentation will survey the case law on exculpatory clauses and discuss both the circumstances in which they apply and the meaning of the terms “gross negligence” and “willful misconduct.”

BYRON C. KEELING, Principal, Keeling & Fredrickson, P.C., Houston, TX

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**3:20 pm - Adjourn for the Day**



# MINING SECTION

WEDNESDAY MORNING, JULY 21, 2021

DAY THREE

**9:00 am - 9:30 am**

## **Annual Mining and Public Land Law Update**

This Annual Mining and Public Land Law Update will summarize the key legislative, administrative, and judicial developments in mining and public land law since the 2020 Annual Institute.

JASON D. STEIERT, Associate, Parsons Behle & Latimer, Salt Lake City, UT

**9:30 am - 10:20 am**

## **Unearthing the Impacts of Foreign Investment Restrictions on the Natural Resources Industries**

The United States, Canada, and Australia are close trading partners, but when it comes to foreign investment, each country's government is committed to prioritizing its own national interests. In recent years, the governments of each nation have exhibited heightened concern over the national security implications of foreign investment, including in natural resources. Under the U.S. Defense Production Act (DPA), the Investment Canada Act (ICA), and Australia's Foreign Acquisitions and Takeovers Act (FATA), the federal government of each country conducts national security reviews of foreign investment transactions across sectors. Recent amendments to the DPA, which took effect in February 2020, dramatically expanded the scope of review to cover investments in greenfield mining properties and oil and gas infrastructure. In Canada, the government relied upon the ICA to block Chinese investment in Arctic mining. And in Australia, the COVID-19 economic crisis caused that country's Foreign Investment Review Board (FIRB) to reduce its screening threshold to \$0. This presentation will spotlight some of the major concerns and procedural pitfalls associated with foreign investment reviews under the DPA, the ICA, and the FATA, as well as case studies that elucidate each government's priorities and practitioners' tips for navigating the transforming regulatory landscape.

NAVIN JONEJA, Partner, Blake, Cassels & Graydon LLP, Toronto, ON

ALMIRA MORONNE, Associate, Davis Graham & Stubbs LLP, Denver, CO

SOPHIE DRAKE, Legal Counsel – Australia, Resource Capital Funds, Perth, Australia

**10:20 am - 10:30 am - Break**

**10:30 am - 11:20 am**

## **Energy Transition and Mining – Reconciling the Growth of Renewable Energy with the Need for New Mineral Development**

Spurred by growing climate change concerns, governments and organizations around the world are calling for the transition and transformation of the energy sector away from continued fossil fuel extraction and toward increased use of renewable energy resources such as solar and wind. But it is another extractive industry that is potentially critical to this transition if it is to occur. Solar panels, wind turbines, and energy storage batteries all require minerals, including cobalt, nickel, copper, lithium, and rare-earth elements (REE), referred to collectively as "transition minerals." Increasing demand for transition minerals has prompted governmental organizations, industry leaders, and others to evaluate both domestic mineral development as well as increased imports. However, new mines in North America often face significant opposition and permitting challenges due to environmental concerns that can delay their construction, if they are built at all. Moreover, transition minerals such as cobalt and nickel are primarily sourced from the Democratic Republic of Congo, Indonesia, and other developing countries, raising concerns over human rights abuses and adverse environmental impacts associated with mining and smelting under lax regulation. This presentation will examine the growing need for transition minerals and potential responses. It will evaluate the economic, security, human rights, and social impacts of relying on mineral imports to meet developed nations' domestic renewable energy goals; the legal and political challenges associated with new North American mines that may undermine energy transition goals; potential solutions to encourage responsible sourcing; growing expectations for sustainability in international mining; and the role of new technology and recycling opportunities.

ALEXANDRA B. KLASS, Distinguished McKnight University Professor, University of Minnesota Law School, Minneapolis, MN

ALLISON J. MITCHELL, Staff Attorney, Fond du Lac Band of Lake Superior Chippewa Legal Affairs Office, Cloquet, MN

# MINING SECTION

WEDNESDAY MORNING, JULY 21, 2021

DAY THREE

**11:20 am - 12:10 pm**

## **BLM's Use of FLPMA and CERCLA to Complete Investigation, Reclamation, and Remediation Work on Abandoned and Inactive Mines on Federal Lands**

Under the Federal Land Policy and Management Act (FLPMA), the Bureau of Land Management (BLM) manages public lands so as "to prevent unnecessary or undue degradation of the lands." As part of its management, BLM has developed databases containing information regarding abandoned and inactive mines located on federal lands across the western United States. Many of these mines possess features that present physical hazards and may involve the release or threatened release of hazardous substances into the environment. BLM has legal authority under both FLPMA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to address these hazards and releases. These authorities provide BLM with significant flexibility to work cooperatively with private parties to inventory, investigate, and address hazards and releases at abandoned and inactive mines. The purpose of this presentation is to (1) explain BLM's authority under FLPMA and CERCLA, (2) discuss how private parties can work collaboratively with BLM to proactively address potential liability, and (3) explain successful collaborations between BLM and private parties.

BRADLEY J. GLASS, Shareholder, Gallagher & Kennedy, P.A., Phoenix, AZ

NATHALIE DOHERTY, Attorney-Advisor, Office of the Solicitor, U.S. Department of the Interior, Portland, OR

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**12:10-12:45 pm - Break**



# PUBLIC LANDS SECTION

WEDNESDAY AFTERNOON, JULY 21, 2021

DAY THREE

**12:45 pm - 1:45 pm**

## **Executive Action to Implement Federal Policy for Public Lands – History, Limitations, and Longevity**

This presentation will begin with an overview of the historical use of executive orders and other executive actions in regard to public lands. The speaker will analyze the effectiveness (or lack thereof) of various executive actions aimed at public land management, conservation, and natural resource and infrastructure development that have been issued during the last several administrations. This will include a discussion of recent case law upholding and overturning executive action. Given the difficulty in enacting legislation, the Biden administration is likely to continue to rely on executive action to achieve many of its goals, including in regard to conservation and the regulation of resource extraction on public lands. The presenter will discuss to what extent executive action is likely to prove an effective tool for advancing the new administration's environmental and public land agendas in light of the history and case law governing such actions.

AMANDA SHAFER BERMAN, Partner, Crowell & Moring LLP, Washington, DC

**1:45 pm - 2:25 pm**

## **Tribal Sovereignty – Recent Developments and Implications for Mineral and Energy Development in “Indian Country”\***

Over the last few years, court decisions involving tribal sovereignty and tribal sovereign immunity may have broad impacts on mineral and energy development in and near Indian reservations. These include the Ninth Circuit's decisions in *Diné Citizens Against Ruining Our Env't v. Bureau of Indian Affairs* (dismissal of NEPA, ESA, and APA challenges to a 25-year extension of the operation of the Four Corners Power Plant and an expansion of the coal mine that feeds the plant on tribal sovereign immunity grounds), and *FMC Corporation v. Shoshone-Bannock Tribes* (tribe had environmental regulatory and judicial jurisdiction over a non-member mining company for activities on fee land within the reservation). While these cases have protected tribes and tribal sovereignty, other key decisions have limited tribal court jurisdiction over tribal members' suits, or held that Indian tribes may not submit to the jurisdiction of state courts without the consent of Congress. This presentation will discuss these decisions and recent federal policy changes, and their potential impact on energy and mineral development in and near Indian Country.

SARAH ROUBIDOUX LAWSON, Of Counsel, Schwabe Williamson & Wyatt, Seattle, WA

**2:25 pm - 2:40 pm - Break**

**2:40 pm - 3:30 pm**

## **Public Lands, the Courts, and the Mining Law of 1872**

In addition to an ore deposit, mines have always needed lands for support facilities. Mines and support facilities on public lands, and mining law reform, have been under discussion for over 30 years. A suite of papers delivered at the 2002 Annual Institute under the topic “Whither and from Whence the Mining Law?” examined previous efforts to impose restrictions on the use of mining claims for support facilities, which were later reversed. The debate is not over and has resurfaced in a direct challenge to BLM's rules in DC federal court, *Earthworks v. U.S. Dep't of the Interior*, and in challenges to specific mine plan approvals. After being rejected in previous litigation, ancillary use restrictions recently found new life in *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, in which an Arizona federal court reversed U.S. Forest Service approval of support facilities for the Rosemont Copper Project. This presentation will examine the current status of the law, including the 1872 Mining Law, current regulations, recent court decisions, and pending litigation. It will also examine measures that could address concerns with the Mining Law, provide reasonable public lands access for mining, and eliminate future uncertainty and controversy.

JIM BUTLER, Partner, Parsons Behle & Latimer, Reno, NV

ROY W. FULLER, Attorney-Advisor, Office of the Solicitor, U.S. Department of the Interior, Washington, DC

**3:30 pm - Adjourn for the Day**

\*The Foundation acknowledges that tribal lands are not public lands. The decision to include this presentation in the Public Lands section was based on its interest to expected attendees.

# CORPORATE COUNSEL SECTION

*THURSDAY MORNING, JULY 22, 2021*

DAY FOUR

**9:30 am - 10:20 am**

## **Challenges to Enforcing Confidentiality Agreements in the Global Economy**

Businesses use confidentiality agreements (CAs) in many contexts, and they are an important step in a mineral property transaction. But are CAs enforceable or merely a psychological deterrent? Using a comparison of pertinent U.S. and Canadian law, this presentation will highlight key practical limitations of CAs and issues practitioners should consider when drafting to increase the probability that a given CA is enforceable. These issues include the conditions essential to enforceability, the types of monetary or injunctive relief that may be available to plaintiffs, and practical considerations regarding enforcement of CAs when multiple jurisdictions, forums, and governing laws may be implicated. The presentation will also address evidentiary requirements that may be implicated in the enforcement of CAs, such as identifying the breaching party, attributing the disclosure of confidential information to a contracting party, facts demonstrating anticipatory breach, and the inevitable disclosure and protectable interest doctrines.

AMY ABDO, Director, Fenmore Craig, P.C., Phoenix, AZ

ROB RISLEY, Senior Counsel (Retired), Freeport-McMoRan Exploration Corporation, Phoenix, AZ

LUIS SARABIA, Partner, Davies Ward Phillips & Vineberg LLP, Toronto, ON

**10:20 am - 11:10 am**

## **Building and Implementing an Effective Anticorruption Compliance Management Program**

Government ownership and regulation of natural resources means that resource companies face corruption risks in nearly all aspects of their operations, from market entry through exploration, development, production, and distribution. Anticorruption enforcement in the U.S. and, increasingly, abroad has risen steadily over the last two decades and continues to push the compliance bar higher. How would your company's anticorruption compliance program hold up to government scrutiny? What does an effective, risk-based program look like, and how do you defend your risk analysis and resource allocation decisions after a problem arises? How do compliance policies and internal accounting controls fit together, and how does your company culture affect how closely they are followed? This presentation will explain current U.S. and foreign enforcement expectations and compliance guidance and will offer practical recommendations on how to create and sustain an anticorruption compliance program that is nimble, effective, and integrated into business operations.

KATHRYN CAMERON ATKINSON, Chair, Miller & Chevalier, Washington, DC

**11:10 am - 11:20 am - Break**

**11:20 am - 12:10 pm**

## **Navigating Global ESG Legal Risks & Evolving Fiduciary Duties for Resource Companies**

In recent years, the legal and financial pressures on resource companies to manage environmental, social, and governance (ESG) risks have multiplied and hardened. Courts across jurisdictions have adopted new and evolving tests for parent liability for foreign subsidiaries' management of ESG risks. Legislation and legal challenges increasingly make key ESG issues board-level responsibilities—with due diligence and disclosure legislation recently passed or imminent in key markets. Such pressures reinforce increasingly stringent ESG expectations of investors and lenders. This presentation will examine how global resource companies can calibrate their governance of ESG risk to navigate evolving expectations while effectively managing operational risk in challenging environments. The speakers will begin with a survey of global legal developments to analyze the risk environment for global resource companies. They will then use practical case studies to offer concrete guidance on how to manage on-the-ground operational risks while effectively charting legal risks to parents, directors, and officers in home jurisdictions.

YOUSUF P. AFTAB, Director, Atelier Aftab (A2), New York, NY

JONATHAN DRIMMER, Partner, Paul Hastings LLP, Washington, DC

**12:10 pm - 12:45 pm - Break**

# LANDMAN'S SECTION

THURSDAY AFTERNOON, JULY 22, 2021

DAY FOUR

**12:45 pm - 1:45 pm**

## **Let's Make a Deal – Negotiating and Drafting Leases from Lessee and Lessor Perspectives – An Ethical Mock Negotiation**

The presentation will take the form of a live mock lease negotiation narrated and moderated by a third party that will weave in a discussion of relevant case law and regulatory provisions. Along the way the presenters will negotiate the commencement and continuous operations clauses, force majeure clause, Pugh and retained acreage clauses, and royalty provisions. The presenters will also address what can and cannot be said during negotiations to comply with the ABA Rules of Professional Responsibility and the AAPL Code of Ethics, and how standards of practice may require ethical behavior beyond the technical requirements of the rules.

KELLI TIEKEN KENNEY, Partner, McElroy, Sullivan, Miller & Weber LLP, Austin, TX  
JOHN B. MCFARLAND, Shareholder, Graves Dougherty Hearon & Moody P.C., Austin, TX  
PAUL G. YALE, Partner, Gray, Reed & McGraw LLP, Houston, TX

**1:45 pm - 2:35 pm**

## **Effective Planning and Drillsite Preparation – A Landman's Roadmap**

When a landman's supervisor informs that "We're Drilling," the landman must effectively and expediently prepare that tract to drill while avoiding unanticipated pitfalls and liabilities. This panel will "unpack" how to properly prepare for development and resolve obstacles in a timely fashion to get the rig onsite and on time. We will discuss everything from ordering title opinions to understanding regulatory obligations in the context of operations, and will identify the many significant differences in law and procedure across producing states. The panel will offer a practical "how-to" discussion from both legal and land perspectives and provide guidance for successfully managing location development across basins. This discussion is designed for both landmen navigating an unfamiliar landscape and legal counsel needing to understand the sequencing and timing of their clients' requirements to effectively coordinate and support the process. Materials will include legal and procedural guidance and illustrative flowcharts co-authored from multiple perspectives.

SARAH BLACK, Senior Landman, Range Resources, Canonsburg, PA  
BRESEE CARLSON, Partner, Kuiper Law Firm, Lakewood, CO  
ELIZABETH A. RYAN, Senior Counsel, New Mexico Operations, ConocoPhillips, Midland, TX

**2:35 pm - 2:50 pm - Break**

**2:50 pm - 3:40 pm**

## **Show Me the Money! Resolving Common Partner Payment Issues**

The best-laid plans for oil and gas development, even in the best of times, can lead to unexpected problems and pitfalls. What happens when operator and non-operator partners in drilling and development projects fail to meet their cost payment obligations? This presentation will identify common partner payment issues such as delays or failures in paying Joint Interest Billings (JIBs); partner bankruptcies; recovery of proportionate plugging and abandonment costs; compelling payment from signatories to election letters and Authorizations for Expenditure (AFEs); managing unjoined cotenants or unleased mineral owners; net revenue calculations where contractual obligations are significant; and dealing with unsigned joint operating agreements (JOAs). We will survey practical solutions for partner non-payment problems, including remedies upon default under JOAs, filing liens, and collecting upon those liens, and we will offer accessible tools for in-house counsel, practitioners, and landmen to expedite resolution of partner non-payment issues.

JAMIE L. JOST, Shareholder, Jost Energy Law PC, Denver, CO  
AMY MOWRY, Of Counsel, Jost Energy Law PC, Denver, CO

**3:40 pm - Adjourn for the Day**

# ENVIRONMENTAL SECTION

FRIDAY MORNING, JULY 23, 2021

DAY FIVE

**9:00 am - 9:30 am**

## **Annual Environmental Law Update**

The Environmental Law Update will summarize the key legislative, administrative, and judicial developments in environmental law since the 2020 Annual Institute.

HEIDI K. RUCKRIEGLE, Senior Associate, WilmerHale, Denver, CO

**9:30 am - 10:20 am**

## **The Pendulum Swings – Analyzing the Biden Administration’s New Priorities and Energy Sector Impacts**

Throughout President Trump’s term, he prioritized rulemaking and executive orders to undo much of the Obama-era climate change policies. Now, with President Biden in office and legislative options limited, the pendulum has swung back to the return of strong executive action on environmental issues, with a whole government approach to addressing climate change. This presentation will examine the Trump administration’s energy-related executive actions and focus on fossil energy, its current status, and the steps the Biden administration has already taken, and plans to take, to repeal or modify those changes. Areas of discussion will include the CEQ’s NEPA regulations (and whether certain streamlining may be retained for clean energy projects, for example), the leasing ban on public lands and waters, the rise of offshore wind and BLM’s renewable energy focus, and the EPA’s efforts to address climate change through Clean Air Act rulemaking.

JANICE M. SCHNEIDER, Partner, Latham & Watkins LLP, Washington, DC

**10:20 am - 10:30 am - Break**

**10:30 am - 11:20 am**

## **Backseat Driver No More! The Expanding Role of State and Local Government in Reducing Methane Emissions**

Toward the end of its term, the Trump administration amended the Obama-era Clean Air Act rule on methane emissions from oil and gas operations. In response to these changes and in response to state regulation, ballot initiatives, and public concern, several states and some local governments proposed or enacted new or strengthened mechanisms or regulations that control methane released from oil and gas production, processing, and transmission. After briefly discussing the import and status of the Trump administration’s amendment and changes made and underway by the Biden administration, this presentation will focus on states and local governments that have increased their efforts in this area, common approaches for achieving emissions reductions, the impact on industry, and how industry has responded.

JENNIFER L. BIEVER, Director, Williams Weese Pepple & Ferguson, Denver, CO

CARLOS R. ROMO, Director, Williams Weese Pepple & Ferguson, Denver, CO

**11:20 am - 12:10 pm**

## **Environmental Justice – What It Is, Whom It Seeks to Help, and How to Address It**

The EPA defines environmental justice 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.” This concept obviously has many layers, and while it has been around for some time, it may not be familiar to many practitioners. This presentation will explore those layers, including the disproportionate environmental burdens shouldered by racial and ethnic minorities, and the regulatory frameworks in place, and contemplated, to address these inequities. Such tools include existing environmental and civil rights legislation as well as constitutional protections. The discussion will also examine various communities’ diverse concerns that have been raised in the environmental justice framework.

CLIFFORD J. VILLA, Associate Professor of Law, University of New Mexico School of Law, Albuquerque, NM

**12:10 pm - 12:45 pm - Break**

# WATER SECTION

FRIDAY AFTERNOON, JULY 23, 2021

DAY FIVE

**12:45 pm - 1:35 pm**

## **Land Use and Water Rights – Lessons from Washington State – Managing Water Resources in a Time of Climate Change**

This presentation with a diverse panel representing state agency, local government, and the private sector will examine how land development impacts water resource management and the environment. Communities are working to develop frameworks to manage development and address competing demands for water supply and related challenges, including saltwater intrusion, suburban wildfires, flooding, stormwater management, water infrastructure, and aquatic species protection. The panel will focus on efforts in the State of Washington and local communities that are working together to do cutting edge work on these issues, providing lessons for other states. The presentation will highlight emerging legal and policy trends in the state, including statutory, case law, and voluntary efforts to better align land development with water supply through water rights mitigation, active water banking programs, and water supply planning at the local government level and the subsequent implications for people, salmon, and orca.

MICHELLE BRYAN, Professor of Law, Alexander Blewett III School of Law, University of Montana, Missoula, MT

MARY VERNER, Water Resources Program Manager, Washington State Department of Ecology, Lacey, WA

KATHLEEN CALLISON, Law Offices of Kathleen Callison, Tumwater, WA

JOSH BALDI, Water and Land Resources Division Director, King County Department of Natural Resources and Parks, Seattle, WA

**1:35 pm - 2:25 pm**

## **Transboundary Pollution Regimes and Canadian Mining Impacts on U.S. Waters**

Numerous mining operations are proceeding in the Canadian headwaters of transboundary watersheds shared across Washington, Montana, Alaska, and Idaho. These operations threaten downstream communities, including U.S. states and tribal lands, with the risk of mining-related water pollution. The international boundary separating the sources and sinks of the potential pollution in these watersheds raises distinctive questions of law, policy, and international treaty, particularly with respect to mine assessment and regulation of contamination. Drawing on scientific research and lessons learned in the relevant river systems—the Flathead, Elk/Kootenai(y), Taku, Stikine, Unuk and Skagit—Erin Sexton will paint a comprehensive picture of potential Canadian mining impacts and policy responses in each of the downstream jurisdictions. Kenta Tsuda will consider structural challenges posed by the legal regimes currently used to control transboundary water pollution, and consider the array of potential legal tools and institutions that could generally provide efficient and effective paths to addressing pollution.

ERIN SEXTON, Senior Scientist, Flathead Biological Station, University of Montana, Polson, MT

KENTA TSUDA, Staff Attorney, Conservation Law Foundation, Boston, MA

**2:25 pm - 2:40 pm - Break**

**2:40 pm - 3:30 pm**

## **401 Certification – The State of the Law**

The cooperative federalism approach in the Clean Water Act (CWA) and the reach of the Commerce Clause is tested by Section 401, which prevents a federal agency from issuing a permit or license unless a state or authorized tribe issues or waives a water quality certification. In July 2020, EPA issued a new rule in an effort to update the 401 certification process and address some longstanding issues, but critics say the rule goes too far. A case pending in the U.S. Supreme Court, *Montana and Wyoming v. Washington*, questions the scope of state authority to deny or condition federal permits under Section 401 certification. That case examines whether Washington State's denial of port access to ship Montana and Wyoming coal to foreign markets using 401 certification violates the Commerce Clause. This presentation will examine the issues surrounding Section 401 certification and provide an update on agency and judicial actions that attempt to define the boundaries of state authority to grant, deny, or condition Section 401 certification.

ALLYN L. STERN, Of Counsel, Beveridge & Diamond PC, Seattle, WA

**3:30 pm - Adjourn for the Day**

# INTERNATIONAL SECTION

MONDAY MORNING, JULY 26, 2021

DAY SIX

**9:30 am - 10:20 am**

## **Far and Away – Overcoming Infrastructure Development Challenges Involving Resource Projects In Remote Areas**

Demand for minerals and energy to address the needs of a growing and changing global community has led to exploration and development efforts in many remote areas of the world that lack transportation, energy, and other infrastructure. Because of these remote locations, project developers need to manage increased costs, deal with communities being asked to welcome new infrastructure, and sometimes even replace the government's role. New infrastructure project developers will often seek support and funding of local governments and vehicles may need to be put in place to successfully partner with governments, institutional sources of funding, indigenous peoples, and private enterprises. This presentation will address the key contractual, permitting, and local community issues in the context of legal or policy frameworks that may facilitate the development and maintenance of infrastructure needed to pursue long-term resource targets in remote or underdeveloped regions of the world.

JULIE ABOUCHAR, Partner, Willms & Shier Environmental Lawyers LLP, Toronto, ON

MARÍA LUISA PORTO FOX, Corporate Legal Manager, Cenit Transporte y Logística de Hidrocarburos S.A.S., Bogotá, Colombia

**10:20 am - 11:10 am**

## **Record-Breaking International Arbitration Awards – Is International Arbitration an Effective Remedy?**

In July 2019, Antofagasta Minerals and Barrick Gold announced that the World Bank's International Centre for Settlement of Investment Disputes had issued a \$5.8 billion arbitration award to their joint venture company Tethyan Copper Company Pty Limited (TCC), against the Islamic Republic of Pakistan, arising from the denial of a mining lease for the world-class Reko Diq project. Using the TCC arbitration and other prominent mining arbitrations as case studies, this presentation will examine the extent to which international arbitration can serve as an effective remedy for adverse actions by a host government. The speakers will provide a practical overview of key issues in investor-state mining arbitrations, including strategic considerations before and during a dispute, the duration, cost, and potential funding sources for international arbitration, the challenges of valuation, and enforcement.

NATALIE L. REID, Partner, Debevoise & Plimpton LLP, New York, NY

BERGLIND HALLDORSOTTIR BIRKLAND, Associate, Debevoise & Plimpton LLP, New York, NY

**11:10 am - 11:30 am - Break**

**11:30 am - 12:20 pm**

## **Protecting Mining Investments Against Government Interference – An Investment Treaty Perspective**

When a project is impaired or expropriated by the conduct of State authorities of a foreign host country, obtaining an effective remedy against the host State in an impartial forum can be a significant challenge. Experience shows that treaties for the protection of foreign investment are among the few viable options available to companies and investors in such circumstances, including by way of an internationally enforceable arbitration award of monetary damages. This presentation will provide an overview of the protections typically provided to investments and projects by investment treaties and the related remedies, including investor-State international arbitration. The presentation will use real-life examples, such as the successful \$740 million investment treaty claim by the Canadian gold mining company Gold Reserve against Venezuela concerning the Brisas gold and copper mining project, and the successful \$48.6 million investment treaty claim by the Chilean ulexite mining company Quiborax S.A. against the Plurinational State of Bolivia. The presentation also will discuss considerations relating to the structuring of mining investments so that they qualify for protection under investment treaties.

MARTÍN AÑEZ REA, International Consultant, DRLAbogados, Madrid, Spain

PETR POLÁŠEK, Partner, White & Case LLP, Washington, DC

**1:00 pm - 2:00 pm - Virtual International Networking Reception**

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MICHELLE BRYAN, University of Montana School of Law, Missoula, MT

# UPCOMING PROGRAMS

## Young Professionals Breakfast and Oil & Gas CLE (in conjunction with NAPE)

August 19, 2021

## International Oil & Gas Law, Contracts, and Negotiations: Part 1: From Concept to Discovery

September 27 - October 1, 2021

Houston, Texas

## International Oil & Gas Law, Contracts, and Negotiations: Part 2: From Discovery to Decommissioning

October 4-8, 2021

Houston, Texas

## Federal Oil and Gas Leasing Short Course

October 18-21, 2021

Westminster, Colorado

## Oil and Gas Law Short Course

October 18-22, 2021

Westminster, Colorado

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