Indian Law and Natural Resources: The Basics and Beyond

September 26-27, 2017
Marriott Hotel, Westminster, CO

Laws, policies, and practices affecting tribal lands have evolved significantly in recent years, while energy and mineral industry involvement on tribal lands has increased. Tribal participation in developing their resources is now the norm and has brought more companies and their legal counsel into Indian Country in the Rocky Mountain Region, Pacific Northwest, Southwest, Upper Midwest, and throughout the U.S.

Federal and some state agencies have been increasingly deferential to tribes and their participation in management of off-reservation federal lands and resources. The controversial Dakota Access Pipeline and opposition to Northwest coal terminals have brought new issues to the forefront, including treaty rights. The landscape has changed, the pace of development has quickened, and new entrants into tribal resource development are on the rise. This Special Institute will begin with a brief overview of the basics then move on to more advanced topics in Indian law that practitioners are seeing every day.

Supported by

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 Colorado to continue the tradition of valuable educational and networking opportunities provided by our Indian Law and Natural Resources Institute.

Course materials and audio recordings are available in various formats if you are unable to attend. See inside for details.
11:00 am: Outlook for the Trump Administration
Changes always occur with any new administration. Given the dearth of early clues on how President Trump will approach Indian Country issues, this presentation will be both essential and hard to scope. Some prognosticators have asserted that federal regulatory barriers to tribal economic development will fall, but some fear a rollback in support for tribal sovereignty. There is also the matter of whether the appointment of Justice Gorsuch will affect the Supreme Court's Indian law jurisprudence.

Paul Moorehead, Principal, Powers Pyles Sutter & Verville PC; Washington, DC
Pilar M. Thomas, Of Counsel, Lewis Roca Rothgerber Christie LLP; Tucson, AZ

12:00 pm: Lunch – On Your Own

1:30 pm: Linear Projects
Linear projects are much in the news in the last several years, from the Dakota Access Pipeline to transmission lines to renewal of rights-of-way for rail and other projects. This presentation will cover practical siting issues and the legal vehicles for access and/or rights-of-way across tribal trust lands and Indian Country, and will also address condemnation, tribal ownership, and renewal issues.

Colby L. Branch, Partner, Crowley Fleck PLLP; Billings, MT

2:20 pm: Evolving Federal Agency Interpretations of Tribal Sovereignty and the Federal Trust Responsibility
Recently promulgated BIA regulations in 25 C.F.R. Parts 162 and 169, particularly language in the preamble to those regulations, reflect an expanded vision of tribal sovereignty. Courts will likely confront challenges to these regulations and this new vision. This presentation will explain substantive versus procedural issues and explore the regulations, the theory, and the implications of this new approach to tribal sovereignty.

Kevin Washburn, Regents Professor of Law, University of New Mexico School of Law; former Assistant Secretary for Indian Affairs, U.S. Department of the Interior; Albuquerque, NM
Jody A. Cummings, Partner, Steptoe & Johnson LLP; former Deputy Solicitor for Indian Affairs, U.S. Department of the Interior; Washington, D.C.

3:10 pm: Hosted Refreshment Break

3:30 pm: Tribal Resource Development
Natural resource development on tribal lands and reservations continues to evolve toward tribal participation. This presentation will address recent developments and best practices for tribes and industry in seeking to co-develop and manage tribal mineral resource development. The speakers will discuss in detail the legal/contractual vehicles available for tribal participation as active owners/venturers in resource development (LLCs, corporate structures, JVs, etc.) and the pros and cons of majority and minority ownership by the tribal partner. Should the tribal partner be the tribe itself or a wholly owned tribal entity? The presentation will also cover the tribal laws that need to be considered in developing the structure and obtaining necessary tribal approvals.

Thomas H. Shipp, Partner, Maynes, Bradford, Shipps & Shetef, LLP; Durango, CO
Lynn H. Slade, Shareholder, Modrall Sperling, Albuquerque, NM
4:20 pm: Indian Water Rights and Settlements

Indian tribes that historically received set-aside reservations also typically received reserved water rights under the Winters doctrine. Those water rights were often never developed or quantified. As tribes continue their economic resurgence, and as the adjudication process has progressed in many western states, conflicts between non-Indian water users and tribal rights have arisen. These conflicts typically have been resolved through negotiated water compacts. This presentation will explore recent Indian water settlements, review the historic process, and present a proposal for an improved and expedited approach. The program will also assess the Salish & Kootenai water compact and ongoing legislation.

REID PAYTON CHAMBERS, Partner, Sonosky, Chambers, Sachse, Endreson & Perry, LLP, Washington, DC
RYAN RUSCHE, Attorney, Confederated Salish and Kootenai Tribes of the Flathead Nation, Columbia Falls, MT

5:10 pm - 6:10 pm: Hosted Reception for Registrants, Speakers, & Guests

DAY 2: Wednesday, September 27, 2017

8:00 am: The Role of Indian Tribes Under CERCLA and the Oil Pollution Act

What is the role of tribes in asserting natural resource damage claims at contaminated sites? What happens when a tribe's interest in restoration or in assessing natural resource damages does not align with the objectives of a CERCLA or OPA investigation or cleanup? These questions are likely to be tested in connection with the Gold King spill in the headwaters of the Animas River in Colorado, which has heightened awareness of tribal participation under the federal cleanup statutes. But uncertainty continues about the boundaries of tribes' authority, trusteeship, and jurisdiction for directing cleanups, assessing natural resource damages, and pursuing damages claims at these sites. This presentation will explore the interplay between tribal, federal, and private party roles at CERCLA and OPA sites, including some recent examples.

ADAM S. COHEN, Partner, Davis Graham & Stubbs LLP, Denver, CO
MAVE A. GASAWAY, Associate, Davis Graham & Stubbs LLP, Denver, CO

9:00 am: International Indigenous Peoples Issues and Federal Indian Law

Emerging norms in international law regarding indigenous peoples are influencing domestic Indian law and tribal consultation rights. This presentation will draw from developments and practices that could be helpful, and identify trends that could change (and have changed) how the federal government looks at tribal deference and consultation rights. The speakers will also examine the trend toward international commissions and other approaches for addressing indigenous rights issues in the U.S.

S. JAMES ANAYA, Dean and Charles Inglis Thomson Professor, University of Colorado School of Law; former UN Rapporteur on Indigenous Peoples, Boulder, CO
REBECCA TSOSIE, Regents' Professor of Law, Special Advisor to the Provost for Diversity and Inclusion, James E. Rogers College of Law, University of Arizona, Tucson, AZ

10:10: Hosted Refreshment Break

10:30 am: Tribal Consultation and Influence on Off-Reservation Development

The Advisory Council on Historic Preservation's guidance (both officially, and anecdotally to federal agencies on specific projects) has expanded the role of tribes both on and off-reservation. In addition to National Historic Preservation Act (NHPA) consultation, this presentation will address executive orders and policies relating to government-to-government consultation, and agency-specific consultation regulations and policies (ACOE, FCC, USFS, DOI, DOE, etc.). It will also examine whether recent court decisions have altered what is now considered a "good faith effort" to consult with tribes under the NHPA. The speakers will address recent use of Section 304 of the NHPA to keep extensive information confidential, raising issues of effective management, administrative record concerns, and due process issues.

VANESSA L. RAY-HODGE, Partner, Sonosky, Chambers, Sachse, Mielke & Brownell, LLP, Albuquerque, NM
SARAH M. STEVENSON, Associate, Modrall Sperling, Santa Fe, NM

11:30 am: Lunch – On Your Own

1:00 pm: Ethical Issues That Arise When Dealing with Tribes

This presentation will address ethical issues arising when dealing with tribal governments and tribal officials (as represented parties) under the ABA Model Rules, and will identify issues that can arise in practicing before tribal administrative, legislative, and judicial bodies. The speaker will also address the issue of companies that prefer to meet with tribes and their counsel without themselves “lawyering up,” and the issues that practice raises under Model Rule 4.2. Which federal, state, and tribal anti-corruption laws may apply to business transactions with tribes and tribal officials, and in establishing mitigation or corporate social responsibility programs with tribes? This presentation will also explain conflicts of interest and the duty of transparency.

MARANDA S. COMPTON, Of Counsel, Van Ness Feldman LLP, Washington, DC

2:00 pm: Case Study – Fort Berthold

Taking a particular reservation as a case study, this panel will examine the breadth of issues that arise with respect to a single reservation and identify the jurisdictional tensions and related issues that flow from that circumstance. For example, there are extremely complicated land title questions involving competing claims to the minerals underlying sections of the Missouri River. There are competing state and tribal tax disputes. There are tribal licenses, TERO obligations, and surface damage claims. There are class actions being filed in tribal court. Using a case study to explore real, on-the-ground topics will be helpful to attendees, both Indian and non-Indian, in better understanding how some of these theoretical issues play out in the real world.

NEIL G. WESTESEN (Moderator), Partner, Crowley Fleck PLLP, Bozeman, MT
LAWRENCE BENDER, Shareholder, Fredrikson & Byron, P.A., Bismarck, ND
JOSHUA B. COOK, Partner, Crowley Fleck PLLP, Billings, MT
MARK N. FOX, Tribal Chairman, Mandan, Hidatsa, and Arikara Nation, New Town, ND
JOHN FREDERICKS III, Partner, Fredericks Peebles & Morgan LLP, Mandan, ND
BRENT SANFORD, Lieutenant Governor, Office of the Governor, State of North Dakota, Bismarck, ND

3:30 pm: Course Adjournment
All registrants will receive a link to the online course materials. A hard copy manual is available to registrants for $70. See the registration form.

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Colorado Residents Add Sales Tax (see Colorado Sales Tax Chart) $_____

Handling Charge (waived for digital materials only) + $11.00 per order

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☐ Federal Express Overnight

Bill my FedEx # ______________________

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**Colorado Sales Tax Chart**

City-Westminster, County-Jeffco, RTD and State ...........................................8.35%
RTD and State ........................................................................................................4%
State of Colorado .................................................................2.9%

**Shipping Information**

Downloadable Items: No handling charge.
All other orders must add $11 per order for handling charges.
Domestic: Sent at no additional charge by FedEx Ground.
Canadian: Must add $30 per item.
International: Must add $65 per item.
FedEx Overnight: Please provide your FedEx number.

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☐ Check drawn on a U.S. bank in U.S. Dollars (Payable to Rocky Mountain Mineral Law Foundation)
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☐ Electronic Transfer: Contact the Foundation at info@rmmlf.org

The Rocky Mountain Mineral Law Foundation is a non-profit, tax-exempt corporation (Tax ID #84-6037688).
**Indian Law and Natural Resources**  
The Basics and Beyond

**PROGRAM COMMITTEE**

CONSTANCE L. ROGERS, Program Co-Chair; Partner, Davis Graham & Stubbs LLP, Denver, CO

NEIL G. WESTESEN, Program Co-Chair; Partner, Crowley Fleck PLLP, Bozeman, MT

WALTER E. STERN, Shareholder, Modrall Sperling, Albuquerque, NM

SCOT W. ANDERSON, Partner, Hogan Lovells, Denver, CO

PILAR M. THOMAS, Of Counsel, Lewis Roca Rothgerber Christie LLP, Tucson, AZ

JOSHUA B. COOK, Partner, Crowley Fleck PLLP, Billings, MT

ALVINA L. EARNHART, Partner, Fredericks Peebles & Morgan LLP, Louisville, CO

REID P. CHAMBERS, Partner, Sonosky Chambers, Sachse, Endreson & Perry, LLP, Washington, DC

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**REGISTRATION**

**1. Registrant Information – Please type or print legibly**

Name ____________________________

Badge Name (if different from above) ____________________________

Employer ____________________________

Employer Address ____________________________

City/State/Zip ____________________________

Phone (___) ____________________________ Fax (___) ____________________________

Attendee Email ____________________________

(required for confirmations, advance registration list, and program updates)

Please check all that apply:  
☐ Attorney  ☐ Landman  ☐ Management

☐ Consultant  ☐ Student  ☐ Other (please specify): ____________________________

CLE credit requested for the following states: ____________________________

Other credit requested from: ____________________________

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**2. Registration Category – Please pay in U.S. Dollars**

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**3. Materials Format**

Select your course materials format:  
☐ DOWNLOAD ONLY ($0) (Electronic materials only)  ☐ HARD COPY ($70) (Receive manual at conference)

**TOTAL: $**

**4. Payment Information – Prepayment Required**

☐ Check drawn on a U.S. bank in U.S. Dollars (Payable to RMMLF)

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General Information

**Room Reservations:** The Marriott Hotel, 7000 Church Ranch Blvd., Westminster, CO, 80021, has blocked rooms for this Special Institute until September 12 at the rate of $169 (single/double) per night. Executive level rooms are available for $189/night. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants. For reservations, contact the Marriott at:

- Online [http://tinyurl.com/rockym124](http://tinyurl.com/rockym124)
- Direct 720-887-1177

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](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 Monday, September 11, 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.

**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, the AAPL, and various 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.