



SPECIAL INSTITUTE ON

The National Environmental Policy Act

November 2-3, 2017

Grand Hyatt Hotel, Denver, CO

The National Environmental Policy Act plays a pivotal role in the permitting and approval of more natural resources and energy development projects than any other federal law. NEPA is the principal federal charter for the protection of the environment.

With ongoing required federal permitting and approvals on energy and mineral projects, and a new Administration in Washington, an understanding of NEPA law and litigation is of critical importance for natural resource attorneys from government, private practice, and NGOs, as well as for environmental consultants and landmen. The third in the Foundation's highly successful NEPA series, this two-day Special Institute will open with an overview of the NEPA process, requirements, and standards, and then quickly move to focus on advanced topics and new developments.

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 Denver to continue the tradition of valuable educational and networking opportunities provided by our NEPA institute.

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

The National Environmental Policy Act

DAY 1: Thursday, November 2, 2017

7:00 am: Registration

8:20 am: Introduction and Opening Remarks

ALEX RITCHIE, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO

MICHAEL J. MALMQUIST, President, Rocky Mountain Mineral Law Foundation; Shareholder, Parsons Behle & Latimer, Salt Lake City, UT

STEVEN K. IMIG, Program Co-Chair, Denver, CO

HADASSAH M. REIMER, Program Co-Chair; Of Counsel, Holland & Hart LLP, Jackson, WY

8:30 am: Laying the Groundwork—NEPA's Purpose, Levels of Agency Review, and Process Overview

We begin by reviewing the basics of the NEPA process, with guidance on what needs to be done and when, including scoping, draft preparation, public comment periods, final document preparation, and the record of decision. This introduction will discuss the levels of NEPA review—environmental impact statements (EISs), environmental assessments, and categorical exclusions—and the standards for determining when each is appropriate, including defining “significance” and application of “extraordinary circumstances.”

ANA M. GUTIERREZ, Senior Associate, Hogan Lovells US LLP, Denver, CO

DALE RATLIFF, Associate, Hogan Lovells US LLP, Denver, CO

9:30 am: Anatomy of an EIS—What Goes into the NEPA Document?

This overview of the required elements of an EIS, and typical practices, will include the purpose and need statement; the proposed action and alternatives; the affected environment; evaluation of direct, indirect, and cumulative impacts; and mitigation measures. The speaker will also cover the differences between an EIS and an environmental assessment (EA), and provide an introduction to the standards for information and analysis of impacts in those documents (such as the “hard look” standard).

BRAD GRENHAM, Attorney, U.S. Department of the Interior, Office of the Solicitor, Portland, OR

10:30 am: Hosted Refreshment Break

10:45 am: NEPA Strategies—Legal Compliance and Process Efficiencies

Moving on from the basics, this presentation will introduce various concepts and strategies that have been developed to streamline the NEPA process within the confines of the legal requirements, such as (1) programmatic review, tiering, and supplementation; (2) proponent/contractor prepared NEPA documents; (3) agency NEPA guidance; and (4) combining NEPA compliance with other statutory requirements under the NHPA, ESA, and state NEPA's.

CONSTANCE L. ROGERS, Partner, Davis Graham & Stubbs LLC, Denver, CO

11:45 am: Lunch – On Your Own

1:15 pm: Defining the Scope of NEPA Review: “Small Handles” and Connected, Cumulative, and Similar Actions

One of the first tasks in any NEPA review is defining the proposed action and whether the scope of the impact analysis and generation of alternatives must encompass connected, cumulative, or similar actions. This presentation will explore the complexities in determining the scope of NEPA review, including special attention to the “small handles” scenario, addressing recent case law developments.

ROGER FLYNN, Director, Western Mining Action Project; Adjunct Professor, University of Colorado Law School, Boulder, CO

JAMES M. AUSLANDER, Principal, Beveridge & Diamond, Washington, DC

2:15 pm: The EPA's Role in the NEPA Process

EPA plays a unique role in the NEPA process. EPA is charged with reviewing EISs prepared by other federal agencies, and with commenting on the acceptability of the environmental impacts of the proposed action. This presentation will cover EPA's two-pronged rating system, how EPA views are addressed by federal agencies, the CEQ referral process, and related issues.

BRET SUMNER, Shareholder, Beatty & Wozniak, P.C., Denver, CO

2:45 pm: Hosted Refreshment Break

3:00 pm: NEPA's Scientific and Information Standards—Taking the Harder Look

What are the NEPA requirements for using high quality information and accurate scientific analyses in NEPA documents, and how is the agencies' treatment of these items reviewed in judicial challenges to NEPA decisions? This presentation considers the applicable NEPA standards from the CEQ regulations, guidance, and NEPA case law, including topics such as agency decision making in the face of scientific uncertainty, incomplete or insufficient information, data gaps, and conflicting scientific views. NEPA supplementation requirements will also be considered in the context of continuing developments in scientific knowledge, including climate change issues.

MURRAY FELDMAN, Partner, Holland & Hart LLP, Boise, ID

KRISTIN A. NICHOLS, Associate, Holland & Hart LLP, Greenwood Village, CO

4:00 pm: NEPA Remedies—Who Wants Some More Process? NEPA Administrative Appeals and Litigation

This presentation will address the remedies available in a NEPA case, highlighting the standard for preliminary injunctive relief, when vacatur is appropriate, supplementation requirements, decisions on remand, and continued supervision by the courts. The latest developments in administrative NEPA appeals within the processes established by federal agencies, exhaustion of administrative remedies, judicial review of agency action in U.S. District Court under the Administrative Procedure Act, intervention, standing, and ripeness will also be addressed.

ANDREW MERGEN, Deputy Section Chief-Appellate Section, U.S. Department of Justice, Environment & Natural Resources Division, Washington, DC

5:00 pm -6:00 pm: Hosted Reception for Registrants, Speakers & Guests

DAY 2: Friday, November 3, 2017**8:15 am: CEQ's Historical Efforts to Modernize and Reinvigorate NEPA**

This keynote talk will provide perspective on CEQ's efforts over the last 20 years to modernize and reinvigorate NEPA. Lessons learned from past initiatives will be explored, including reasons why some have proven successful and others have fallen flat. The most recent CEQ guidance and efforts will be addressed, along with considerations and recommendations for future CEQ initiatives and priorities.

EDWARD A. ("TED") BOLING, Esq., Associate Director for National Environmental Policy Act, White House Council on Environmental Quality, Washington, DC

HORST GRECZMIEL, former Associate Director for NEPA Oversight, Council on Environmental Quality, Washington, DC

9:15 am: Public Comments—Panel on the Public and Agency's Perspective

What makes an effective public comment, and what is the agency process for organizing, reviewing, and responding to comments? This presentation will address the varying roles of public comment at different stages in the NEPA process (scoping, the draft EIS, and post-final EIS). The panel will attempt to answer the question of how to most effectively get the agency's attention and affect the final decision.

Moderator: TEMPLE STOELLINGER, Co-Director, Center for Law and Energy Resources in the Rockies, Assistant Professor, Haub School of Environment and Natural Resources, University of Wyoming College of Law, Laramie, WY

GREG LARSON, Field Manager, BLM Uncompahgre Field Office, Montrose, CO

TOM HALE, Senior NEPA Project Manager, SWCA Environmental Consultants; Adjunct Professor, University of Utah, Salt Lake City, UT

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

10:15 am: Hosted Refreshment Break**10:30 am: Ethical Issues That Arise When Representing Clients Before Government Agencies**

Unique ethical issues can arise under the ABA Model Rules of Professional Conduct when representing clients in agency proceedings. This presentation will provide useful tips to help practitioners avoid falling into the ethical traps that can ensnare even the most seasoned lawyers.

STANLEY W. LAMPORT, Cox, Castle & Nicholson LLP, Los Angeles, CA

11:30 am: Lunch – On Your Own**1:00 pm: NEPA Mitigation—How Does NEPA's Procedural Requirement to Consider Mitigation Impact Agency Decisions?**

What are NEPA's requirements for identifying and considering mitigation in environmental reviews, and how can project proponents use mitigation to streamline the NEPA process? Does the requirement to develop and consider mitigation approaches and their effectiveness actually provide "teeth" to NEPA's otherwise procedural mandate?

Does the process of identifying and considering mitigation actually affect the outcome of an agency decision?

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

TIMOTHY R. CANON II, Associate, Davis Graham & Stubbs LLP, Denver, CO

2:00 pm: NEPA and Climate Change

Agency consideration of climate change in NEPA documents, including the problem of climate change as a cumulative effect and the impact of President Trump's March 28, 2017 Executive Order on Energy Independence, will be addressed. The presentation will discuss recent cases and agency decisions addressing climate change and issues of standing specific to climate change related NEPA claims.

DEANA BENNETT, Partner, Modrall Sperling, Albuquerque, NM

2:50 pm: Hosted Refreshment Break**3:05 pm: NEPA Evaluation of Cultural Resources, Tribal Values, and Environmental Justice**

Exploring the requirements, nuances, and best practices for evaluating impacts to cultural resources, Native American traditional values, and environmental justice in NEPA documents, this presentation will also delve into related issues such as impacts to culturally significant plants and animals, aboriginal hunting and gathering, sacred sites, and other important cultural landscape-scale values. What is the role of the Department of the Interior's draft Environmental Justice Strategic Plan? How does the NEPA cultural resource impact review process dovetail with the National Historic Preservation Act and government-to-government review and consultation obligations? Appropriate use of ethnographic assessments and programmatic agreements in the NEPA context to provide baseline information and explore impacts and mitigation opportunities will be discussed.

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

KYLE TISDEL, Attorney, Climate & Energy Program Director, Western Environmental Law Center, Taos, NM

4:05 pm: Practice Pointers and Pitfalls

From the viewpoint of seasoned practitioners who prepare or manage the preparation of NEPA documents, this presentation will focus on how the process of preparing a NEPA document actually proceeds behind the scenes, particularly for large projects with involvement by numerous federal agencies or field offices within the same agency. The speakers will also address how the public and project proponents can best participate and stay effectively engaged during all stages of the process.

Moderator: JULIA A. JONES, Counsel, Anadarko Petroleum Corporation, Denver, CO

DAWN MARTIN, Senior Principal Professional, Kleinfelder, Denver, CO

ARTHUR R. KLEVEN, Attorney-Advisor, U.S. Department of the Interior, Office of the Solicitor, Rocky Mountain Region, Lakewood, CO

BARBARA D. CRAIG, Partner, Stoel Rives LLP, Portland, OR

5:05 pm**Course Adjournment**

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

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Course materials and audio for NEPA will be available within 4 weeks after the program

Title/Description	Qty.	Unit Price		Total
		Non-Member	RMMLF Member	
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Looseleaf Manual only (NEPA3M)		\$255	\$215	\$
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Audio CD (NEPA3-ACD)		\$385	\$320	\$
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Solicitor, Lakewood, CO

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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)

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General Information

Room Reservations: The Grand Hyatt Denver, 1750 Welton St, Denver, CO, 80202, has blocked rooms for this Special Institute until October 11 at the rate of \$209 (single/double) per night. Ask for special rates for Rocky Mountain Mineral Law Foundation registrants. A limited number of government rate rooms are also available. For reservations, contact the Hyatt at:

- Online <http://tinyurl.com/rockym120>
- Toll-Free 888-421-1442

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 Monday, October 16, 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, 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.