The Rocky Mountain Mineral Law Foundation, and our co-sponsor the American Bar Association, Environment, Energy, and Resources Section, are excited to host the new two-day Water Law Institute in beautiful San Diego, California. Water is a critical and finite resource, and water management impacts all aspects of environmental and resource law. In an era of limited supply and increasing demand, knowledge of the emerging issues in water law is a must, not only for water law practitioners but also for all environmental and resource professionals.

This Institute provides the only truly national dialogue on water law, addressing issues of water supply and water quality from both eastern and western perspectives. Our distinguished speakers will provide insight and analysis of the key topics impacting the acquisition, management, and use of water, including issues relating to integrated water management, use of water in the development of renewable energy, emerging water contamination risks, inter-jurisdictional water disputes, dam removal, stream access and streambed ownership, endangered species, tribal water use, and water management within the Colorado River Basin.
DAY 1: Wednesday, November 18, 2020

7:00 am – 8:30 am: Registration at the Manchester Grand Hyatt San Diego

8:30 am – 8:45 am: Introductions and Opening Remarks
ALEX RITCHIE, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, CO
STUART R. BUTZIER, President-Elect, Rocky Mountain Mineral Law Foundation; Shareholder, Modrall Sperling, Santa Fe, NM
WENDY BOWDEN CROWTHER, Program Co-Chair; Shareholder, Parsons Behle & Latimer, Salt Lake City, UT
CRAIG P. WILSON, Program Co-Chair; Managing Partner, K&L Gates, Harrisburg, PA

8:45 am – 10:15 am: Colorado River Basin Management Update
The Colorado River provides a significant water supply to the seven states of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming and provides water to nearly 40 million people for municipal use, along with supplying water to irrigate nearly 5.5 million acres of land. At least 22 federally recognized tribes, 7 National Wildlife Refuges, 4 National Recreation Areas, and 11 National Parks also rely on the River, and more than 4,200 megawatts of hydropower electrical generating capacity are used across the West. This presentation will provide a current view of the Upper Basin and Lower Basin perspectives, heading into the new negotiations to update the 2007 Interim Guidelines and Drought Contingency Plans.
ANNE J. CASTLE, Getches-Wilkinson Center for Natural Resources, University of Colorado, Boulder, CO (moderator)
AMY HAAS, Director, Upper Colorado River Commission, Salt Lake City, UT
CHRISS HARRIS, Executive Director, State of California Colorado River Board, Glendale, CA

10:15 am – 10:30 am: Hosted Refreshment Break

10:35 am – 11:35 am: Tribal Water and How It Looks in the Future
As Indian Tribes adjudicate and firm up their Winters water rights in the West, the value of those rights is apparent to those looking for additional supplies in dry years and for drought planning. As the West faces climate change, how tribal water sources may be part of drought resilience is a topic playing out in several watersheds. This presentation will explore how tribal water rights have been in play, and what the future may bring.
HILARY TOMPKINS, Partner, Hogan Lovells, Washington DC

11:35 am – 12:05 pm: Global Water Stress
Data released by the World Resources Institute in 2019 ranks countries by the likelihood that they will drain their annual water stores in a typical year. About a quarter of the world’s populations live within 17 nations ranked as “extremely stressed” in this analysis, meaning that in a “typical” year, these countries use most of the water they have. The humanitarian and economic implications of global water stress are great. This presentation will consider water as a business and financial risk.
PAUL REIG, Former Director, Aqueduct Water Risk Atlas and Corporate Water Stewardship, World Resources Institute, Washington, DC

12:05 pm – 1:35 pm: Lunch – On Your Own

1:35 pm – 2:35 pm: Integrated Water Management
Management and use of water resources are becoming increasingly complex. Where in the past the available quantity of water was the critical issue for water rights holders, consumptive water users now are facing many competing demands on the resource such as maintaining water quality, providing non-consumptive uses of water to support ecosystems and aquatic life, and meeting other societal recognized beneficial uses of water. This presentation will explore this brave new world of water use and management and exciting projects underway in different states, and address the question whether traditional, quantity-based water law is a barrier to innovation or can be an opportunity to more efficiently utilize a resource that is increasingly in demand for a multiplicity of purposes.
TINA CANNON LEAHY, Senior Staff Counsel, State Water Resources Control Board, Sacramento, CA

2:35 pm – 3:35 pm: New Risks to Water Quality
New risks to water quality, some of them linked to global climate disruption, are posing challenges to drinking water supplies and leading to new sources of liability that affect manufacturers, water purveyors, and other utilities and businesses, with the prospect of new regulations affecting these entities. This presentation will offer a broad view and a deeper dive into cyanobacteria, per- and polyfluoroalkyl substances, microplastics, and wildfires, and in the process provide background on state and federal regulation of emerging contaminants in drinking water, groundwater, and surface water.
JEFF B. KRAY, Partner, Marten Law, Seattle, WA

3:35 pm – 3:55 pm: Hosted Refreshment Break

3:55 pm – 4:55 pm: Renewable Energy and Water
This presentation will provide an overview of the relationship between renewable energy generation and water supply, a specific form of the energy-water nexus. While the pursuit of renewable energy currently tends to focus on decarbonizing the electric grid, we must remember that wind, hydropower, and solar – like fossil fuels and nuclear power plants – both require water at various stages of production, and in varying amounts, and impact traditional energy production, the environment, and water resources. Renewable energy policy therefore is water policy.
BARRY H. EPSTEIN, Partner, Allen Matkins Leck Gamble Mallory & Natsis, San Francisco, CA

4:55 pm – 6:00 pm: Hosted Reception for Registrants, Speakers & Guests
DAY 2: Thursday, November 19, 2020

8:30 am – 10:00 am: Interjurisdictional Water
Disputes often arise when sovereigns – countries, states, or tribal nations – must share water resources. This presentation examines these disputes and the legal means for resolving them, focusing primarily on negotiated agreements for the allocation and management of interjurisdictional waters. Topics include:
• Interstate waters and issues relating to compacts
• Tribal water interests and approaches to settlement
• International treaties and related negotiations
BURKE GRIGGS, Professor, Washburn University School of Law, Topeka, KS (moderator)
BARBARA COSENS, Professor, University of Idaho College of Law, Moscow, ID
MARIA O’BRIEN, Shareholder, Modrall Sperling, Albuquerque, NM

10:00 am – 10:20 am: Hosted Refreshment Break

10:20 am – 11:20 am: Groundwater or Not? The Eye of the Beholder
The Supreme Court, recognizing a split among circuits on the issue of what constitutes “waters of the United States,” has granted certiorari in the Maui case with the following question presented: “Whether the CWA requires a permit when pollutants originate from a point source but are conveyed to navigable waters by a nonpoint source, such as groundwater.” This question is central to the application of the Clean Water Act and has the potential to expand the scope of the Act to all waters with a hydrologic connection to a surface water (i.e., almost all waters, surface or groundwater) or to limit the scope of the Act in a significant way. This presentation will discuss the Court’s opinion and seek to identify its implications for water practitioners.
RICHARD J. LAZARUS, Howard and Katherine Aibel Professor of Law, Harvard Law School, Cambridge, MA
BARTON H. “BUZZ” THOMPSON, JR., Robert E. Paradise Professor of Natural Resources Law, Stanford Law School, Stanford, CA

11:20 am – 11:50 pm: Lunch – On Your Own

11:50 am – 1:20 pm: Water and the ESA
The application of the Endangered Species Act to water management and use has long been controversial, and continues to generate litigation. This presentation offers a concise update of issues involving water and the ESA, focusing primarily on recent judicial decisions and ongoing cases. These issues include:
• ESA compliance for federal water project operations and water supply contracts
• Water right takings claims arising from ESA related restrictions on water deliveries
• Notable ESA developments in Congress and the agencies
DREVET HUNT, Senior Attorney, Natural Resources Defense Council Nature Program, San Francisco, CA

1:20 pm – 2:20 pm: Dam Removal and Fish Recovery: What We Are Learning
In 2018, 82 dams were removed across the U.S.. Dams have been removed in states as diverse as Alaska, California, and Maine, as well as Maryland, Michigan, Oregon, and Washington. Dam removal is important both to river restoration and, often, tribal culture and legal rights. When dams come out, fish (some of them endangered species) come back – often faster than expected, revitalizing aquatic ecosystems and tribal cultures alike. This presentation will discuss the law and policy of dam removal and the species, ecosystem, and tribal improvements that are occurring as a result.
DAVE OWEN, Professor of Law, UC Hastings College of Law, San Francisco, CA
KIM SAGER-FRADKIN, Wildlife Biologist, Lower Elwha Klallam Tribe, Port Angeles, WA

2:20 pm – 3:20 pm: Stream Access and Streambed Ownership
Disputes between property owners and recreational and commercial users of streams are on the rise. Recreational and commercial users seek to maintain or expand access to public waters while riparian property owners often seek to limit access to waterways. Such disputes are generally governed by state law. This presentation will discuss recent developments in state legislation and in case law addressing stream access and streambed ownership with a comparison of the differing state approaches.
KARRIGAN BORK, Acting Professor of Law, UC Davis School of Law, Davis, CA

3:20 pm – 3:40 pm: Hosted Refreshment Break

3:40 pm – 4:40 pm: Ethics and the Use of Experts
Litigation involving water resources, almost by its very nature, requires the intensive use of experts. This presentation will evaluate both the obligations of an expert witness and of the lawyer who has retained that witness in water litigation. Given the scientific uncertainty associated with most cases, how far can a lawyer go in suggesting testimony to an expert witness? When must an expert witness refuse to support a legal theory? Is recusal ever justified (or required)? Finally, how can an expert both recognize the scientific uncertainty that is inherent in most major cases and, at the same time, portray what is known in a way that supports the client’s position? Applicable ABA Model Rules of Professional Conduct will be addressed.
JUGE GREGG, Senior Corporate Counsel, Amazon, Washington, DC (invited)

4:40 pm: Course Adjournment
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Materials format: ☐ ELECTRONIC ONLY ($0) ☐ HARD COPY ($90)

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General Information

Room Reservations: The Manchester Grand Hyatt, 1 Market Pl., San Diego, CA 92101, has blocked rooms for this Special Institute until November 3 at the rate of $249 (single/double) per night. A limited number of government rate rooms are also available. For discounted reservations, contact the Hyatt and mention that you are a Water Law registrant:

- Group Rate:
  - Toll Free: 800-233-1234
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Registration Fees: Include electronic 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: Full refunds, will be given for cancellations received by 3:00 pm at least seven days prior to the start of the program. 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.

Car Rental: Hertz is offering special discounts by referencing Meeting CV#03NJ0015 and Rocky Mountain Mineral Law Foundation. Make reservations at http://tinyurl.com/hertz2020 or call 800-654-2240 (U.S.); 800-263-0600 (Canada); or 405-749-4434 (Int’l).

CLE Credit: This course consists of approximately 12 hours of continuing education, including up to 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.

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