

**59TH ANNUAL  
ROCKY MOUNTAIN  
MINERAL LAW  
INSTITUTE**



*Spokane, Washington  
July 18-20, 2013*

CML



# PROGRAM CHAIRS



**David M. Patton**  
PROGRAM CHAIR



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## 59TH ANNUAL ROCKY MOUNTAIN MINERAL LAW INSTITUTE

This summer's Annual Institute is in family-friendly Spokane, which offers something to interest everyone: River rafting, golf, fishing, bicycle trails, a children's museum and a new science center, eclectic restaurants, trendy boutiques, vibrant nightlife, two world-class casinos, a funky arts scene, and wineries, all at very affordable prices. Spokane's location at the heart of the Inland Northwest makes it the perfect launch point for post-Institute trips. Seattle is a half-day drive, Vancouver a little longer, and Glacier, Yellowstone, and Mt. Rainier national parks are all within a day's drive. For a complete guide to Spokane, what to do, where to go, shopping, restaurants, museums, and recreation, please visit the microsite created for us by **Visit Spokane** – <http://www.visitspokane.com/rmmlf>.

The Annual Institute opens with the General Session on Thursday morning. On Thursday afternoon, Friday, and Saturday morning, attendees can choose among the Mining, Oil and Gas, Water, Public Lands, Environmental, International, and Landman's Sections. See the program inside for details.

Don't miss our Hosted Dessert Reception – 8:00-9:30pm on Wednesday night at the historic Davenport Hotel, open to everyone. We had such fun with our dessert reception in Newport Beach that we decided to have another in Spokane.

The traditional Thursday evening Hosted Reception will also be this year's Family Night. Spokane gives us the perfect opportunity to combine our hosted reception with our family event. Join us from 6:00-8:00pm on Thursday night in Riverfront Park, across the street from the Red Lion at the Park, where kids of all ages can ride the antique carousel and the SkyRide gondola over the Spokane Falls, named one of the top 12 scenic cable rides in the world.

Finally, make your room reservations as soon as possible. More than 500 people have already booked their rooms in Spokane. The Red Lion at the Park is our headquarters, and we also have discounted rooms at the Red Lion River Inn, The Davenport Hotel & Tower, Hotel Lusso, and the Coeur d'Alene Resort. Complete information is inside.

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

## Program Chairs

<i>Program Chair</i>	DAVID M. PATTON, Locke Lord LLP, Houston, TX
<i>Environmental Chair</i>	STEVEN K. IMIG, Lewis, Bess, Williams & Weese P.C., Denver, CO
<i>International Co-Chairs</i>	JOEL O. BENSON, Davis Graham & Stubbs LLP, Denver, CO IGNACIO J. RANDLE, Estudio Randle, Buenos Aires, Argentina
<i>Landman's Chair</i>	JONATHAN BAUGHMAN, McGinnis, Lochridge & Kilgore, L.L.P., Houston, TX
<i>Mining Chair</i>	ROB RISLEY, Freeport-McMoRan Copper & Gold Inc., Phoenix, AZ
<i>Oil &amp; Gas Chair</i>	MILAM RANDOLPH PHARO, Davis Graham & Stubbs LLP, Denver, CO
<i>Public Lands Chair</i>	HADASSAH M. REIMER, Holland & Hart LLP, Jackson, WY
<i>Water Chair</i>	LAWRENCE J. MACDONNELL, University of Wyoming College of Law, Laramie, WY

# PROGRAM

## AT A GLANCE

WEDNESDAY, JULY 17

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9:00 am - 5:00 pm

**REGISTRATION** - Red Lion Hotel at the Park

THURSDAY, JULY 18

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7:00 am

**REGISTRATION OPENS**

8:30 am - Noon

**GENERAL SESSION**

2:00 pm - 5:10 pm

**OIL & GAS 1** *or* **WATER**

FRIDAY, JULY 19

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8:20 am - Noon

**OIL & GAS 2** *or* **MINING**

2:00 pm - 5:00 pm

**INTERNATIONAL** *or* **PUBLIC LANDS**

SATURDAY, JULY 20

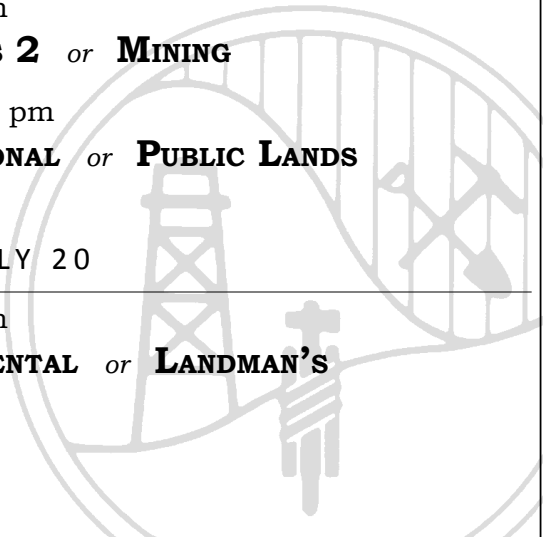
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9:10 am - Noon

**ENVIRONMENTAL** *or* **LANDMAN'S**

Noon

**ADJOURN**



## REGISTRATION

*Red Lion Hotel at the Park, 303 West North River Drive*

Wednesday, July 17, 9:00 am - 7:00 pm

Thursday, July 18 and Friday, July 19, 7:00 am - 5:00 pm

Saturday, July 20, 7:00 am - Noon

# GENERAL SESSION

THURSDAY MORNING, JULY 18

7:15 - 8:15 am

**Newcomers Breakfast** (see p. 28 and Registration Form)

**International Breakfast** (see p. 28 and Registration Form)

8:30 - 8:40 am - **Introductions**

8:40 - 8:50 am - **Special Recognitions**

8:50 - 9:40 am

### **America's Water Crisis and What to Do About It**

America's self-inflicted water crisis is coming. Throughout the United States, even in places that are not particularly dry or hot, communities, farmers, and factories are struggling to find water, and even running out altogether. Our water woes will get worse before they get better because we are slow to change our ways, and because water is the overlooked resource. From the Vegas Strip to faux snow in Atlanta, from megafarms to Washington's love affair with biofuels, heady extravagances and everyday waste are sucking the nation dry. This problem is urgent, and we need action on multiple fronts to solve it. We cannot engineer our way out of the problem with the usual fixes or zany schemes. America must make hard choices, and Professor Glennon's answer is a provocative market-based system that values water as a commodity and a fundamental human right.

ROBERT GLENNON, University of Arizona College of Law, Tucson, AZ

9:40 - 10:10 am - **Break**



Robert Glennon

10:10 - 11:00 am

**Understanding Natural Resource Damages**

With fracking, oil spills, chemical leaks, and other environmental contamination ever-present in the daily news, it is important for both the government and the private sector to understand how state and federal laws impact the potential recovery of, and calculation of, natural resource damages (NRD). NRD are distinct from remedial damages, but are nonetheless authorized under multiple environmental laws. This session will explain the current state of NRD law and explore realistic scenarios in which NRD may be sought as a result of oil and gas or mining operations. The discussion will also address practical and policy considerations affecting private plaintiffs, governmental entities, and private companies in the current and prospective NRD landscape.

KENNETH O. CORLEY and ANN L. AL-BAHISH, Jackson Gilmour & Dobbs, PC, Houston, TX



Kenneth O. Corley



Ann L. Al-Bahish

11:00 - Noon

**Ethical and Practical Issues Relating to Talking to the Media During a Crisis**

Speaking to the media, particularly during a crisis, presents legal, ethical, reputational, and strategic issues. Lawyers who speak to the media, or who advise clients on speaking to the media, must also comply with lawyers' ethics rules, and will benefit from familiarity with journalists' ethical obligations. The inadvertent off-the-cuff remark, particularly during the pressure of a crisis, has continued to haunt executives and companies for many years. Such remarks can negatively impact not only the reputation of the company and its management, but impair a company's license to operate, incite and unite public opposition, and attract the unwanted attention of regulators and private litigants. This presentation by a seasoned media consultant and noted legal advisor to senior executives and boards will highlight the legal and ethical issues, as well as the tactical and strategic considerations, that must be considered in dealing with the media, including the use of social media. It will consider practical ways to manage the process, including the planning, training and other considerations that are necessary to assist in managing a company's public image and risk exposure.

LOU COLASUONNO, FTI Consulting, New York, NY

PAMELA M. GIBSON, Shearman & Sterling LLP, London, U.K.



Lou Colasuonno



Pamela Gibson

Noon - 2:00 pm - **Lunch - On Your Own, or In-House Counsel Lunch, or Natural Resources Teachers Lunch**  
(see p. 28 and Registration Form)

# OIL & GAS SECTION (PT 1)

THURSDAY AFTERNOON, JULY 18 - CONCURRENT WITH WATER SECTION



Marc H. Folladori

2:00 - 3:00 pm

## **Ethical and Compliance Considerations Associated With the Recently Revised Reserves Disclosure Rules and Related Corporate Decisionmaking**

In 2008, the Securities and Exchange Commission approved new rules for hydrocarbon reserves disclosures. These rules have produced numerous areas of uncertainty for those responsible for preparing SEC filings. How have companies responded to these new rules? How have comments from the SEC staff helped both to clarify and raise additional interpretive questions? These disclosure questions and SEC staff views also draw attention to the numerous compliance and ethical concerns for attorneys involved in the reserves reporting disclosure process and corporate compliance arena. Many of these concerns are relevant for private as well as for publicly held clients. This presentation will explore and highlight the ethical and compliance pitfalls for attorneys advising their clients on these important topics.

MARC H. FOLLADORI, Mayer Brown LLP, Houston, TX

3:00 - 3:30 pm - **Break**

3:30 - 4:20 pm

## **Tax Traps: Bait, Catch, and Release**

Several dreaded federal income tax “traps” are commonly encountered in minerals transactions. Every transactional minerals lawyer can – and should – learn to avoid getting caught. This session will explore traps ranging from time-honored tax catastrophes, such as failing to qualify a “sale” of mineral properties for capital gains treatment, to cutting-edge tax failures like establishing tax partnerships for earn-in arrangements, in contravention of newly issued Treasury Regulations on non-compensatory partnership options. It will also review foreign-related tax calamities, such as purchasing U.S. real property interests from non-U.S. persons in violation of FIRPTA.

LARRY NEMIROW, Davis Graham & Stubbs LLP, Denver, CO



Larry Nemirow



4:20 - 5:10 pm

**Midstream Update – Challenges in Getting Production to Market**

Between traditional development and new shale plays, fresh challenges face the producer in getting production to market. The need for new midstream infrastructure, requirements for long-term dedication and transportation, and changing economics of gas, oil, and liquids markets have required new contractual solutions and more complicated agreements, and have raised new (and some old) concerns. This presentation will spotlight some of these key concerns, including joint venture and participation issues, dedication and commitment problems, pitfalls in long-term commitments, economic and operational considerations for the contract negotiator, royalty and joint owner side-issues, and risk allocation and avoidance solutions.

ROBERT L. THERIOT, Liskow & Lewis, Houston, TX



Robert L. Theriot

6:00 - 8:00 pm - **Hosted Reception**



Did you know that the Foundation's Digital Library, current through 2012, and easily searchable and affordable, contains the papers from the Proceedings of our first 58 Annual Institutes plus all of the papers from over 200 Special Institutes, 1970 through 2012? Manuals and audio CDs from the more recent institutes also are available separately.

# WATER SECTION

THURSDAY AFTERNOON, JULY 18 - CONCURRENT WITH OIL & GAS SECTION

Thursday Afternoon



Nigel D. Bankes

2:00 - 3:00 pm

## **What Does the Future Hold for the Columbia River Treaty?**

The Columbia River Treaty between the United States and Canada, which entered into force in 1964, is celebrated around the world as an excellent example of the cooperative development of an international watercourse. Under the treaty, Canada agreed to construct three major storage dams and to operate those dams in order to provide flood control and power benefits in the United States. Canada in return received a lump sum payment for the flood control benefits and continues to receive a share of the downstream power benefits. What does the future hold for the treaty? This presentation will focus on three possible developments and consider the implications of each. First, as early as 2014, either party may give ten years notice to terminate the treaty. Second, the nature of the treaty-based flood control operation changes automatically in 2024, and the new regime offers less certainty to downstream interests. Third, some argue that the treaty or a new legal arrangement should embrace a broader range of values than the power and flood control values of the original treaty.

NIGEL D. BANKES, University of Calgary, Calgary, AB

3:00 - 3:30 pm - **Break**

3:30 - 4:20 pm

## **Environmental Requirements of Allocating Water in the Western U.S.**

Environmental issues play a significant role in how water managers in the western U.S. allocate rights to surface and groundwater. What environmental requirements apply specifically to the allocation of water rights in the West? How do state water managers and the courts review environmental impacts in water rights cases? How do the public trust doctrine, local land use regulations, and state and federal environmental laws influence the allocation of water rights and the management of water resources in the western U.S.? This speaker will provide an overview of these important issues.

JOHN R. ZIMMERMAN, Parsons Behle & Latimer, Reno, NV



John R. Zimmerman

4:20 - 5:10 pm

**Providing Short-Term Access to Water for Energy and Mineral Development**

Water is a critical resource for many industries in the United States. With increases in technology permitting new means and methods for extraction of raw natural resources and materials, the need for utilization of water in these processes has also increased. Because water is, to some extent, a non-renewable resource with limited legal availability in many parts of the western United States, many states have begun to amend their water resource statutes to provide a mechanism by which industries can temporarily use water. This session will provide an overview of water source issues, legal requirements throughout the western United States related to energy and mineral development, and a general discussion of statutory schemes for the various mineral producing states in the western United States.

RENEÉ COPPOCK and ELI J. PATTEN, Crowley Fleck PLLP, Billings, MT



Renee Coppock



Eli J. Patten

6:00 - 8:00 pm - **Hosted Reception**

# OIL & GAS SECTION (PT. 2)

FRIDAY MORNING, JULY 19 - CONCURRENT WITH MINING SECTION

8:20 - 8:50 am



James Lebeck

## **Annual Oil and Gas Law Update**

The Annual Oil and Gas Law Update will summarize the significant statutory, regulatory, and common law developments concerning many aspects of upstream oil and gas development in the United States that have occurred since the 2012 Annual Institute.

JAMES LEBECK, SM Energy Company, Denver, CO

8:50 - 9:40 am



Marie B. Durrant

## **Getting Ready for the Flood: CO<sub>2</sub> Enhanced Oil Recovery Projects**

It is rare to find an energy issue that the Natural Resources Defense Council and the American Petroleum Institute agree upon, but both organizations endorse enhanced oil recovery through carbon dioxide flooding (CO<sub>2</sub> EOR). Companies undertaking CO<sub>2</sub> EOR projects must deal with many of the same issues as traditional oil and gas operations, such as weighing the costs and benefits of available locations, adjusting technologies, managing pollution, and balancing costs and profits. However, the CO<sub>2</sub> factor infuses the legal landscape with additional complexity and uncertainty. Access to and management of CO<sub>2</sub> present the greatest challenges for financing, locating, operating, and managing CO<sub>2</sub> EOR projects. While the CO<sub>2</sub> factor introduces exciting potential for future production and global warming solutions, CO<sub>2</sub> also expands potential regulatory burdens and introduces uncertain and varied legal risks and requirements.

MARIE B. DURRANT, Holland & Hart LLP,  
Salt Lake City, UT

9:40 - 10:10 am - **Break**

10:10 - 11:00 am

**Raising Capital for the Oil and Gas Industry**

It is well known that the oil and gas industry is very capital intensive. Whether a company is well-established or just starting out, access to capital is crucial to its success. This segment will examine a range of options for raising capital available to oil and gas companies of various capital strengths and structures, including public and private equity, public and private debt securities, mezzanine finance, commercial bank finance, joint ventures, master limited partnerships, and royalty trusts. The discussion will equip in-house counsel and outside counsel advising companies with knowledge of the options that are available and the factors to consider when raising capital by explaining the characteristics, benefits, limitations, and costs of these options, as well as how a company would choose among the available options and at what times.

DOUGLAS E. McWILLIAMS, Vinson & Elkins LLP,  
Houston, TX



Douglas E. McWilliams

11:00 am - Noon

**Tangled Relationships: Antitrust Considerations, Recent Enforcement Actions, and Proposed Solutions When Using AMIs and Other Forms of Collaboration**

For many years oil and gas lawyers have prepared documents effectuating joint ventures, AMIs, joint bidding arrangements, and other vehicles by which companies have collaborated to acquire federal and private leases, with little or no regard for the possible antitrust implications. Recently, the DOJ Antitrust Division brought an action in federal court in Colorado, and announced “the first time the Department of Justice has challenged an anticompetitive bidding arrangement for mineral rights leases.” This presentation will discuss the antitrust laws as they apply to common oil and gas collaborations, provide insights into the Division’s recent investigation and litigation, and provide guidance to practitioners to avoid subjecting their clients to investigation and possible civil action or criminal prosecution.

TIMOTHY R. BEYER, Bryan Cave HRO, Denver, CO



Timothy R. Beyer

Noon - 2:00 pm - **Lunch - On Your Own, or Portia’s Lunch, or IMPS Lunch, or IPAA Lunch**  
(see p. 28 and Registration Form)

# MINING SECTION

FRIDAY MORNING, JULY 19 - CONCURRENT WITH OIL & GAS SECTION



Matt Bingham

8:20 - 8:50 am

## **Mining and Public Land Law Update: Recent Jurisprudence, Legislation, and Regulation**

This presentation will highlight federal and state judicial, legislative, and administrative trends and developments in mining and related public land law during the second half of 2012 and the first half of 2013.

MATT BINGHAM, Lewis and Roca LLP, Phoenix, AZ

8:50 - 9:40 am

## **Voter Initiatives: Mineral Development and the Will of the People**

Citizen ballot initiatives have been an established part of the American political process since about 1900. In recent years, citizen initiatives have been proposed, and sometimes enacted, to prohibit or significantly discourage natural resource developments in several western states. The initiative process has also been utilized to regulate other natural resource, environmental, and land use matters. What is the history and purpose of the initiative process? What are the case histories of some of these efforts? And what are the limitations upon the use of voter initiatives to control the use of private, state, and federal lands? What role do state elections law, state and federal Constitutional law, and federal statutes have in determining the validity and enforceability of citizen ballot initiatives? How do issues such as preemption applied to local versus state government, federal preemption with regard to public lands, legislative repeal or reenactment, and property rights constraints, affect the validity of citizen ballot initiatives?

JAMES D. LINXWILER, Guess & Rudd P.C., Anchorage, AK



James D. Linxwiler

9:40 - 10:10 am - **Break**

10:10 - 11:00 am

## **Managing Obstacles to New Mining Projects In Historic Mining Regions in the United States**

Commodity prices, improved technology, and even sustainability considerations are all factors that can drive development of new projects in regions with a rich history of hard rock mining and exploration. However,



Eugene E. Smary

these are the same areas where mining legacy issues are most acute. Companies initiating projects in these areas – either greenfields or brownfields – confront sophisticated stakeholders operating in a mature regulatory environment. This makes resolution of both regulatory and social license issues substantially more complex. This discussion will address the themes and lessons learned (and to be learned) in grappling with these complexities, by looking at examples of new exploration and mining activity in the historic hard rock mining areas of the United States, particularly in the Upper Midwest.

EUGENE E. SMARY and DENNIS J. DONOHUE, Warner Norcross & Judd LLP, Grand Rapids, MI



Dennis J. Donahue

11:00 - Noon

**Force Majeure (and Other Useful French Profanities) in Resource Agreements**

What are the historic origins of force majeure provisions? What are the distinctions between force majeure, impracticability, and frustration? This presentation will discuss the operation of force majeure clauses in current resource agreements and undertake an overview of the case law governing such clauses in Canada and the United States. The analysis will consider issues such as triggering events; foreseeability and control; impact, causation, and mitigation; and general principles of interpreting force majeure provisions, including the even more ominously foreign-sounding *ejusdem generis* rule. The speakers will also provide a number of practical recommendations and considerations for resource practitioners in drafting force majeure clauses.

FRED R. PLETCHER, Borden, Ladner & Gervais, LLP, Vancouver, BC

ANTHONY A. ZOObKOFF, Teck Resources Ltd., Vancouver, BC



Fred R. Pletcher

Noon - 2:00 pm - **Lunch - On Your Own, or Portia's Lunch, or IMPS Lunch, or IPAA Lunch**  
(see p. 28 and Registration Form)



Anthony A. Zoobkoff

# INTERNATIONAL SECTION

FRIDAY AFTERNOON, JULY 19 - CONCURRENT WITH PUBLIC LANDS SECTION



Paul Hilton

2:00 - 2:50 pm

## **Dodd-Frank Provisions Applicable to Resources Companies Operating Internationally**

In November 2012 the federal government adopted rules requiring U.S. and foreign companies engaged in “commercial development of oil, natural gas or minerals” that file reports with the SEC to disclose information about all payments of \$100,000 or more to any foreign governmental entity and to the U.S. federal government, broken out by project and by governmental entity. These rules (Rule 13q-1 of the Securities Exchange Act of 1934) were adopted pursuant to Section 1504 of the Dodd Frank Wall Street Reform and Consumer Protection Act. They represent an important step in the United States’ participation in the international Extractive Industries Transparency Initiative (EITI), an effort to promote transparency and accountability of governmental entities across the globe. This session will explore the numerous requirements of Rule 13q-1, the challenges in interpreting and complying with the Rule, the variations between the EITI and Rule 13q-1, and the status of litigation challenging the Rule.

PAUL HILTON, Hogan Lovells US LLP, Denver, CO

2:50 - 3:20 pm - **Break**

3:20 - 4:10 pm

## **The Inclusion of Artisanal and Small-Scale Mining in National Legislation: How Has This Advanced Formalization of the Sector?**

The observed proliferation of informal mining activities – often referred to as artisanal and small-scale mining (ASM) – in developing countries since the late 1980s has raised nation-states’ interest in better harnessing this activity within the formal economy. Legislative inclusion, it has been argued, is a key step in this broader ASM formalization agenda. As a result, over the last several decades, national governments have integrated specific provisions for ASM in their mining codes and accompanying regulations. Are we potentially entering a new era of mining code revisions that may afford further opportunities for local participation in mining? Should the increase in research and knowledge of how ASM operates in specific country contexts compel interested policymakers to reconsider earlier assumptions about how best to formalize ASM through specific legislative



# APPLICATION FOR 2013 ANNUAL MEMBERSHIP

## NEW MEMBERS ONLY

2012 Annual Members have been billed separately and should not submit this form.  
PLEASE PRINT LEGIBLY

Employer \_\_\_\_\_  
 Primary Contact \_\_\_\_\_  
 Office Address \_\_\_\_\_  
 City \_\_\_\_\_ State/Prov. \_\_\_\_\_  
 Zip \_\_\_\_\_ Country \_\_\_\_\_  
 Phone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_  
 Date \_\_\_\_\_ Email \_\_\_\_\_

For other than individual memberships, please print on a separate piece of paper all individuals who should be listed in the *2013 Membership Directory*, including their email addresses, and their business addresses if different from your primary location. Note that although the "Unlimited Global" category is unlimited in size, only a maximum of 25 persons whom you designate will be listed in the Directory and receive the *RMMLF Journal*.

CATEGORY	PRICE
Individual	\$ 495
Firm/Corp/Agency/Organization:	
1-3 persons	\$ 965
4-9 persons	\$ 1,625
10-15 persons	\$ 2,365
Unlimited Global	\$ 3,625
University (Faculty)	\$ 335
Senior (Fully retired)	\$ 145

**MAIL TO:**

Rocky Mountain  
 Mineral Law Foundation  
 9191 Sheridan Blvd., Ste. 203  
 Westminster, CO 80031 USA

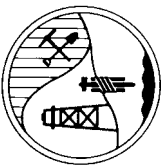
TEL (303) 321-8100  
 FAX (303) 321-7657

The Rocky Mountain Mineral Law  
 Foundation is a non-profit,  
 tax-exempt corporation  
 Tax ID #84-6037688

**Circle the correct category.**  
**Please pay in U.S. dollars.**

### PAYMENT INFORMATION

- Check drawn on a U.S. bank (payable to RMMLF in U.S. dollars)
- VISA     MasterCard     American Express
- Credit Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_
- Name on Card \_\_\_\_\_
- Signature \_\_\_\_\_
- Electronic Transfer: Contact the Foundation at [info@rmmlf.org](mailto:info@rmmlf.org)



**59TH ANNUAL ROCKY MOUNTAIN  
MINERAL LAW INSTITUTE**

# Registration Form

PLEASE TYPE OR PRINT LEGIBLY

*Please pay in U.S. Dollars*

Name \_\_\_\_\_

Badge Name (if different from above) \_\_\_\_\_

Employer \_\_\_\_\_

Employer Address \_\_\_\_\_

City/State/Zip \_\_\_\_\_

Phone (\_\_\_\_) \_\_\_\_\_ Fax (\_\_\_\_) \_\_\_\_\_

Attendee Email \_\_\_\_\_

Spouse/Guest Name Badge \_\_\_\_\_

Spouse/Guest Email \_\_\_\_\_  
(so we can keep them informed of Spokane events)

**Registration and  
Payment Received**  
Thru 6/17/13 After 6/17/13

Registration Fee  \$895  \$995

RMMLF Member Fee  \$395  \$495

Gov't Agency or Non-Profit Org. Fee (submit PO# if required)  \$545  \$645

Student Fee (full time) (proof of status required)  \$ 45  \$145

**CLE credit** requested for the following states: \_\_\_\_\_

**Other credit** requested from: \_\_\_\_\_

Attorney  Certified Public Accountant  Landman

Management  Consultant  Other (please specify) \_\_\_\_\_

The Rocky Mountain Mineral Law Foundation  
is a non-profit, tax-exempt corporation.  
Tax ID #84-6037688

**Register online at**

Function	Number of Tickets	Price	Total
<b>Registration Fee</b> (see chart above)			
<b>Wed., July 17</b>	Hosted Dessert Reception	_____ @ \$ 0	\$ _____
<i>Please note number of tickets if you plan to attend</i>			
<b>Thurs., July 18</b>	Newcomers Breakfast	_____ @ \$ 28	\$ _____
	International Breakfast	_____ @ \$ 28	\$ _____
	In-House Counsel Lunch	_____ @ \$ 33	\$ _____
	Natural Resources Law Teachers Lunch	_____ @ \$ 33	\$ _____
	Hosted Reception/Family Night		
	# of Adults	_____ @ \$ 0	\$ _____
	# of Children	_____ @ \$ 0	\$ _____
<i>Please note number of tickets if you plan to attend</i>			
<b>Fri., July 19</b>	Portia's Lunch	_____ @ \$ 44	\$ _____
	International Mining Professionals Society (IMPS) Lunch	_____ @ \$ 33	\$ _____
	Independent Petroleum Association of America (IPAA) Lunch	_____ @ \$ 33	\$ _____
<b>GRAND TOTAL</b>			\$ _____
			<i>U.S. Dollars</i>

MAIL, FAX, OR EMAIL REGISTRATION FORM AND PAYMENT TO:

Rocky Mountain Mineral Law Foundation  
 9191 Sheridan Blvd., Suite 203  
 Westminster, CO 80031 USA  
 Tel: (303) 321-8100  
 Fax: (303) 321-7657  
 info@rmmf.org

Questions?  
 email info@rmmf.org

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**PAYMENT INFORMATION**

- Check drawn on a U.S. bank (payable to RMMLF in U.S. Dollars)
- VISA  MasterCard  American Express

Credit Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_  
 Name on Card \_\_\_\_\_  
 Signature \_\_\_\_\_

- Electronic Transfer: Contact the Foundation at info@rmmf.org

# ROOM RESERVATIONS

*Make your room reservations as soon as possible!*

Rooms can be reserved at substantially discounted rates. Most sessions will be held at the Red Lion Hotel at the Park, which is about 8 miles from Spokane International Airport (15 minutes) and offers complimentary airport transfers.

We also have discounted rooms at the Red Lion River Inn (just down the path); at the world-famous Davenport Hotel and Tower and their Hotel Lusso (a 15-minute walk through the park or a five-minute drive); and at the Coeur d'Alene Resort (about 45 minutes by car). There will be complimentary shuttles available between the Red Lion and Davenport Hotel Collection.

Our Institute takes place during Spokane's busiest tourist season, so please reserve early. We had more than 1,000 attendees in Newport Beach last year, and we sold out most hotels many months in advance. Spokane is a new destination for RMMLF, very family friendly, and we expect it to be popular.

For those wishing to extend their trips, hotels are offering our conference rates three days before and after the Institute, based on availability. Prices do not include taxes and various tourism fees. When calling, please reference Rocky Mountain Mineral Law Foundation. Visit the hotel websites to see which might be best for you and your family and friends.

**If the hotels below are sold out,  
additional overflow rooms can be found at [www.rmmlf.org/AI59-Rooms.htm](http://www.rmmlf.org/AI59-Rooms.htm)**

**RED LION AT THE PARK** (*Headquarters Hotel for most meetings*) [www.spokaneredlionpark.com](http://www.spokaneredlionpark.com)  
Single/double rooms: \$129/night - 800-733-5466, code RCKYMLAW  
- <http://tinyurl.com/rockym66>

**RED LION RIVER INN** (8-minute walk from the Red Lion at the Park) <http://redlion.com/riverinn>  
Single/double rooms: \$114/night - 800-733-5466, code RCKYMLAW  
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**HOTEL LUSSO** (Davenport's boutique hotel)  
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<http://hotellusso.com>  
Single/double standard and deluxe rooms: \$119/night  
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[kym53](http://tinyurl.com/rockym53), Group Code ROCKY

# INTERNATIONAL SECTION

(Continued)

provisions? What lessons can we draw from the last several decades of policy implementation? This session will explore the key challenges facing the current formalization of ASM in Africa and will discuss how ASM legislative provisions can better respond to these challenges.

RACHEL PERKS, World Bank, Washington, D.C.

4:10 - 5:00 pm

## **International Comparison of Solutions to Aboriginal Rights Issues Associated With Mineral Development**

Aboriginal groups represent important stakeholders in any development of oil, gas, and mineral resources located on or near aboriginal lands, or which otherwise impacts aboriginal peoples. Different jurisdictions apply different requirements with respect to aboriginal consultation, aboriginal approval, or aboriginal social license to conduct extractive operations. The developing concept of Free, Prior, Informed Consent (FPIC) for the development of extractive projects often requires consent from indigenous, aboriginal peoples. This panel will compare how different countries address aboriginal rights and the best practices associated with obtaining aboriginal consent.

JAN N. STEIERT, Eurasian Minerals Inc.,  
Littleton, CO - *Moderator*

WALTER E. STERN, Modrall Sperling, Albuquerque, NM  
- *U.S. Perspective*

SARAH V. POWELL, Davies Ward Phillips & Vineberg  
LLP, Toronto, ON - *Canadian Perspective*

XENNIA FORNO, Rubio Leguia Normand, Lima, Peru -  
*South American Perspective*

ROBERT MILBOURNE, Norton Rose, Brisbane, QLD -  
*Australian Perspective*



Jan N. Steiert



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Sarah V. Powell



Xennia Forno



Robert Milbourne

# PUBLIC LANDS SECTION

FRIDAY AFTERNOON, JULY 19 - CONCURRENT WITH INTERNATIONAL SECTION



Mark S. Squillace

*2:00 - 2:50 pm*

## **Meaningful Engagement in Public Lands Decisionmaking**

Many of us have had the experience of submitting comments to a public land management agency either on a draft land use plan, or more likely on a proposal to use the lands for some specific purpose. Too often this experience ends in frustration from the sense that our comments were ignored, misunderstood, or not fully considered. Perhaps this is due to a sense that the agency has already decided on its course of action and the comment process is designed merely to satisfy legal requirements or appease the public and its desire to participate in decisionmaking. Perhaps the agency is simply overwhelmed with comments and lacks the capacity or competence to consider them in a systematic way. How can public lands decisionmaking be structured to promote meaningful engagement with interested parties? This discussion will address not only ways to improve the decisionmaking process, but also ways to design the substantive proposal so as to better engage interested parties.

MARK S. SQUILLACE, University of Colorado Law School, Boulder, CO

*2:50 - 3:20 pm* - **Break**

3:20 - 4:10 pm

**(Ir)reconcilable Differences – Can Renewable and Conventional Energy Be Co-Developed on Public Lands?**

The United States Energy Information Agency now predicts that the United States could become increasingly energy independent in the next three decades. In reaching energy independence, public lands and public policy will continue to play a critical role in the nation's energy future. Can both conventional and renewable energy development coexist on public lands? This presentation will examine the basics of conventional and renewable energy development, the federal framework for the development of energy resources, and federal policies for both conventional and renewable energy development. It will also examine the viability of these projects, how the courts have addressed similar issues, and what factors encourage or discourage such development.

MARTE D. LIGHTSTONE, Modrall Sperling, Albuquerque, NM



Marte D. Lightstone

4:10 - 5:00 pm

**I'm Still Standing: Future Public Land Withdrawals and Industry's Million-Acre Challenge**

The session will explore withdrawals of public land, examining the pre-Federal Land Policy and Management Act of 1976 (FLPMA) authorities and doctrines, the FLPMA statutory framework and how it has been used, and examples of other authorities that arguably create "de facto" withdrawals to place public lands off-limits for various uses. Using a case study analysis of Interior's recent withdrawal of over one million acres in northern Arizona and the Arizona federal district court litigation challenging that withdrawal, *Yount v. Salazar*, this section will focus on key legal issues, including the constitutionality of FLPMA's authority to withdraw more than 5,000 acres, and industry's standing to bring National Environmental Policy Act (NEPA) claims.

SUSAN M. MATHIASCHECK and AMY B. CHASANOV, Crowell & Moring LLP, Washington, D.C.



Susan M. Mathiascheck



Amy B. Chasanov

# ENVIRONMENTAL SECTION

SATURDAY MORNING, JULY 20 - CONCURRENT WITH LANDMAN'S SECTION



Melinda Taylor

9:10 - 10:00 am

## **Market-Based Approaches to Endangered Species Act Compliance: What Works in the Real World?**

Since the U.S. Fish and Wildlife Service issued its guidance on conservation banking in 2003, the Service has approved banks that are intended to protect dozens of listed endangered and threatened species in 10 states. Conservation banking is a concept modeled on wetlands mitigation banking, intended to be an incentive for private landowners to protect habitat for rare species in important parts of the species' ranges. Though the number of banks has expanded significantly over the last decade, especially in states that are experiencing rapid population growth and where there is little publicly owned land, the path forward has been anything but smooth. This session will highlight some of the challenges involved in putting together a conservation bank that meets the Service's requirements and establishing demand for conservation credits. It will also discuss success stories from Texas and identify areas for improving the Service's banking guidance.

MELINDA TAYLOR, University of Texas School of Law, Austin, TX

10:00 - 10:20 - **Break**

10:20 - 11:10 am

## **Who's on First? EPA's Unique, Evolving Role Under Section 404 of the Clean Water Act**

Section 404 of the Clean Water Act regulates the discharge of fill material into wetlands and other regulated "waters of the U.S." While the Army Corps of Engineers is the lead agency for implementing Section 404, EPA plays a prominent and sometimes conflicting role under this program. EPA issues "Guidelines" that control when 404 permits can be issued, rules on the scope of regulated "jurisdictional waters," comments on permit terms and NEPA compliance, and takes over major 404 enforcement cases. EPA asserts that it can also "veto" Corps permitting decisions under 404(c), but courts recently have ruled such authority is more limited than EPA asserts. This session will address EPA's unique position in this program, recent court rulings narrowing EPA's "veto" power, and practical steps to take in light of EPA's key roles under Section 404.

ZACH C. MILLER and ERIC WAECKERLIN, Davis Graham & Stubbs LLP, Denver, CO



Zach C. Miller



Eric Waeckerlin



11:10 am - Noon

**Remedies in Environmental and Natural Resources  
Litigation: Predictable? Or Should You Ask the  
Magic 8 Ball?**

This presentation will examine the range of remedies imposed by federal courts in environmental and natural resources litigation under the National Environmental Policy Act, the Endangered Species Act, and related statutes that govern the authorization of natural resource development projects by federal agencies. The speakers will evaluate substantive and procedural factors that influence the type of remedy – injunction, vacatur, or remand – and examine patterns and precedents related to these remedies in different federal jurisdictions. Finally, the presentation will discuss mechanisms available to natural resource developers to influence the type of remedy that may be imposed.

JENNIFER L. BIEVER and ANA GUTIERREZ,  
Hogan Lovells US LLP, Denver, CO



Jennifer L. Biever



Ana Gutierrez

# LANDMAN'S SECTION

SATURDAY MORNING, JULY 20 - CONCURRENT WITH ENVIRONMENTAL SECTION

9:10 - 10:00 am



Craig L. Stahl



Emmie M. Gooch

## **Keeping Leases Alive: The Evolving Law of Lease Termination in Today's Unconventional Shale Plays**

Lease termination has always captured the industry's attention, given the mix of high stakes, often competing interests, and complex legal issues involved. Now added to this mix is enhanced activity in shale plays with unprecedented levels of drilling, using technologies that change production procedures and timelines. Our law is responding to these changes, making lease termination even more interesting. This session will provide an overview of established lease termination concepts, combined with lessons learned from recent litigation. It will discuss the ways in which the law has evolved (or not) in the face of advanced drilling techniques, how courts have applied existing law to new factual scenarios, and how terms like "producing in paying quantities," "completion," and "operations" are being interpreted today.

CRAIG L. STAHL and EMMIE M. GOOCH, Andrews Kurth LLP, The Woodlands, TX

10:00 - 10:20 am - **Break**

10:20 - 11:10 am



Jesse R. Pierce

## **The Use and Perils of Sight Drafts in Leasing Transactions**

For decades, oil and gas companies have relied upon "sight drafts" or "demand drafts" to pay lessors their bonuses for new oil and gas leases. Similar to a check, a sight draft is an order to pay a specified amount by a specified date. But unlike a check, a sight draft usually contains certain contingencies that must occur before the bank is authorized to release the funds, such as approval of the lease and/or verification of title. As a result, oil and gas companies often use sight drafts as a virtual "escrow agent," allowing the company to take immediate possession of the signed lease while delaying payment so that the company may verify the lessor's title. But the use of sight drafts, while creating some conveniences and advantages for the lessee, also creates significant uncertainties. This session will examine those uncertainties and provide a survey of recent court decisions in key oil and gas producing states regarding the use of sight drafts in oil and gas leasing transactions.

JESSE R. PIERCE, Pierce & O'Neill, LLP, Houston, TX

11:10 am - Noon

**New Horizontal Modifications to the 1989 AAPL Form 610 Model Form Operating Agreement and an Overview of Recent Developments in Case Law Relating to JOAs**

The AAPL has recently approved horizontal modifications to its 1989 Form 610 Model Form Operating Agreement. This session will explain the alternatives that were explored and the intended purpose of the changes. We will also survey recent court decisions from around the country that relate to the implementation and interpretation of JOAs, including an analysis of the Texas Supreme Court's significant decision in *Reeder v. Wood County Energy*. Finally, as time permits, we will examine some of the changes (beyond horizontal modifications) that are being considered by the AAPL committee charged with modernizing the base AAPL Model Form agreement.

JEFF WEEMS, Porter Hedges LLP, Houston, TX



Jeff Weems

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the  
Dates!**

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ROW ADVENTURES, named the # 1 Tour Operator by Travel & Leisure Magazine, is offering our attendees a 10% discount on any of their activities during the conference, or a 20% discount if you have a group of six or more. ROW offers rafting, kayaking, biking, and fly fishing trips in the Spokane area.

Trips have limited availability and reserving in advance is recommended. Visit <http://www.rowadventurecenter.com> or call 866-836-9340 for complete information or to check availability. Mention RMMLF to receive the discounted price.



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THE DAVENPORT HOTEL is offering a 10% discount on all spa services (not including products) to our attendees. Visit <http://tinyurl.com/rockymspa> for their menu of services (left click through the site). Call 509-789-7300 to make reservations, and mention RMMLF to receive the discount. This is one of just 136 four-star spas worldwide, named by Forbes Travel Guide.



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# SPECIAL FUNCTIONS

## WEDNESDAY, JULY 17

### **Dessert Reception**

(8:00 - 9:30 pm at The Davenport Hotel)

We had so much fun at our Dessert Reception last year in Newport Beach that we decided to host it again. Join us in the exquisite Grand Pennington Ballroom at The Davenport Hotel. Sweet treats for the entire family. The reception is complimentary, but please note the number of guests on the registration form.

## THURSDAY, JULY 18

### **Newcomers Breakfast**

(7:15 - 8:15 am)

For newcomers to the Foundation who would like to learn more about participating in Foundation activities, committees, and programs.

### **International Breakfast**

(7:15 - 8:15 am)

For registrants working in the international arena who would like to network with other professionals and learn more about the Foundation's international programs and outreach efforts. Speaker to be announced.

### **In-House Counsel Lunch**

(Noon - 2:00 pm)

Limited to in-house counsel. This is an opportunity to meet your peers, socialize, and network. Speaker to be announced.

### **Natural Resources Law Teachers Lunch**

(Noon - 2:00 pm)

For full- and part-time academic faculty who would like to network with new and old friends. Marcilynn Burke, University of Houston Law Center, will discuss "Reframing, Restraining, and Refocusing: The Three R's of Hydraulic Fracturing on Federal Public Lands."

### **Hosted Reception/Family Night**

(6:00 - 8:00 pm)

For registrants, guests, and kids.

## FRIDAY, JULY 19

### **Portia's Lunch**

(Noon - 2:00 pm at The Davenport Hotel)

An opportunity for professional women from different generations, cities, and practices to meet, network, share experiences, and enjoy a program. Ann Phillips, Archaeologist and Rock Art Specialist, will discuss "Recording Upper Sand Island." A number of world-class rock art panels are located along the San Juan River in southeastern Utah. The Upper Sand Island Site near Bluff recently has been recorded with spectacular results.

### **International Mining Professionals Society (IMPS) Lunch**

(Noon - 2:00 pm)

For IMPS members and other professionals in the field of international mining. Sayed Zaman Hashimi, Afghan Ministry of Mines - invited speaker.

### **IPAA Law Committee Meeting Lunch**

(Noon - 2:00 pm)

For IPAA members and interested professionals.

- Professor Emeritus Pat Martin will discuss the recent Louisiana Supreme Court decision concerning remediation damages for Louisiana oil and gas properties.
- Professor Emeritus Bruce Kramer, Of Counsel at McGinnis, Lochridge & Kilgore, LLP, Houston, will discuss current Texas disputes concerning indemnification claims under the 1989 Form JOA.
- Jonathan Airey, IPAA Law Committee Chairman, Vorys Sater Seymour and Pease LLP, Columbus, will discuss the recent Ohio Supreme Court decision concerning the appeal of oil and gas permits in Ohio and the recent Ohio court of appeals decision concerning preemption of local regulation.

Current as of May 28, 2013

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**Car Rental:** Hertz is offering special discounts by referencing Meeting CV#03NJ0008 and Rocky Mountain Mineral Law Foundation. Make reservations at [www.hertz.com](http://www.hertz.com) 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. 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. If a registration form and payment are not received by June 28, 2013, your name may not appear on the final registration list.

**Registration Cancellations:** Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Thursday, June 27, 2013. No refunds will be given thereafter, although substitution of attendees may be made by contacting RMMLF. Cancellations must be made by email at [info@rmmlf.org](mailto:info@rmmlf.org) or by fax at 303-321-7657. Registrants not entitled to a refund will receive a copy of the unedited Institute papers on a USB drive and all handouts. For questions on refunds, complaints, and/or program cancellations, please contact our office at 303-321-8100.

**Recording:** Audio or video recording of this course is not permitted, except with the express permission of the Foundation.

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

**CLE Credit:** Foundation Institutes 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 course consists of approximately 13.5 hours of continuing education, including up to 2 hours of ethics (depending on your jurisdiction). You must let us know at least 30 days in advance of the conference the states or organizations for which you will need credit (see registration form). RMMLF is a State Bar of California MCLE-approved provider.

**CPE Credit:** The Rocky Mountain Mineral Law Foundation is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be addressed to the National Registry of CPE Sponsors through its website: [www.learningmarket.org](http://www.learningmarket.org). There are no prerequisites and no advance preparation is required to attend this course. The delivery method is Group-Live, and up to 16 CPE credits are available, including 2 ethics credits. The program level is "overview."

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1957-58	* James M. Haughey	4th	Boulder	1987-88	Clayton J. Parr	34th	Seattle
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1977-78	Robert G. Pruitt, Jr.	24th	Vail	2007-08	Craig R. Carver	54th	Snowmass
1978-79	Terry N. Fiske	25th	Seattle	2008-09	David E. Pierce	55th	San Francisco
1979-80	Donn Bennett	26th	Sun Valley	2009-10	Walter E. Stern	56th	Banff
1980-81	Stan Dempsey	27th	San Diego	2010-11	Max Main	57th	Santa Fe
1981-82	Burns H. Errebo	28th	Vail	2011-12	Jan N. Steiert	58th	Newport Beach
1982-83	* Norman Hanson	29th	Vancouver	2012-13	Catherine J. Boggs	59th	Spokane
1983-84	Thomas J. Nance	30th	Sun Valley				

## HONORARY TRUSTEES

<b>Richard H. Bate</b>	Denver, CO	<b>Patrick H. Martin</b>	Clinton, LA
* <b>Roland F. Champion</b>	Denver, CO	<b>J. Robert Outerbridge</b>	Bridgewater, NS
<b>Fred E. Ferguson</b>	Prescott, AZ	<b>David P. Phillips</b>	Boulder, CO
<b>Jerry L. Haggard</b>	Phoenix, AZ	<b>W. E. "Wallie" Rasmussen</b>	Houston, TX
<b>Earl M. Hill</b>	Reno, NV	<b>George E. Reeves</b>	Denver, CO
<b>Desmond P. Kearns</b>	Eagle, CO	<b>Donald E. Wakefield</b>	Toronto, ON
<b>Bruce M. Kramer</b>	Keystone, CO	<b>Robert F. Wilson</b>	Denver, CO

\* deceased

**ROCKY MOUNTAIN**

**MINERAL LAW FOUNDATION**

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