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The Third Annual Advanced Conference on

# Natural Resource Damages Claims

New case law and legislation, and best strategies

July 9 & 10, 2009

Santa Fe, New Mexico

La Fonda Hotel in Santa Fe

**Credits:** NM CLE 10.7 (call about others)

**Quick when/where:** 8:30 a.m., 100 E. San Francisco Street

### Natural Resource Damages Claims Conference

July 9 & 10, 2009 | Santa Fe, New Mexico  
La Fonda Hotel in Santa Fe



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- 8:00** Registration and Continental Breakfast
- 8:30** Introduction and Overview  
**James A. Bruen, Esq., Program Co-Chair**  
 Farella Braun + Martel LLP ~ San Francisco, CA  
**Richard O. Curley, Jr., Esq., Program Co-Chair**  
 Curley & Associates LLC ~ Golden, CO
- 8:45** The U.S. Department of Justice's Perspective on Natural Resource Damage (NRD) Claims  
 The federal process, key cases and current events  
**John C. Cruden, Esq., Deputy Assistant Attorney General**  
 Environmental & Natural Resources  
 U.S. Department of Justice ~ Washington, DC
- 9:15** Sources, Nature, and Relative Strength of NRD Claims  
**Victoria L. Peters, Esq., Independent Consultant, Legal Advisor**  
 Attorney at Law ~ Denver, CO  
**Brian J. Cleary, Esq.**  
 The Cleary Law Group, P.C. ~ Hayden, ID  
**Peter C. Chestnut, Esq.**  
 Chestnut Law Offices ~ Albuquerque, NM
- 10:15** Break
- 10:30** Case Law Update and NRD Claims Around the Country  
 A survey of cases from around the country that have implications for NRD litigation  
**John K. Dema, Esq.**  
 Law Offices of John K. Dema, P.C. ~ Christiansted, VI  
**Scott E. Kauff, Esq.**  
 Law Offices of John K. Dema, P.C. ~ Rockville, MD
- 11:15** Determining Natural Resource Injury and Strategies for Conducting/Resisting NRD Assessments  
 Assessment of injury as the foundation of a NRD claim; evolving methodologies employed by trustees to establish injury and potential defenses; issues related to the assessment process including cooperative assessments  
**Angus Macbeth, Esq.**  
 Sidley Austin LLP ~ Washington, DC  
**Kenneth Jenkins, Ph.D.,**  
 Senior Vice President and Discipline Director for NRD  
 ARCADIS ~ Petaluma, CA

- 12:15** Lunch (on your own)
- 1:30** Lessons Learned from Managing Complex NRD Cases  
 Evaluating the claim for management; establishing the in-house team to manage litigation; selecting counsel and experts; helping, not hindering, in strategy and litigation review; trusting the team  
**Mark Barash, Esq., Moderator, Senior Attorney**  
 U.S. Department of Interior ~ Washington, DC  
**Jean Martin, Esq., Senior Attorney, Legal Department**  
 BP ~ Warrenville, IL  
**Robert W. Johnson, Esq., Chief Attorney, Environmental**  
 Exxon Mobil Corporation ~ Houston, TX  
**Nathaniel Barber, Esq., Associate Attorney**  
 Office of General Counsel  
 New York State Department of Environmental Conservation  
 Albany, NY
- 2:45** Defenses to Claims of Natural Resource Damages  
 New twists on conflict preemption; CERCLA 113(h), CERCLA 107 defenses and state claim defenses  
**James A. Bruen, Esq., Program Co-Chair**
- 3:30** Break
- 3:45** Rule 702/Daubert and NRD  
 Rule 702/Daubert standards for admissibility of expert opinions in the NRD context; lessons learned from recent litigation  
**Donald W. Fowler, Esq.**  
 Hollingsworth LLP ~ Washington, DC
- 4:30** Economic Valuation of Natural Resource Damages  
 Trustee's perspective  
**Robert Unsworth, President**  
 Industrial Economics, Incorporated ~ Cambridge, MA  
 Defendant's perspective  
**William H. Desvousges, Ph.D., President**  
 W. H. Desvousges & Associates ~ Raleigh, NC
- 5:30** Continue the Exchange of Ideas: Reception for Attendees and Faculty Sponsored by Curley & Associates LLC and Farella Braun + Martel LLP



About the Conference

LAW SEMINARS INTERNATIONAL

We dedicate all of our efforts to producing high-quality professional education programs.

Our seminars provide an opportunity for lawyers to learn about their clients' businesses and for the clients to learn about the legal issues impacting their business.

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*CERCLA Natural Resource Damage (NRD) litigation remains at the cutting edge of environmental law. NRD claims in state and federal courts across the United States, and associated state statutory and common law claims, present complex strategic, tactical and substantive issues for both state natural resource trustees and potentially responsible parties. As new case law has developed, trustees and other stakeholders have responded to level or tilt (depending upon your perspective) the playing field with new regulations and draft legislation.*

*What are the limits of NRD claims? How will trustees use other statutes to avoid recent federal and state NRD decisions? How can trustees and responsible parties best position themselves during the natural resource injury assessment process? What are the most effective (and least effective) NRD claims? What are the most effective (and least effective) defenses to NRD claims? How are NRD injuries monetized? What are the best strategies and tactics to handle large, complex NRD litigation?*

*These and other questions will be discussed at this advanced conference. Our faculty is drawn from senior environmental leaders across the country. They come from affected industry, federal and state government, nationally-recognized plaintiff and defense firms, and environmental and economic consultant practices directly involved in the precedent-setting NRD lawsuits resolved in the last five years.*

*Serious environmental practitioners will not want to miss this.*

*Program Co-Chairs: James A. Bruen, Esq. and Richard O. Curley, Jr., Esq.*



- 8:00 Registration and Continental Breakfast**
- 8:30 Strategies for Determining Baseline**  
Historical and ecological research to define the quality of the resource absent defendant's actions  
**Brian D. Israel, Esq.**  
Arnold & Porter LLP ~ Washington, DC
- 9:15 Counterclaims and Third Party Claims**  
**Richard O. Curley, Jr., Esq., Program Co-Chair**
- 10:00 Break**
- 10:15 Settlement of NRD Litigation**  
Trustee's perspective  
**Allan Kanner, Esq.**  
Kanner & Whiteley, L.L.C. ~ New Orleans, LA  
Defendant's perspective  
**Steven G. Jones, Esq.**  
Marten Law Group ~ Seattle, WA
- 11:15 What's Next in NRD Litigation?**  
An overview of current NRD litigation and its impact on possible future actions; what federal and state trustees may do next  
**Ira Gottlieb, Esq.**  
McCarter & English, LLP ~ Newark, NJ
- 11:45 Establishing Trusteeship Over Injured Resources**  
Requirements of United States, State and Tribal Trusteeship; coordination among trustees in preparing damage assessments; coordination between trustees and EPA concerning restoration and remediation  
United States trusteeship  
**Deborah K. Tellier, Esq.**  
Farella Braun + Martel LLP ~ San Francisco, CA  
State trusteeship  
**Michael R. Thorp, Esq.**  
Summit Law Group ~ Seattle, WA  
Tribal trusteeship  
**Brian J. Cleary Esq.**  
The Cleary Law Group, P.C. ~ Hayden, ID
- 12:30 Evaluations and Adjourn**

### Upcoming Seminars:

Winery & Wine Distribution Law	August 3-4, 2009	Seattle, WA
Tax Management for Tribes	August 10-11, 2009	Los Angeles, CA
Permitting Renewable Energy Projects	September 2, 2009	Boston, MA
California Environmental Quality Act (CEQA)	September 11, 2009	Santa Monica, CA
SEQRA & NEPA	September 14, 2009	Syracuse, NY
Winery & Wine Distribution Law	October 8-9, 2009	San Antonio, TX
Endangered Species Act	November 2-3, 2009	Anchorage, AK
Air Quality Regulation in California	November 9-10, 2009	Los Angeles, CA
Natural Resource Damages	November 19-20, 2009	Newark, NJ

See more at [www.lawseminars.com](http://www.lawseminars.com)



### Registration & Other Conference Information

#### To Register:

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 Walk-ins are welcome, subject to space availability.  
 Registration is complete when we receive payment or agree to later payment.

**Tuition:** Regular tuition for this program is \$995 with a group rate of \$845 each for two or more registrants from the same firm. For government employees, we offer a special rate of \$695. For students and people in their job for less than a year, our rate is \$497.50. All rates include admission to all seminar sessions, food and beverages at breaks, and all course materials. Make checks payable to Law Seminars International.

**Substitution & Cancellation:** You may substitute another person at any time. We will refund tuition, less a \$50 cancellation fee, if we receive your cancellation by 5:00 p.m. on Thursday, July 2, 2009. After

that time, we will credit your tuition toward attendance at another program or the purchase of a Homestudy. There is a \$25 cancellation fee for Course Materials orders and \$50 for Homestudy orders.

**Seminar Location:** The conference will be held at the La Fonda Hotel in Santa Fe at 100 E. San Francisco Street in Santa Fe, NM 87501. Call the hotel directly at (505) 982-5511 for reservations at the special negotiated rate of \$199/night and mention that you are attending a Law Seminars International conference. Rooms are on a first come, first served basis.

**Continuing Education Credits:** This program qualifies for 10.7 NM CLE credits. Upon request, we will apply for CLE credits in other states and other types of credits.

**If You Cannot Attend:** Our complete Homestudy Course, consisting of a DVD recording and the written course materials, is available for \$1005. The written course materials, or searchable CDs of the course materials, are available for \$100. We will ship your Homestudy order via UPS ground within two weeks after the seminar or from the date we receive payment (whichever is later).

## Faculty: Natural Resource Damages Claims Conference

**James A. Bruen**, *Program Co-Chair*, partner at Farella Braun + Martel LLP, specializes in representation of industry, universities and governmental institutions in complex domestic and international products and environmental counseling and litigation. He was an Enforcement Attorney for the FCC, an Assistant U.S. Attorney for the Northern District of California, and Chief of the U.S. Attorney's Civil Division, and is named one of the top 25 environmental lawyers in the country.

**Richard O. Curley, Jr.**, *Program Co-Chair*, founder of Curley & Associates LLC, specializes in CERCLA and state law equivalent remediation matters and advocacy relating to legislative and regulatory reform of CERCLA, natural resource damages, cost recovery litigation, and criminal and civil litigation concerning claims under RCRA, the Clean Water Act and TSCA.

**Mark Barash**, *Moderator*, a Senior Attorney with the U.S. Department of the Interior, focuses on development of natural resource damages policies and case approaches.

**Nathaniel Barber**, Associate Attorney in the Office of General Counsel at the New York State Department of Environmental Conservation (NYSDEC), leads the team of NYSDEC attorneys pursuing New York's NRD claims.

**Peter C. Chestnut** is a tribal attorney at Chestnut Law Offices and is a lawyer for the Pueblo of San Ildefonso.

**Brian J. Cleary**, shareholder of The Cleary Law Group, P.C., focuses on environmental, bankruptcy, gaming, submerged lands ownership, hydropower licensing and water rights law litigation.

**John C. Cruden**, Deputy Assistant Attorney General of the Environment and Natural Resources Division at the U.S. Department of Justice, supervises the Environmental Enforcement and Environmental Defense Sections.

**John K. Dema**, founder of Law Offices of John K. Dema, P.C., 09NRDNM

focuses on natural resource damage recoveries on behalf of Trustees of Natural Resources, specializing in groundwater and marine resources.

**William H. Desvousges, Ph.D.**, President of W. H. Desvousges & Associates in Raleigh, NC, has led major NRDA valuations, co-authored the economic handbook for the Department of Interior regulations.

**Donald W. Fowler**, partner at Hollingsworth LLP, concentrates on the defense of environmental and toxic tort litigation, including actions brought by federal and state natural resource trustees.

**Ira Gottlieb**, partner at McCarter & English, LLP, focuses on environmental law, natural resource damage assessments, superfund surface water sediment and other site remediation matters and insurance coverage on behalf of policyholders.

**Brian D. Israel**, partner at Arnold & Porter LLP, specializes in environmental litigation and counseling including contaminated properties, toxic tort lawsuits and Natural Resource Damages claims. He wrote the "Natural Resource Damages" chapter in the *Environmental Law Practice Guide*.

**Kenneth Jenkins, Ph.D.**, Senior Vice President and Discipline Director for Natural Resource Damages at ARCADIS, provides strategic consulting, expert testimony and litigation support for potentially responsible parties in natural resource damage actions, allocation issues under CERCLA, and sediment and water quality issues under the CWA.

**Robert W. (Rob) Johnson** is Chief Attorney of Environmental at Exxon Mobil Corporation. He has overall responsibility for the provision of legal services on environment, safety and health issues to Exxon Mobil Corporation and its worldwide affiliates.

**Steven G. Jones**, partner at Marten Law Group PLLC and Chair of the Litigation Department, focuses on litigation arising under CERCLA, the Clean Water Act, the Federal Torts Claim Act, and solid waste and nuisance issues.

**Allan Kanner**, founder of Kanner & Whiteley, L.L.C., focuses on environmental law, toxic tort, commercial litigation, first-party insurance, consumer fraud and complex class action suits and represents states and tribes in NRD matters, including representing trustees in NRD litigations and negotiations.

**Scott E. Kauff**, of counsel at the Law Offices of John K. Dema, P.C., focuses on environmental and toxic torts litigation, and environmental counseling. He is currently assisting several trustees in prosecuting their claims.

**Angus Macbeth**, senior counsel and head of the Environmental Law Practice Group at Sidley Austin LLP, focuses on RCRA, and EPA's administration of the Clean Air and Clean Water Acts.

**Jean Martin** is Senior Attorney in the Legal Department of BP.

**Vicky L. Peters**, independent consultant and legal advisor, focuses on environmental enforcement. She worked on Colorado's two largest NRD cases, the Rocky Mountain Arsenal and the California Gulch site in Leadville..

**Deborah K. Tellier**, partner at Farella Braun + Martel LLP in the Environmental Law Department, focuses on compliance with federal, state, and local environmental laws and redevelopment of Brownfields properties. Previously she was Associate General Counsel and Chief Compliance Officer for the Gordon and Betty Moore Foundation.

**Michael R. Thorp**, partner at Summit Law Group, focuses on environmental and natural resource litigation and counseling, including toxic tort class actions, and wrote *Handbook of the Law of Natural Resource Damages*.

**Robert Unsworth**, President of Industrial Economics Incorporated, specializes in natural resource economics and damage assessment, environmental benefits assessment and policy analysis. He has provided support to the U.S. Department of Justice, NOAA, U.S. Department of Interior, states and Indian Tribes.

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Santa Fe, New Mexico

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### Who Should Attend:

*In-house and private attorneys, consultants, corporate managers and governmental representatives, and others who are involved in natural resource damage claims*

### You Will Learn About:

- The DOJ's perspective on NRD claims
- Cases countrywide and their implications for litigation
- Determining natural resource injury and assessment strategies
- Lessons from managing complex cases
- Defenses to NRD claims
- Rule 702/Daubert standards
- Economic valuation from trustee and defendant perspectives
- Strategies for determining baseline
- Counterclaims and third party claims
- Settlement of NRD litigation
- Current litigation and its impact on future actions

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