



**First Annual  
Emerging Issues in Environmental  
Law Policy and Practice Symposium:**

The Collision of Energy Development and Environmental Laws

**October 3, 2013**

8:00 a.m. to 4:30 p.m.

EDU 1111



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# First Annual Emerging Issues in Environmental Law Policy and Practice Symposium

Presented By The University Of California, Irvine School Of Law

## This Year's Presentation – The Collision of Energy Development and Environmental Laws

Rapidly changing around the world, energy development poses new economic and environmental challenges on a daily basis. Companies have made long-term investment and supply chain decisions based upon climate change models. “Zero” emission vehicles have changed the point of emissions from the tailpipe to the power plant, but those emissions are only as “clean” as the manufacturing process and the source that generates the power. Laws and regulations are adapting to the changing world of energy development and this year’s symposium discusses the law, the politics and the policies influencing these changes.

**8:00 – 8:30 a.m. – Sign In and Welcome (CLE credit arranged)  
Programs to Be Held in EDU 1111**

### **8:30 – 8:40 a.m. Welcoming Remarks and Introductions by Conference Co-Chairs:**

- Alejandro E. Camacho– Professor of Law, Director, UCI Law Center for Land, Environment, and Natural Resources (CLEANR), University of California, Irvine
- Geoffrey K. Willis – Partner, Sheppard, Mullin, Richter & Hampton LLP

### **8:40 – 9:45 a.m. Panel 1: The Unanticipated Environmental Consequences of Renewable Energy**

As the United States continues to promote creative and efficient ways to develop and use energy resources, two key challenges are 1) to understand the environmental impacts of renewable energy development and use, and 2) to develop strategies to ensure maximum benefit at the lowest cost. Development of solar and wind farms has been pushed to the front of the energy agenda, bringing with it impacts to endangered species habitat, migratory birds and raptors, visual resources, cultural resources, agriculture and unanswered questions about the disposal of replaced or depleted units and post-development land restoration. Are there unexpected consequences from clean energy development? If so, what is being done to identify those consequences and reduce or eliminate environmental impacts?

### **Panelists**

- Tony Toranto – Partner, Sheppard, Mullin, Richter & Hampton LLP
- Julie Falkner – Senior Director of Renewable Energy, Defenders Of Wildlife
- Angela Mooney D’Arcy (Acjachemen Nation, Juaneno Band of Mission Indians) – Co-Director of the United Coalition to Protect Pahne, Executive Director of the Sacred Places Institute for Indigenous Peoples, and Co-Coordinator for the United Nations North American Indigenous Peoples Caucus

### 9:45 – 10:45 a.m. Panel 2: Tensions and Conflicts Between Energy Development And Environmental Laws

As energy development is pushed to the front of the agenda, the roles and relative positions of environmentalists, industry and government have seemingly been rearranged. What are the major tensions between “clean” energy development and existing environmental laws? Who are the stakeholders? Are stakeholder alliances shifting? What is the status of current efforts to resolve these conflicts? How are competing stakeholders working to resolve these conflicts?

#### Panelists

- Timothy O’Connor – Director, California Climate Initiative, Environmental Defense Fund
- Peter H. Weiner – Partner, Paul Hastings LLP
- Ken Alex – Senior Policy Advisor to Governor Jerry Brown and the Director of the Office of Planning and Research

### 10:45 -11:00 a.m. Break

### 11:00 – 12:15 p.m. Panel 3: Significant CEQA and NEPA Issues Raised By Green Energy Projects

Clean or alternative energy development has dominated the agenda both in California and nationwide.

How have these projects been evaluated under either the California Environmental Quality Act or the National Environmental Protection Act? What creative solutions have project proponents or regulatory agencies used to identify and resolve these issues? Are environmental groups hesitant to identify the environmental impacts of clean or alternative energy projects? Have the courts handled claims arising from either CEQA or NEPA differently for alternative energy projects than they have handled similar issues for other projects?

#### Panelists

- Lisa T. Belenky – Senior Attorney, Center for Biological Diversity
- Susan V. Lee – Vice President, Aspen Environmental Group
- Geoffrey K. Willis – Partner, Sheppard, Mullin, Richter & Hampton LLP

### Hosted Lunch 12:15 – 1:30 p.m.

### 1:45 – 3:00 p.m. Panel 4: Greenhouse Gas Emission Control Measures – A Sub-Global Solution?

Much of the drive to shift to clean energy is fueled by concerns over climate change and the drive to reduce greenhouse gasses. California has been a national leader in the adoption of laws and regulations to control and mitigate greenhouse gas emissions. California’s sub-global climate action program is predicated on the theory that a national/international program is built from the ground up rather than from the top down. California’s adoption of low carbon fuel standards has raised concerns that the program violates constitutional protections for interstate commerce.

*The Rocky Mountain Farmers Union v. Corey* case was recently decided by the Ninth Circuit. It reversed a portion of a lower court decision striking down California’s low carbon fuel standards, but then remanded the case to address the remaining constitutional claims. Will these challenges sound the death knell to all sub-global regulatory efforts to control GHGs or merely limit their scope? Given the global nature of climate change, is a local or regional approach more desirable than national and international emission control and mitigation approaches?

### Panelists

- Ellen M. Peter – Chief Counsel, California Air Resources Board
- Peter Miller – Senior Scientist, Natural Resources Defense Council
- Evan Johnson – Senior Advisor, REDD Offset Working Group

### 3:00 – 3:15 p.m. BREAK

### 3:15 – 4:30 p.m. Panel 5: Practical Solutions Resolving The Conflicts Between Environmental Regulations And Resource Availability

Efforts to preserve the environment in one area have resulted in significant environmental harm in another. Global warming, water quality protection, air quality protection and similar regulatory environmental programs sometimes appear to have goals and objectives that are in direct competition with each other.

What is being done to resolve conflicts between competing regulatory programs that are focused on a single environmental issue or media and operate in conflict with other programs? How are private companies using regulatory trends for both economic benefit and competitive advantage? How can all stakeholders meaningfully engage to resolve these conflicts?

### Panelists

- Chris Costanzo – Legal Director, SolarReserve LLC
- Mark Massara – General Counsel and Vice President of Sustainability, O'Neil Wetsuits LLC
- Scott B. Birkey – Associate, Cox, Castle & Nicholson LLP

### 4:30 p.m. – Program Close

## CONFERENCE CO-CHAIRS

### Alejandro E. Camacho

**Professor of Law, Director, UCI Law Center for Land, Environment, and Natural Resources (CLEANR), University of California, Irvine**

Professor Camacho's expertise is in environmental law, land use regulation, and government organization, with a particular focus on adaptive management, collaborative governance, and climate change. His scholarship in environmental law explores how both the design and goals of the law and legal institutions must and can be reshaped to more effectively account for the dynamic character of natural systems. Professor Camacho's interdisciplinary research involves collaborations with experts in ecology, land use planning, political science, computer science, genetics, philosophy, and sociology. He is a co-investigator on National Science Foundation-funded research working with The Nature Conservancy to develop and study a collaborative cyber-infrastructure for facilitating information sharing on and managing the ecological effects of climate change. Professor Camacho also serves as the inaugural Director of the UCI Law Center for Land, Environment, and Natural Resources, which seeks to promote public engagement and discussion through conferences, lectures, and stakeholder facilitation on a variety of regional and national environmental issues. He is a Scholar at the Center for Progressive Reform, a nonprofit think tank devoted to issues of environmental protection and safety; Affiliated Faculty with the Newkirk Center for Science and Society; and holds a courtesy appointment in Political Science at UCI's School of Social Sciences. He is the former chair of the Association of American Law Schools' Section on Natural Resources. Before joining UC Irvine, Professor Camacho was an Associate Professor at the Notre Dame Law School, a research fellow at the Georgetown University Law Center, and practiced environmental and land use law. Professor Camacho received a LL.M. from the Georgetown University Law Center (2005), a J.D. from Harvard Law School, cum laude (1998) and a B.A. in Political Science, summa cum laude and a B.A. in Criminology, Law, and Society, summa cum laude, from the University of California, Irvine (1995).



### Geoffrey K. Willis

**Partner, Sheppard, Mullin, Richter & Hampton LLP**

Geoff Willis concentrates his practice on matters involving CEQA; NEPA; water rights and quality; the Endangered Species Act; wetlands regulation; the Clean Air Act; CERCLA investigation, remediation and litigation; the California Subdivision Map Act; and local zoning and land use requirements, environmental due diligence and audits. He has represented his clients' interests before all of the counties in Southern California, many of the cities in California, the State Water Resources Control Board, the Regional Water Quality Control Boards, the South Coast Air Quality Management District, the High Desert Air Pollution Control District, the California Department of Fish and Game, the California Coastal Commission, the California EPA, EPA Region IX, and a number of additional state and local governing bodies. Additionally, Geoff handles matters involving the use or reuse of real property – from the development of shopping centers, large conjunctive use projects, houses, golf courses, industrial parks and manufacturing complexes to regulatory compliance of ongoing businesses involving air, endangered species, water and wetlands permitting. Geoffrey has represented his clients' interests before all of the counties in Southern California, many of the cities in California, the State Water Resources Control Board, the Regional Water Quality Control Boards, the Army Corps of Engineers, the United States Fish and Wildlife Service, the South Coast Air Quality Management District, the Federal Aviation Administration, the High Desert Air Pollution Control District, the California Department of Fish and Game, the California Coastal Commission, the California EPA, EPA Region IX, and a number of additional state and local governing bodies.



## PANELISTS

### Ken Alex

#### Senior Policy Advisor to Governor Jerry Brown and the Director of the Office of Planning and Research

Before joining the Governor's Office, Ken was the Assistant Attorney General heading the environment section of the California Attorney General's Office, and the co-head of the Office's global warming unit. From 2000 to 2006, Ken led the California Attorney General's energy task force, investigating price and supply issues related to California's energy crisis. He spearheaded numerous settlement negotiations against power producers that collectively resulted in over \$5 billion of energy crisis-related recoveries for the State of California. During his tenure at the Attorney General's Office, Ken handled cases under most federal and California environmental statutes, and negotiated dozens of significant settlements, including agreements with San Bernardino County and ConocoPhillips for the first required reductions of greenhouse gas emissions in the country. California Lawyer named Ken an "Attorney of the Year" in 2004 for his work in energy law, and he received the ABA award for Distinguished Achievement in Environmental Law and Policy in 2007 for global warming work. He has taught courses on environmental law and policy at Stanford, Hastings, and Golden Gate University. Ken is a graduate of Harvard Law School and holds a B.A. in political theory from the University of California at Santa Cruz.



### Lisa T. Belenky

#### Senior Attorney, Center for Biological Diversity

Lisa T. Belenky focuses on the protection of rare and endangered species and their habitats under state and federal law on public lands throughout California and the southwest. Her work includes litigation and policy advocacy regarding: endangered species listing petitions and critical habitat designation; recovery plan development and implementation; site specific projects; and land use planning. Over the last few years, Lisa Belenky has spent innumerable hours on legal and policy issues related to siting large-scale renewable energy projects on public and private lands. Ms. Belenky has presented at many continuing legal education seminars and conferences including the State Bar of California Environmental Law Section's 2010 and 2013 Environmental Law Conference at Yosemite, the Symposium on Conservation of Extremely Small Populations at University of California, Davis 2012, CLE International's California Wetlands Conference 2009, solar industry conferences in 2010, 2011, and 2012. In addition, Ms. Belenky has participated in several at law school sponsored conferences including conferences at Stanford School of Law, U.C.L.A School of Law, U.C. Berkeley School of Law and U.C. Hastings School of Law and worked with law school clinics on litigation matters. Ms. Belenky received her J.D. from the University of California, Boalt Hall School of Law in 1999, and her B.A. in philosophy from University of California at Santa Cruz. Her publications include: Belenky, Lisa T., Cradle to Border: U.S. Hazardous Waste Export Regulations and International Law, 17 Berkeley J. Int'l L. 95 (1999).



### Scott B. Birkey

Associate, Cox, Castle & Nicholson LLP

Scott Birkey is an associate in the San Francisco office of Cox, Castle & Nicholson LLP, where he is a member of the Land Use practice group. Scott Birkey's practice includes advising clients in connection with the preparation of environmental review documents pursuant to the National Environmental Policy Act (NEPA), the California Environmental Quality Act (CEQA), and Section 404 of the Clean Water Act (CWA). His practice also includes advising clients regarding endangered species and wetlands issues pursuant to the Federal Endangered Species Act (ESA), the California Endangered Species Act (CESA), and Section 404 of the CWA, including habitat conservation plans, incidental take permits, and mitigation requirements. He has advised clients regarding the Porter-Cologne Water Quality Control Act and water rights under California water law. Mr. Birkey also has litigation experience regarding issues raised under a wide variety of federal and state environmental laws. In addition to his courtroom experience, he has appeared before various administrative agencies, including county boards of supervisors and planning commissions, representing clients in connection with land use approvals and environmental compliance. Mr. Birkey received his J.D. degree from the University of California, Berkeley School of Law, (Boalt Hall) in 2000, where he was Editor in Chief of the Ecology Law Quarterly, a member of California Law Review, and on the Moot Court Board. He also received a Masters Degree in Environmental Science from the University of Idaho in 1997, and graduated summa cum laude from Southwest Texas State University in 1994.



### Chris Costanzo

Legal Director, SolarReserve, LLC

Chris Costanzo manages and implements legal affairs of the SolarReserve, LLC. and its affiliates, including all aspects of its project development and financing activities. He has global experience in renewable energy and emissions reduction project development and transactions, climate change regulatory regimes, and environmental law. Chris Costanzo practiced law with the global climate change and environmental law practice groups of Allen & Overy LLP in London. While at Allen & Overy, he provided counsel on several international transactions involving the purchase and sale of power generation facilities and emissions reduction projects and credits, as well as advised on various emissions trading schemes and other environmental matters. Before Allen & Overy, Mr. Costanzo was an environmental associate at Gibson Dunn & Crutcher LLP for five years in Los Angeles and London. Mr. Costanzo spent time in Istanbul advising energy project and carbon asset developers on the financing of renewable energy projects, monetization of carbon credits, and climate change and renewable energy regulatory and policy developments. He serves as Co-Chair of the International Environmental Law Committee of the American Bar Association's Section of International Law. Mr. Costanzo provides legal advice on a pro bono basis to the non-profit emissions reduction inventory and accounting organization, Climate Action Reserve. He was an executive editor of Georgetown's International Environmental Law Review of Georgetown University Law Center. Mr. Costanzo is a graduate of Georgetown University Law Center.



**Angela Mooney D'Arcy (Acjachemen Nation, Juaneno Band of Mission Indians)**  
**Co-Director of the United Coalition to Protect Pahne, Executive Director of the Sacred Places Institute for Indigenous Peoples, and Co-Coordinator for the United Nations North American Indigenous Peoples Caucus**

Angela Mooney D'Arcy has been working with Tribal Nations, Indigenous peoples, and grassroots organizations on Indigenous environmental justice issues for over fifteen years. She is the founder and Executive Director of the Sacred Places Institute for Indigenous Peoples (SPI), a Los Angeles-based, Indigenous-led organization that works to build the capacity of Tribal Nations and Indigenous peoples to protect sacred lands, waters, and cultures. SPI is an Affiliate of the Seventh Generation Fund for Indian Development. She is the Co-Director of the United Coalition to Protect Panhe (UCPP), a grassroots alliance of Acjachemen people dedicated to the protection of their sacred site Panhe, located within and around San Onofre State Park in San Clemente, CA. Angela serves as the Co-Chair for the North American Indigenous Peoples Caucus and as the Pacific Coordinator for the Regional Action Network Weaver program organized by Native Americans in Philanthropy. She also serves on the Board of the Blas Aguilar Adobe Museum & Acjachemen Cultural Center located within the ancestral homelands of the Acjachemen/Juaneno people in the area now known as San Juan Capistrano, CA. She is a recipient of the New Voices Fellowship, a national Ford Foundation-funded program dedicated to cultivating the next generation of social justice leaders, the Earthjustice Sutherland Fellowship, awarded each year to a young lawyer to continue their work in environmental public-interest law, and is a member of the 2012 Circle of Leadership Academy sponsored by Native Americans in Philanthropy and the Center for Leadership Innovation. She received her B.A. from Brown University and received her JD, with a concentration in Critical Race Studies and Federal Indian Law, from UCLA School of Law.



**Julie Falkner**  
**Senior Director of Renewable Energy, Defenders of Wildlife**

Julie Falkner oversees Defenders of Wildlife's renewable energy program. In 2011 she joined the Defenders' renewable energy team focusing on wind and wildlife issues. Julie has over 20 years of experience working on public lands and natural resources issues in the public, private and non-profit sectors. Prior to joining Defenders, Julie worked for the Interior and Environment appropriations subcommittee in the House of Representatives and previously served as a Deputy Chief of Staff in the Department of the Interior under Secretary Bruce Babbitt. She also has worked as a public policy facilitator and natural resource consultant and has extensive experience working with Native American Tribes. Julie is a lawyer and a graduate of Washington and Lee Law School in Virginia and Albion College in Michigan.



### **Evan Johnson**

#### **Senior Advisor, REDD Offset Working Group**

Evan Johnson is Senior Advisor to the nonprofit Green Technology Leadership Group on issues relating to climate change, land use, and energy, and recently facilitated the REDD+ Offset Working Group. In addition, through his consultancy, he has worked with a range of institutions including the United Nations, the Woods Hole Research Center and Center for Resource Solutions on climate issues ranging from renewable energy to multi-stakeholder forest carbon dialogues. Evan received a Master's Degree at the Donald Bren School of Environmental Science and Management at UC Santa Barbara, focusing on the economics and policy of climate change.



### **Susan V. Lee**

#### **Vice President, Aspen Environmental Group**

Susan Lee has over 30 years of technical and managerial experience in environmental assessment. She has been at Aspen for 20 years, where she manages Aspen's San Francisco Office and Aspen's work for the California Public Utilities Commission. Her expertise is in management of environmental assessment for infrastructure and energy projects (renewable energy projects, electric transmission lines, pipelines, and gas-fired power plants) under both the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). Ms. Lee has managed preparation of several major and controversial transmission line and pipeline siting EIR/EISs. In addition, she has managed preparation of EIRs for large solar photovoltaic projects, and contributed to Energy Commission Staff Assessments for 7 utility-scale solar thermal projects. A sampling of her project experience includes providing guidance to the Western Governors' Association (WGA) relating to transmission permitting processes for large interstate transmission lines, CEQA and NEPA analysis of infrastructure projects for the California Public Utilities Commission, and support to generation siting for the California Energy Commission. Ms. Lee received a M.S. in Applied Earth Science from Stanford University and a B.A. in Geology from Oberlin College.



### **Mark Massara**

#### **General Counsel and Vice President of Sustainability, O'Neil Wetsuits LLC**

Mark Massara is the General Counsel and Vice President of Sustainability, O'Neil Wetsuits LLC, and the former Director of the Sierra Club's California Coastal Campaign. Massara is a surfer and attorney who gained a reputation in the surfing and environmental communities when, as counsel for Surfrider in 1991, he won a lawsuit against two pulp mill companies near Eureka, California that were dumping 40 million US gallons (150,000 m<sup>3</sup>) of toxic effluents per day into the ocean. The penalty was the second largest collected for Clean Water Act violations. Massara later founded Surfers Environmental Alliance ("SEA") and the National Association of Surfing Attorneys ("NASA"), and partnered with Kenneth and Gabrielle Adelman to create a California coastline photographic survey ([www.californiacoastline.org](http://www.californiacoastline.org)). He is a former Board member of Vote the Coast, counsel for California Coastal Protection Network ("CCPN"), serves on the advisory board of Save the Waves Coalition and is a current Board member of CoastWalk ([www.coastwalk.org](http://www.coastwalk.org)). He writes on coastal and environmental legal issues for many publications and teaches law and coastal policy. In 1999, The Smithsonian Institute declared Massara an "ocean hero".



### **Peter Miller**

#### **Senior Scientist, Natural Resources Defense Council (NRDC)**

Peter Miller has over 25 years experience in energy and climate policy. His work is focused on California energy policy, AB32 implementation, GHG emissions accounting and offsets. He is currently a boardmember of the Climate Action Reserve (CAR) and has served on the California Board for Energy Efficiency and on both Independent Review Panels evaluating the Public Interest Energy Research program at the California Energy Commission. Mr. Miller has degrees from Dartmouth College and Reed College.



### **Timothy O'Connor**

#### **Director, California Climate Initiative, Environmental Defense Fund**

Timothy ("Tim") O'Connor is the Director of Environmental Defense Fund's California Climate Initiative in their San Francisco office. Since joining EDF in 2006, Mr. O'Connor has engaged state regulatory agencies and legislature on the implementation of AB 32 with particular focus on heavy industry and power plant emissions, alternative fuels and vehicles, and compliance instruments in cap-and-trade programs. During this time, Mr. O'Connor has also managed EDF's participation in both state and federal courts on issues related to climate and energy, both as a formal party and as amicus curiae. In addition to working on AB32 policies, Mr. O'Connor has served as an attorney in EDF's Energy Program, participating in proceedings at the California Public Utilities Commission (CPUC) and California Energy Commission (CEC) on issues related to electric vehicles, energy storage, smart grid planning, power plant permitting and geologic carbon capture and sequestration. Prior to joining EDF, Mr. O'Connor was a senior compliance inspector at heavy industrial facilities including petroleum refineries and power plants in the San Francisco bay area. He holds a Masters of Environmental Management Degree from Duke University and a J.D. from Golden Gate University with specializations in Environmental and Public Interest Law.



### **Ellen M. Peter**

#### **Chief Counsel, California Air Resources Board**

Ellen M. Peter was appointed Chief Counsel of the California Air Resources Board in May 2008. Her legal staff provides advice to the Board on the development and implementation of air pollution control regulations. As a member of the Board's executive team, Ellen helps formulate policy recommendations, including the implementation of California's comprehensive greenhouse gas reduction mandate. In addition, she manages the Enforcement Division with more than 100 investigators. In March 2013, Ellen was named as one of the California Lawyer Attorneys of the Year in the Environmental Law category for her work overseeing California's first carbon allowance auction. Previously, Ellen worked for more than 20 years for the California Attorney General; her last position was Supervising Deputy Attorney General for the Natural Resources section. During 2006-2008, she headed the legal team that defended the Pavley AB 1493 vehicle greenhouse gas emissions standards against the auto industry's attacks in federal and state courts. Ellen started her Attorney General Office career in 1985 in the Criminal Division after working for nine years with non-profit legal organizations, primarily California Rural Legal Assistance.



### **Tony Toranto**

**Partner, Sheppard, Mullin, Richter & Hampton LLP**

Tony Toranto is a partner in the Corporate, Real Estate, and Energy Practice Groups in the firm's Del Mar and San Francisco offices. Tony is the Chair of the firm's Energy Group, and advises energy clients on project financing and development matters, project acquisitions, power purchase agreements, EPC agreements, and other transactional matters. His experience includes both conventional and renewable energy projects. In the renewable sector, Mr. Toranto regularly advises clients on projects ranging from distributed generation projects throughout the US, to some of the largest utility scale renewable energy projects in the industry. Toranto received his J.D. from Stanford Law School, as well as his MBA, M.A. and A.B., Phi Beta Kappa, from Stanford University.



### **Peter H. Weiner**

**Partner, Paul Hastings LLP**

Peter Weiner heads the Energy and Environmental Practice of Paul Hastings. He splits his time between San Francisco, Sacramento, and Southern California. Mr. Weiner's renewable energy practice includes representation of solar, wind, geothermal, and biomass companies before the California Energy Commission, wildlife protection regulatory bodies (US Fish and Wildlife Service, Department of Fish and Game, etc.), Public Utilities Commission, and all levels of land-use agencies (Bureau of Land Management, Bureau of Reclamation, local government, State Lands Commission, etc.). He also represented the solar industry as a whole with regard to the BLM Programmatic EIS for solar development and continues to represent a large segment of the industry on current issues such as avian mortality, the DRECP, etc. Mr. Weiner has represented over 6000 MW of successful permitting of renewable energy. Mr. Weiner received his B.A. degree from Harvard College in 1966, his L.L.B. degree from Yale Law School in 1970 (member, Yale Law Journal), and a Master's degree in Economics from the London School of Economics in 1967.



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