

Native American Resources Committee Newsletter

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MESSAGE FROM THE CHAIR

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The vice chairs of the Native American Resources Committee have ambitious plans for this year. This issue of our newsletter is but the first deliverable in carrying out our committee action plan. We plan to produce four more issues of the newsletter before the 16th Section Fall Meeting in September 2008 in Phoenix. That's right, I did say four. And we are planning a series of teleconference programs.

The idea for a series of teleconferences grew out of the membership survey that we conducted last Spring. Quite a few of the people who responded to that survey said they would be very interested in our committee sponsoring a series of teleconference programs, especially such if they are offered for continuing legal education credit. So, we are working on plans for a series of teleconferences. These will be 90-minute programs that you can dial into from your office, or wherever you happen to be. We have defined four general themes for the teleconference series, with the intention of holding at least one teleconference on each theme. Here are the themes we are working on:

- Global Warming—Efficiency, Renewables, Cap-and-Trade, Adaptation
- Environmental Protection Regulatory Programs in Indian Country
- Remediation and Restoration of Contaminated or Degraded Environments

- Cultural Resources and Sacred Places in Indian Country and on Public Lands

Each of these themes includes enough substance to support several teleconference programs. (We have two pieces on global warming in this issue.) As we put these programs together, and as we develop the content and identify speakers, it's easy to imagine how this teleconference series could become an ongoing activity for our committee. Whether that actually happens depends, in large part, upon the interests of committee members and the willingness of some members to volunteer to share their expertise with the rest of us.

The idea of four themes for the teleconference series led us to the idea of producing four issues of the committee newsletter, one issue devoted to each of the four themes. If you have something in mind that you want to write about on any of the four themes, please get in touch with our newsletter vice chairs, Pablo Padilla (PPadilla@NordhausLaw.com) and Connie Rogers (Connie.Rogers@dgslaw.com). We really would like to make the newsletter a vehicle for contributions from committee members. If you are interested in being a speaker/author for a teleconference, let Connie and Pablo know that, too. Or contact one of the three vice chairs in charge of programs: Richard Du Bey (rdubey@scblaw.com), Robert Gruenig (BGruenig@ntec.org), and Douglas MacCourt (dcm@aterwynne.com).

The four themes that we have set out do not, of course, cover the full range of legal work within the

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Pablo Padilla and Connie Rogers,
Editors

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purview of our committee. If you have something that you want to get published online, and it doesn't fit within one of the four themes, please don't let that stop you from offering it to us for publication in the newsletter. You might also consider publishing it in the newsletter of another of the Section's committees, or in one of the Section's print publications such as *Natural Resources & Environment* or *Trends*. If you are an author in search of a place to publish your work, we really would like to help. That's all for now.

**LIEBERMAN-WARNER BILL MOVES
OUT OF SENATE ENVIRONMENT AND
PUBLIC WORKS COMMITTEE**

Bob Gruenig

Since being introduced in October 2007, "America's Climate Security Act" (ACSA) (S. 2191) has been moving swiftly toward the Senate floor. This bill, which was introduced by Sens. Joseph Lieberman (I-CT) and John Warner (R-VA) to reduce greenhouse gas (GHG) emissions and their adverse impacts, even contains elements specific to tribes although improvements are necessary to provide the best protection to Indian country against climate change impacts.

The ACSA is a step in the right direction for addressing climate change impacts as it would cap more than 75 percent of the nation's (GHG) emissions, with such emissions being generated by the electric power, industrial, and transportation sectors. The cap for these sources would be reduced below 2005 emissions levels by 15 percent in 2020 and 70 percent in 2050, respectively. With these reductions and additional ones expected as a result of energy efficiency provisions in the bill, total U.S. GHG emissions are expected to decline more than 60 percent.

The ACSA contains two measures specific to tribes that would provide them with resources to address climate change impacts to their communities. First, the bill sets aside 0.5 percent of all allocations made available under the bill for tribes to undertake activities

SEVEN POINTS ABOUT GLOBAL WARMING

Dean B. Suagee

to “deliver assistance to tribal communities within the United States that face disruption or dislocation as a result of global climate change.” Second, the bill also allocates one percent of the monies made available under a fund for adaptation activities through the Tribal Wildlife Grants program of the U.S. Fish and Wildlife Service.

While these measures are certainly helpful to tribes, the bill still falls short in the allocation amounts made available to tribes. Furthermore, the scope of activities that tribes may undertake to address climate change impacts also fall short by not allowing them to engage in such activities as renewable energy development and promotion of energy efficiency, the same kinds of activities that states may undertake with their allocations. Finally, a bill provision which makes reference to Section 301(d) of the Clean Air Act could prevent Alaskan Native communities, perhaps the most noteworthy communities being impacted by climate change, from accessing resources under the bill. That is because Section 301(d) requires that tribes receive treatment-as-a-state (TAS) status before they can take on U.S. Environmental Protection Agency (EPA) regulatory programs, and Alaskan Native Villages are unable to receive TAS status at this time as well as most tribes in Oklahoma.

On Dec. 5, 2007 and by a vote of 11 to 8, the ACSA was passed by the Senate Environment and Public Works (EPW) Committee, largely along party lines with all eight Democrats on the committee voting for the bill. The remaining three votes came from the EPW’s two independents (Joseph Lieberman and Bernie Sanders) and the bill’s Republican co-sponsor (John Warner). The ACSA must now go to the Senate where it will need to overcome a sixty-vote hurdle in order to avoid an impending filibuster due to be led by certain Republican senators.

***Bob Gruenig** serves as a senior policy analyst and attorney for the National Tribal Environmental Council in Albuquerque, New Mexico. For any questions concerning this piece or other environmental legislation which might affect tribes, please contact him at bgruenig@ntec.org.*

The signs are everywhere. Global warming is real. Some of the signs are more dramatic in northern latitudes. Alaska Native communities have been coping with global warming for a couple of decades, as the changing climate has disrupted the web of life that has sustained subsistence cultures for countless generations. Sea ice freezes up later in the fall, thaws earlier in the spring, and is generally thinner. The permafrost thaws. Precipitation patterns change. Some wildlife populations are crashing; others very likely will crash soon. The signs of climate change can also be seen in Indian country in the lower forty-eight, and they will become more pervasive in the years to come.

In predicting the effects of global warming there are uncertainties, of course, and the projections made by scientists tend to be expressed in ranges. In the big picture, the uncertainty might be described as ranging from “really bad” to “absolutely catastrophic.” That’s the bad news.

There is also some good news—we know what we have to do, and we might even have enough time to get it done. Since global warming is mostly driven by emissions of carbon dioxide (CO₂) as a result of burning fossil fuels, what we have to do is dramatically reduce our use of fossil fuels, and we can do this by getting serious about energy efficiency and the widespread use of solar and other renewable energy technologies. We need to bring about a post-fossil fuels economy. We need to bring about the solar age.

Of course, some among us have been talking about this for what seems like an awfully long time. See, e.g., Amory B. Lovins, *Soft Energy Paths: Toward a Durable Peace* (1977) (thirty years ago!); see also Dean B. Suagee, *Self-Determination for Indigenous Peoples at the Dawn of the Solar Age*, 25 U. MICH. J. L. REF. 671 (1992) (fifteen years ago). The dawn of the solar age has been a long time coming. Global warming means that we really do need to make it happen, and we need to make it happen soon.

Does anyone else reading this remember the Solar/Conservation Study prepared by the Solar Energy Research Institute (now known as the National Renewable Energy Laboratory)? It was entitled “A New Prosperity: Building a Sustainable Energy Future,” and was completed in 1981 and ultimately published by Brick House Publishing Company after the Reagan administration’s unsuccessful attempt to keep it from seeing the light of day. The key word here is “prosperity.”

If we can do it, if we can bring about the solar age, we can reap a range of benefits in addition to heading off the worst of the climate change crisis, benefits such as lots of new jobs and business opportunities, price stability for energy services, national and regional energy self-sufficiency, avoidance of adverse environmental impacts associated with fossil fuel technologies, and a generally enhanced quality of life. The people living in tribal communities should get to share in these kinds of benefits.

Many organizations are calling on the United States to lead the world in the transition to a post-fossil fuels economic order. If we were to do that (and by “we” I mean the American people), we might even achieve freedom from the perceived need to send our armed forces to regions of the world that just happen to have oil, either to prop up friendly regimes or to overthrow unfriendly regimes, without much concern for democratic principles or human rights or anything else other than access to oil.

As a subject of legal analysis, global warming is multi-faceted. The causes of global warming can be addressed through both environmental law (e.g., by regulating CO₂ as a pollutant) and through energy law (e.g., by regulating the electric utility industry, the natural gas industry, and through various kinds of market mechanisms). The subject matters of environmental law and energy law each includes a patchwork of statutes and regulations at federal and state levels. In many of the subsets of these subjects there has been a long history of regulation by states and not much history of regulation by tribal governments. Some of the governmental policy tools that can be wielded at the federal and state levels may

be beyond the reach of tribal governments, but there are lots of points at which the question should be asked: how do tribal governments fit into the mix?

Over the past year or so I’ve been reading about global warming, doing some writing, and editing some pieces that others have written. I have put together some PowerPoint slides that I’ve shown on a few occasions, law school conferences and continuing legal education programs. And I have invested a lot of hours writing a law journal article on how tribal governments could fit into the mix. It has occurred to me, though, that when I finish writing that article, it will take another six or eight months before it gets published, and then a relatively small number of people will read it, and maybe a few of them will be inspired to take something from it and act on it.

In the mean time, it has been two years since climate scientist James Hansen, of the National Atmospheric and Space Administration, said that we have about a ten-year window to turn things around. So, now that would be about eight years. To make a personal contribution to dealing with the problem, maybe the traditional law review article is not the most effective vehicle. Maybe I should focus on shorter pieces that reach a larger audience. So, here’s one shorter piece. Seven points. Any of these points can be expanded, and I intend to pick up on some of these points in subsequent offerings. I have also included some Web sites, for readers who want some leads for further reading.

1. We need to reduce global emissions of CO₂ by about 60 to 80 percent from 2005 levels by 2050 in order to have any real chance of avoiding the most catastrophic impacts of climate change driven by global warming. The most authoritative information on the science is the Intergovernmental Panel on Climate Change (IPCC), the organization established in 1988 by the World Meteorological Organization (WMO) and the United Nations Environment Programme (UNEP). The IPCC is the organization that, along with Al Gore, was recently award the Nobel Peace Prize. The reports issued by the IPCC can be downloaded from its Web site: www.ipcc.ch. Reducing CO₂ emissions is just part of the problem, but to have any

hope of avoiding catastrophic climate change, we need to deal with CO₂ emissions from fossil fuels. Another good source on the science of climate change is a report by the World Wildlife Fund, *Climate Solutions: WWF's Vision for 2050* (May 2007), which can be downloaded from the WWF Web site: www.panda.org. See also Union of Concerned Scientists: www.ucsusa.org.

2. In the United States, we can achieve the scale of reductions in CO₂ emissions that we need—down 60 to 80 percent from 2005 levels by 2050—through energy efficiency and renewable energy, without new nuclear plants and without new coal plants that feature experimental technologies for capturing carbon. One of the best sources of information on this is a report commissioned by the American Solar Energy Society (ASES), *Tackling Climate Change in the U.S.: Potential Carbon Emissions Reduction from Energy Efficiency and Renewable Energy by 2030* (January 2007), available at the ASES Web site: www.ases.org. The ASES report builds on the concept of “stabilization wedges” posited by two Princeton University professors, Stephen Pacala and Robert Socolow, published in the journal *Science* in 2004. The concept of stabilization wedges captures the point that there is no single solution to climate change. Rather, there are a lot of partial solutions. The basic idea is conveyed through a graph showing, under a business as usual scenario, how CO₂ emissions would continue to increase. Through the adoption of a combination of partial solutions—stabilization wedges—we can make the line on the graph level off and then start trending dramatically down.

In the ASES report, the potential reductions that can be achieved through energy efficiency are enough to level off the curve and start on a downward trend, and these emissions reductions can be achieved in the very near term. Beyond efficiency, a number of mature renewable energy technologies can be implemented that, in combination, would offset enough fossil fuel energy to put us on track to hit the 60 to 80 percent reduction target by 2050. The renewable energy technology with the greatest potential is wind power. Five other renewable energy technologies each come in at about one-third or so of the potential of wind

power: photovoltaics, concentrating solar power, biofuels, biomass, and geothermal. There are other ways of defining these wedges. For example, solar thermal applications in buildings—e.g., passive solar design features for heating and lighting—are included in energy efficiency in the ASES report, but could be treated as a separate wedge. The ASES report also includes a section on plug-in hybrid electric vehicles, a technology that is not a renewable energy source but rather an energy storage technology that could play a major role in transforming the electric utility industry, away from centralized power plants and toward distributed wind and solar.

3. It will take comprehensive governmental support programs to realize the potentials of energy efficiency and renewable energy, including regulatory programs, market-mechanisms, subsidies, and educational programs. Many reports by various organizations have called for legislative and regulatory action by all levels of government. For example, see the Web site of the U.S. Climate Action Partnership: www.us-cap.org. Or see a report jointly published by Worldwatch Institute and the Center for American Progress, *American Energy: The Renewable Path to Energy Security* (Sept. 2006), available at: www.worldwatch.org/node/4405.

4. Reports on climate change that call for governmental action at all levels typically mention federal, state, and local governments. Every report that I have seen overlooks the potential roles of tribes as governments. In the American system of government, there are some aspects of reducing CO₂ emissions that will be addressed at the state or local level, including building codes to make buildings more efficient and land use planning to reduce the need for motor vehicles to move people around. Renewable energy will be brought to market, for the most part, in the form of electricity, and many aspects of the electric power industry are shaped by state legislation rather than federal law. I don't think that the authors of such reports consciously decide not to include tribal governments; rather, I think they just don't think about tribes. If tribal leaders and advocates don't call attention to what tribes can do as governments, we shouldn't be surprised if no one else thinks about it.

5. Making the transition to an energy economy based

on efficiency and renewable resources will yield lots of benefits in addition to reducing CO₂ emissions, including: energy independence, long-term price stability, avoidance of other environmental impacts of conventional energy technologies, millions of new jobs, and lots of business opportunities. An organization called the Apollo Alliance projects three million new jobs over the next couple of decades. See: www.apolloalliance.org.



6. Tribal communities in the U.S. need to share in those benefits, especially the jobs and business opportunities. I wish I knew of a Web site to which to direct readers to read more about bringing these new jobs and business opportunities to Indian country and Native Alaska.

7. Tribal leaders and advocates should be talking about how to get tribal governments included in proposed federal legislation, in a comprehensive way. The legislation currently under consideration in Congress comes under two main headings—climate change and energy—but these subjects overlap. In the bills that I have read, references to tribes as governments are few and far between. The Lieberman-Warner bill, S. 2191, “America’s Climate Security Act,” introduced on Oct. 18, does mention Indian tribes in a few places, but there are also several places where tribes should be included and are not, at least not yet. For just one example, eleven pages of bill language would create a program through which the Department of Energy would provide support for ratcheting up the standards in the national model energy codes for residential and commercial buildings so that by 2020 new buildings will use half as much energy as they do now. The bill would create mandates for states to adopt the updated standards and a federal assistance program help states meet these mandates. There is no comparable program to help tribal governments adopt and implement energy efficiency building codes. The National Congress of American Indians (NCAI) recently adopted a resolution, NCAI Resolution DEN-07-085, available at www.ncai.org, calling for inclusion of provisions in the bill to support tribal activities to promote energy efficiency, renewable energy, and carbon capture and sequestration, as well as tribal activities to address adaptation to climate

change. An NCAI resolution, however, is just some words on paper (or available to be downloaded) unless people who care about those words do something with them.

The transition to an efficient and renewable energy future will mean some profound changes in the American way of life. In many ways, these changes are going to be for the better, and we should make sure that tribal communities share in the benefits. This means we need to be talking about policy tools that can be wielded by tribal governments and about how federal policies to support action at the state and local levels should be crafted to make sure that tribal governments are included. We need to get people asking and offering answers to this basic question—where do tribal governments fit in moving America and the world to a post-fossil fuels economy, in bringing about the solar age?

Mr. Suagee is of counsel to the firm Hobbs, Straus, Dean & Walker, LLP, Washington, D.C. He is the chair of the Native American Resources Committee, ABA Section of Environment, Energy, and Resources.



LIKE TO WRITE?

The Native American Resources Committee welcomes the participation of members who are interested in preparing this newsletter. If you would like to lend a hand by writing, editing, identifying authors, or identifying issues, please contact one the editors: Pablo Padilla at PPadilla@NordhausLaw.com, or Connie Rogers at connie.rogers@dgsllaw.com.

UPDATE ON RECENT ISSUES IN INDIAN COUNTRY

**Pablo Padilla
Connie Rogers**

Ninth Circuit Grants Rehearing En Banc to Forest Service and Snowbowl Ski Resort

The Ninth Circuit recently granted the petitions of the U.S. Forest Service and Arizona Snowbowl Resort Limited Partnership, the operator of Snowbowl Ski Resort, for rehearing *en banc* of the unanimous three judge panel's ruling in *Navajo Nation v. Forest Service*, 479 F.3d 1024 (9th Cir. 2007). This case involves challenges brought by Indian tribes and environmental groups to the Forest Service's approval of the Snowbowl Ski Resort's proposed expansion and use of recycled sewage effluent to make artificial snow. The Snowbowl Ski Resort is located on a portion of the San Francisco Peaks near Flagstaff, Arizona, a site that has long been considered sacred to numerous area Indian tribes, including the plaintiffs, and has been recognized as eligible for inclusion in the National Register of Historic Places as a traditional cultural property. The district court opinion held that the Forest Service's approval of Snowbowl's proposal to use treated wastewater on the Peaks would violate the plaintiffs' rights under the Religious Freedom Restoration Act (RFRA). The Ninth Circuit panel held that the definition of religious exercise under RFRA was broader than under the Free Exercise Clause of the U.S. Constitution because of amendments to RFRA accomplished under the Religious Land Use and Institutionalized Persons Act. Argument on rehearing was Dec. 11, 2007 in Pasadena. To listen to an audio replay, go to www.ca9.uscourts.gov/ca9/media.nsf/Media+Search?OpenForm&Seq=1 after noon PST on Dec. 12.

Ninth Circuit Upholds Forest Service's Ban on Recreational Climbing on Cave Rock

The Ninth Circuit recently upheld a U.S. Forest Service decision to implement a ban on recreational climbing on Cave Rock, a site considered sacred by the Washoe Tribe. *Access Fund v. U.S. Dept. of*

Agr., Case No. 05-15585 (9th Cir. Aug. 27, 2007). At issue was the Forest Service's decision to ban recreational rock climbing in development of its resource management plan for the area. The Access Fund challenged this decision as a violation of the Establishment Clause of the U.S. Constitution, among other claims.

In 1996, the Forest Service determined that Cave Rock is eligible for inclusion in the National Register of Historic Places as a traditional cultural property. As part of that determination, the Forest Service also found that recreational climbing is an adverse effect on Cave Rock pursuant to the National Historic Preservation Act, and the Nevada State Historic Preservation Office concurred in that determination. The 9th Circuit held that the Forest Service decision did not run afoul of the Establishment Clause because the Forest Service had a legitimate secular purpose in protecting a cultural and historic resource, the decision did not advance or endorse Washoe religion, and because the Washoe would have preferred an alternative that banned all activities inconsistent with traditional Washoe belief and would have denied access to all non-Washoe, an alternative the Forest Service rejected. The court concluded that "the Establishment Clause does not bar the government from protecting an historically and culturally important site simply because the site's importance derives at least in part from its sacredness to certain groups."

Federal Circuit Court of Appeals Rules in Favor of Navajo Nation in Coal Mine Trust Fund Suit

On Sept. 13, 2007, the United States Court of Appeals for the Federal Circuit held that the Navajo Nation has a cognizable, money-mandating claim against the United States for breach of trust associated with approval of a 1964 coal mine lease on Navajo Nation lands by the predecessor of the Peabody Coal Company. *Navajo Nation v. United States*, No. 2006-5059 (Fed. Cir. 2007). Under the terms of the lease, the court found that the Navajo Nation received not more than 37.5 cents per ton of coal extracted from its lands, far less than the 12.5 percent royalty set by Congress in 1977 for coal mined on federal lands.

In 1993 the Navajo Nation brought the breach of trust suit, but the Court of Federal Claims and later the United States Supreme Court held that neither the Indian Mineral Leasing Act of 1938 nor the Indian Mineral Development Act of 1982 provide a statutory basis from which the Navajo Nation can sue and collect damages.

The Federal Circuit Court of Appeals evaluated a network of other statutes and regulations, including the Indian Tucker Act, two treaties between the United States and the Navajo Nation, a 1884 Executive Order, six federal statutes and implementing regulations, and the 1964 lease, to determine whether this network provide a cognizable, money-mandating claim against the United States. The court held that it does. The court found the network gave the United States control of coal resource planning, coal mining operations, and management and collection of coal mining royalties sufficient to warrant compensation for a breach of trust. The court also found that the United States violated common law trust duties of care, candor, and loyalty owed to the Navajo Nation. The suit was remanded to the Court of Federal Claims.

U.S. Supreme Court Denies Certiorari in Gold Mine Case

On Oct. 1, 2007, the United States Supreme Court denied certiorari to the Gros Ventre Tribe, Assiniboine Tribe, and the Fort Belknap Indian Community Council from a decision by the Ninth Circuit in a breach of trust case involving the expansion of two cyanide heap-leach gold mines located upriver from the Tribes' reservation. In *Gros Ventre Tribe v. United States*, 469 F.3d 801 (9th Cir. 2006), the Ninth Circuit denied the Tribe's claim that the United States violated specific and general trust obligations to protect tribal trust resources when it authorized the expansion of the gold mines.

The Tribes unsuccessfully argued to the Ninth Circuit that the expansion of the gold mines would continue to diminish the quality and quantity of water resources available to the Tribes caused by water use at the gold mines. After disposing of an Administrative Procedures Act claim made by the Tribes, the Ninth Circuit

decided that the treaties cited by the Tribes did not impose a specific duty on the United States to regulate third parties or non-tribal resources for the benefit of the Tribes. "Although we recognize that activities occurring off of the Reservation may impact resources on the Reservation, the language in these treaties simply cannot be read to impose a specific fiduciary obligation on the government to manage non-tribal resources, such as the clean-up of nearby gold mine tailings, for the benefit of the Tribes." 469 F.3d at 814. Finally, the court rules that the Tribes did not have a cognizable failure to act claim because the Tribes could not assert that the government has failed to take a discrete agency action that it is legally required to take.

The United States Can Have CERCLA Liability as "Owner" of Indian Reservation Lands

In *United States v. Newmont USA Ltd.*, the court held that the United States was liable as an "owner" under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) because, in addition to possessing fee title, the United States exercised sufficient control and indicia of ownership over Midnite Mine Superfund Site located on the Spokane Indian Reservation in Washington State. 504 F. Supp. 2d 1050 (E.D. Wash. 2006). As a result of the decision, Newmont and Dawn Mining Corp., potentially responsible parties for the cleanup of the site, were permitted to proceed with a counterclaim against the United States as the site owner.

The Midnite Mine Site is situated on land within the Spokane Indian Reservation, including reservation trust land that was never allotted, and a 120-acre tract of land that was allotted to an individual who died intestate prior to a fee patent being issued. The court found holding fee title, together with sufficient 'indicia of ownership' satisfied tests under *City of Phoenix v. Garbage Servs. Co.*, 816 F. Supp. 564, 567 (D. Ariz. 1993), *United States v. Friedland*, 152 F. Supp. 2d 1234 (D. Colo. 2001), and *Castlerock Estates, Inc. v. Estate of Markham*, 871 F. Supp. 360 (N.D. Cal. 1994) satisfied the court "that the elements of ownership that the United States has exercised over the Indian lands at issue here dictates a finding that the

United States was an ‘owner’ under CERCLA during the relevant time frames.” The court explained that elements of ownership are demonstrated not only through the “general trust relationship between the United States and the Indian people,” but also through various statutes and regulations. Specifically, The Indian Mineral Leasing Act of 1938 (IMLA) imposes “extensive responsibilities on the federal government in leasing mineral rights for the benefit of the Indians in a detailed and comprehensive fashion.” In addition, the court highlighted several actions undertaken by the federal government with respect to the Midnite Mine Site as indications that the United States exercised the required degree of ownership to incur CERCLA liability. The United States, for example, collected the rents and royalties, approved royalty rate adjustments, performed audits, monitored the reclamation fund, reviewed and approved Dawn’s mining plan, and monitored environmental conditions at the mine. The court explained that the “key question in the indicia of ownership analysis” is “whether the fiduciary could have affected the disposal of the hazardous wastes on the subject property.” According to the court, “the United States had the authority to prevent the very contamination for which it brings this action.” The court further explained that its determination is “supported by CERCLA’s overarching purpose . . . to impose costs of the cleanup on those responsible for the contamination.”

DOE Names Director for Office of Indian Energy Policy

Samuel W. Bodman, secretary of the U.S. Department of Energy (DOE), recently announced the appointment of Steven J. Morello as director of DOE’s newly formed Office of Indian Energy Policy and Programs. As director of this office, Mr. Morello will implement and manage energy planning, education and efficiency for American Indian tribes. The Indian Energy Policy and Program Office will work within DOE’s Office of Congressional and Intergovernmental Affairs. Mr. Morello also serves as deputy assistant secretary for Intergovernmental and External Affairs. For more on DOE’s Tribal Energy Program see www.eere.energy.gov/tribalenergy/.

The secretary also announced that the DOE Office of Energy Efficiency and Renewable Energy will make available a total of up to \$2 million for fifteen Native American tribes and Alaskan villages to support renewable energy technologies on tribal lands and rural Alaskan villages. Six projects will conduct feasibility studies of utilizing renewable energy technologies on tribal lands. The other nine projects will work toward implementation of renewable energy and energy efficiency projects on tribal lands. The awards include both financial and technical assistance from DOE. For more information, see www.energy.gov/news/5493.htm.

National Park Service Publishes Proposed Rule on Disposition of Culturally Unidentifiable Human Remains under NAGPRA

On Tuesday, Oct. 16, 2007, the National Park Service proposed a new rule specifying procedures for the disposition of culturally unidentifiable human remains in the possession or control of museums or federal agencies, implementing certain requirements of the Native American Graves Protection and Repatriation Act of 1990. The Federal Register notice (72 Fed. Reg. 58,582) solicits comments from Indian tribes, Native Hawaiian organizations, museums, federal agencies, and members of the public. Written comments will be accepted through Jan. 14, 2008. For more information, see the Federal Register notice or www.nps.gov/history/nagpra/.

With thanks to Abby Gaffney, Davis Graham & Stubbs LLP, for her assistance in preparing portions of this column.

**Communicate with Your Colleagues
Using the Native American Resources
Committee List Serve:**

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CALENDAR OF EVENTS

Regional Renewable Energy Development Workshop: California Tribes, Jan. 14-17, 2008, Sacramento, California. More information available at: http://www.eere.energy.gov/windandhydro/windpoweringamerica/filter_detail.asp?itemid=1665

Tribal Law & Government Conference, Feb. 1, 2008, University of Kansas School of Law. More information available at: http://www.law.ku.edu/events/Agenda2007_2008.pdf.

ABA Section of Environment, Energy, and Resources 26th Annual Water Law Conference, Feb. 21-22, 2008, San Diego, California. More information available at: www.abanet.org/environ/calendar/.

ABA Section of Environment, Energy, and Resources 37th Annual Conference on Environmental Law, March 13-16, 2008, Keystone, Colorado. More information available at: www.abanet.org/environ/calendar/.

Climate Change and the Natural Resources Industry, April 10-11, 2008, Phoenix, Arizona. More information available at: <http://www.rmmlf.org/>.

15th National Tribal Environmental Conference, April 15-18, 2008, at the El Mueso Cultural De Santa Fe, Santa Fe, New Mexico. More information available at: <http://www.ntec.org/conference.htm>.

EPA Region 10 Tribal Leaders Summit, April 24-28, 2008, 21-24 Little Creek Resort and Casino, Kamilche, Washington.

2008 Annual Tribal Self-Governance Department of the Interior and the Department of Health & Human Services Conference, April 27-May 1, 2008 in Las Vegas, Nevada. More information available at: <http://www.tribalselfgov.org/>.

ABA Section of Environment, Energy, and Resources, Eastern Water Resources Conference, May 1-2, 2008, Charlotte, North Carolina. More information available at: www.abanet.org/environ/calendar/.

Strategic Risk Management in the Natural Resources Industry, May 1-2, 2008, Santa Fe, New Mexico. More information available at: <http://www.rmmlf.org/>.

8th National Tribal Conference on Environmental Management, June 23-27, 2008, Holiday Inn Grand Montana, Billings, Montana. More information available at: <http://www.ntcem8.org/>.

54th Annual Rocky Mountain Mineral Law Institute, July 17-19, 2008, Snowmass/Aspen, Colorado. More information available at: <http://www.rmmlf.org/>.

ABA Section of Environment, Energy, and Resources, 16th Section Fall Meeting, Sept. 17-20, 2008, Phoenix, Arizona. More information available at: www.abanet.org/environ/calendar/.