



American Bar Association
Section of Environment, Energy, and Resources
Energy and Natural Resources Litigation Committee



Presents a "Quick Teleconference" program
This program does not offer CLE credit

**Implications of the Culverts Case Ruling in
United States v. Washington:
Protection of Treaty Fishing Rights or an Impermissible
Environmental Servitude?**

Tuesday, December 11, 2007

2:00 p.m. – 3:15 p.m. Eastern Time / 1:00 p.m. – 2:15 p.m. Central Time
12:00 p.m. – 1:15 p.m. Mountain Time / 11:00 a.m. – 12:15 p.m. Pacific Time

Program Overview:

The teleconference will explore the declaratory ruling in *United States v. Washington* (W.D. Wash. Aug. 22, 2007) issued by Judge Martinez of the Western District of Washington holding that treaties reserving tribal rights to take fish impose a duty on the State to refrain from diminishing fish runs through the construction and maintenance of culverts blocking fish passage. The Court held that "the right of taking fish, secured to the Tribes in the Stevens Treaties, imposes a duty upon the State to refrain from building or operating culverts under State-maintained roads that hinder fish passage and thereby diminish the number of fish that would otherwise be available for Tribal harvest."

The Court described its judgment as a "narrow directive to refrain from impeding fish runs in one specific manner." Nonetheless, the Court's conclusion that the treaties impose duties on the State to refrain from impeding fish runs has uncertain implications for other state actions. The decision leaves the door wide open for future litigation and leaves unresolved whether third party actions authorized by state permits are likely to be implicated.

Educational Objectives:

- Explore the legal and practical implications of the decision from tribal, state, and private perspectives.

Faculty:

Moderator:

Beth Ginsberg, Stoel Rives LLP, Seattle, WA

Panelists:

Michael O'Connell, Stoel Rives, LLP, Seattle, WA

Robert Anderson, University of Washington School of Law, Seattle, WA

Questions?

Do you have a question that you would like the panel to address? Please email your question to Beth Ginsberg at bsginsberg@stoel.com by December 10, 2007 at noon Eastern Time and the panel will make every effort to address your inquiry.

