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Message from the Chair **by Warren Burke**

It has been a great privilege serving you as chair of the EENR Section over the past year. On Thursday, September 24, the EENR Section's board will elect new officers. The section's executive committee has nominated Ken Gelburd to serve as chair, John Harms to serve as deputy chair, and Luis Nido to serve as treasurer. Under their leadership, the section is sure to have a fantastic year.

My optimism is based on my firsthand experience working with Ken, John, and Luis. I cannot say enough good things about them. If you read the June edition of *The Federal Lawyer* magazine, you are familiar with their work. The June edition was devoted to environment, energy, and natural resources law. Our section supplied the articles. Ken, John, and Luis, together with Erik Petersen, served as the section's editorial committee responsible for soliciting articles and conducting substantive editorial review. The committee provided timely, detailed, well-reasoned feedback to the author of each article and managed to complete its work by the beginning of May, giving FBA staff plenty of time to incorporate the articles into the June edition.

Another reason for optimism is the section's stellar board. Hailing from across the nation and drawing on a wide range of professional experiences, the section's board makes our programming possible. I would like to extend my sincere thanks to the section's board members and FBA manager of sections and divisions, Adrienne Woolley, for their dedication and hard work over the course of the year.

The EENR Section is only one of many FBA sec-

tions with a bright future. The FBA's national chair of sections and divisions, Kent Hofmeister, is doing a great job reinvigorating other sections, such as the Health Law Section, which have been dormant for some time. To further improve sections and divisions and encourage interaction among their leaders, the association is committed to offering leadership training each August to incoming section and division chairs. As the old saying goes, a rising tide lifts all boats. Over the coming year, I predict the EENR Section will increasingly join with other sections and divisions in sponsoring programming. The first such program will be held on November 17. The EENR and Alternative Dispute Resolution Sections are joining with Pace Law School's Theodore W. Kheel Center and other entities to sponsor a program in New York City on effective legal strategies to resolve new environmental disputes—more details will follow soon!

If you would like to experience these exciting developments firsthand, join us for the section's next board meeting at 11:00 Eastern Time on Thursday, September 24. All section members are welcome. The call-in number is 1-866-228-9900, and the passcode is 816734. After that, the next opportunity to meet your fellow section members and learn more about the section's programming will be a happy hour on October 2 at Capitol City Brewhouse in Washington, D.C. I hope to talk with you soon and look forward to a great year! ♦

SEND US YOUR CURRENT E-MAIL ADDRESS!

We are lacking current e-mail addresses for many EENR Section members. During the remainder of the year, we intend to communicate with members exclusively by e-mail. So if we do not have your correct e-mail address, you will be missing out! If you have not been receiving e-mails announcing EENR Section events, please send your updated contact information to membership@fedbar.org

Oklahoma City Convention Wind Power Panel

As part of the FBA's CLE programming at the Association's annual meeting in Oklahoma City, the EENR Section sponsored a panel on wind power on September 10. EENR Section's incoming Chair Ken Gelburd began the panel with opening remarks. EENR Section board member Miles Tolbert then introduced the three speakers: Mary Ellen Ternes, Professor Shannon Ferrell, and Jeremy Fielding.

Ms. Ternes, an attorney with the firm of McAfee & Taft in Oklahoma City, discussed the increasing demand for renewable sources of energy and the potential role of wind power in satisfying this demand. Ms. Ternes focused on the adverse impacts of wind power on bird species. She described advancements in the engineering and placement of wind power projects intended to mitigate these adverse impacts.

Professor Ferrell, an assistant professor at Oklahoma State University, explained that the United States has a rich wind resource, but most of the wind-rich areas (in the mid-western United States) are distant from the areas with the biggest electrical loads. A notable exception is the wind off the western and northeastern coasts. The United States wind industry is relatively young, growing fast, and learning quickly from other industries. Professor Ferrell predicts that educational dialogue will be key in solving the issue of transmitting wind power to the areas with the biggest electrical loads.

Mr. Fielding, a trial attorney with the firm of Lynn, Tillotson & Pinker in Dallas, litigated a case in which residents of Abilene, Texas, brought suit against a wind project, alleging it was too ugly and too loud. Under Texas law, a plaintiff cannot bring a nuisance claim on the basis of an aesthetic impact. Therefore, the first claim fell quickly. The second went to a jury, which found in

favor of the defendant because the levels of noise generated by the wind project were tested and determined to be no greater than the background noise in plaintiffs' homes. Mr. Fielding recommends that companies seeking to develop wind projects take a proactive approach in order to avoid the costs of litigation. Specifically, he says companies should adopt a preemptive public relations strategy (such as by hosting town hall meetings, working with local schools, and hiring local residents), prevent easy scores in litigation by paying careful attention to the

structures and uses of land within a "half-mile donut" of the proposed project, bury power lines, establish a complaint hotline, enter into confidentiality agreements with landowners in order to reduce envy between neighbors, perform routine inspections of the project, consider royalty sharing agreements to expand the base of land owners with a vested interest in the project, and consider establishing noise easements.

The EENR Section hopes to continue the tradition of sponsoring a panel each year as part of the FBA's CLE programming at the annual meeting. Next year, the annual meeting will be in New Orleans. If you have suggestions for a CLE program

which the EENR Section could sponsor in New Orleans, don't hesitate to contact the Section's leadership with your ideas! ♦



Pictured left to right: Luis Nido, EENR section board member; Kenneth Gelburd, EENR section deputy chair; Professor Shannon Ferrell, Oklahoma State University; Mary Ellen Ternes, McAfee & Taft; Jeremy Fielding, Lynn, Tillotson & Pinker; and Warren Burke, EENR section chair.

The Environment, Energy and Natural Resources Section of the Federal Bar Association is concerned with new and significant legislation, regulatory programs, and national policy in the areas of energy and environmental law. The scope of the section ranges from environmental concerns and waste control efforts in this country to the use of America's public lands. The section's jurisdiction stretches to the U.S.' energy policy. It encompasses the exploration, development of use of our natural resources.

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Upcoming Program Information

Section Board Meeting—September 24

The section's next board meeting will be held at 11:00 Eastern Time on Thursday, September 24. All section members are welcome. The call-in number is 1-866-228-9900, and the passcode is 816734.

EENR Section/Capitol Hill Chapter Happy Hour

The EENR Section and the Capitol Hill Chapter of the FBA will co-sponsor a happy hour on October 2 at Capitol City Brewhouse in Washington, D.C. For more details, see the flyer attached to this newsletter.

11th Annual Washington, D.C., Indian Law Conference

Held annually at the National Museum of the American Indian, the Washington, D.C., Indian Law Conference focuses on all aspects of federal Indian law. Many of the current topics of discussion involve EENR issues, as tribes look to develop wind power and other natural resources on their lands. This year's conference will be held on November 13. More details to follow on www.fedbar.org.

Program in New York City on Effective Legal Strategies to Resolve New Environmental Disputes

Mark your calendars! On November 17, the EENR and Alternative Dispute Resolution Sections of the FBA will join with Pace Law School's Kheel Center to offer a program on effective legal strategies to resolve new environmental disputes. Other sponsors will include Lowenstein Sandler PC, the ABA Alternative Dispute Resolution Committee, the Environmental Law Institute, and the New York State Bar Dispute Resolution Section. The program will be held at the University Club at One West 54th Street in New York City. More details will follow soon!

Co-Sponsoring a Program With Your Local Chapter

Do you have an idea for a program to be cosponsored by EENR Section and your local FBA Chapter? EENR Section is seeking to assist chapters with environment, energy, and natural resources law programming. We would strongly consider any request by a chapter for the Section to assist with such programming by securing speakers, providing financial assistance, providing technical assistance, promoting the event—whatever your chapter most needs to make your event a reality! To start the ball rolling, please send an e-mail to EENR Section Chair Warren Burke at warren_burke@yahoo.com. ♦

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Get More Involved— Join the Section Leadership!

Are you interested in becoming more involved in the section's leadership? Would you like to meet more of your fellow section members? Now is the time! We are currently accepting applications for section members to serve on the section's board during FY2010. There is no formal application process. You need merely send an email expressing your interest to incoming section chair Ken Gelburd at kgelburd@state.pa.us.

HAPPY HOUR

Join the Energy, Environment, and Natural
Resources Section and the Capitol Hill Chapter of
the Federal Bar Association

Friday, October 2 • 5:30–7:00 p.m.
Capitol City Brewing Company
(next to Union Station in Washington, D.C.)

Appetizers will be provided; Standard happy
hour prices on drinks will apply.

For additional information, contact Warren Burke
at (443) 756-0182 or warren_burke@yahoo.com