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Message from the Chair ***by Sheila Hollis***



Dear EENR Members,
What lies ahead? Following a year of extraordinary weather and geological events, how is it possible to envision potential revolutions of thought in environmental, energy, and resources law and policy. The world as we see it today seems like the embodiment of the best of times and the worst of times.

We see New York, New Jersey, and Connecticut and the impacts of the massive Sandy, yet we behold business as usual in one part of the states and cities and devastation, tragedy, and despair in others. The effects of these events on the public psyche and the political reaction to them remain to be seen; yet we know it may truly be different this time. Walking between the world of abundance and success—in the burgeoning energy renaissance in shale gas and oil and the benefits and challenges these newly available resources

are capable of providing to the country—and the other world of economic woes and fears of what may come in other parts of the country is what energy, environmental, and resources law really does.

Our section presents all sides of the complex puzzle of providing energy, water, and food to our nation while simultaneously preventing environmental damage and escalating climatological and related negative changes. We stand on a precipice and will try to bring you, as section members insights, experts, contacts and content to help you navigate the treacherous terrain ahead and find a way to represent your clients that aids them and you, wherever your policy preferences may stand, in the year ahead. It promises to be a challenge but one that will be met with vigor and commitment from the section. We need you to make this happen! Your comments, suggestions, and insights are exceedingly welcome and will aid us in shaping the products you need for your practice. Please email me with ideas and observations at sshollis@duanemorris.com. ♦

Message from the Immediate Past Chair ***by Kevin Desharnais***

It has been truly both an honor and a pleasure to serve as EENR section chair for the past year. Due to the knowledge, energy, and experience of my fellow board members, it has also been a very successful year for our section. As promised in our spring newsletter, in April we held our webinar on Natural Gas Fracking, the first webinar to be held by an FBA section. Other highlights included continuing our tradition of participating in Tulane Law School's Summit on Environmental Law and Policy, where we presented a panel on hydro-fracking, and our co-sponsorship of a speaker at the California Bar Association's Yosemite Environmental Law Conference. Our section also contributed to the environmental issue of *The Federal Lawyer* issued in July, with timely and informative articles on judicial trends in addressing the Clean Water Act, pre-enforcement review of USEPA's administrative orders, and CERCLA arranger liability. In addition, we fulfilled our goal

of providing access to “insiders” in the environment and energy arena by co-sponsoring a lunch program with the FBA's Capitol Hill and D.C. chapters, featuring speaker Michael Bardee, the general counsel of the Federal Energy Regulatory Commission (FERC). Be sure to see the article in this issue describing this very successful program. We hope to continue bringing these “insider access” programs to our members.

At the Annual Meeting in San Diego, we hosted a panel on Hot Topics in International Environmental Law, with two truly outstanding speakers: John Cruden, president of the Environmental Law Institute, and Professor Don Brown of Widener University. These remarkable individuals covered a wide range of topics, from the ethical issues of climate change to principles on environmental sustainability coming

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out of the Rio+20 Conference. This panel discussion, moderated by our own programs chair Ken Gelburd, was one of the many highlights of the Annual Meeting.

As we close out this past term and begin the next, I also extend a warm welcome to my successor as chair, Sheila Slocum Hollis. Sheila is a true leader of the energy and environmental bar, and we are truly honored to have her serve as our chair. I have no doubt that Sheila will continue

and enhance the success of our section in the coming year.

In closing, I want to extend my sincere thanks to my fellow EENR Board members for their efforts over the past year, which have enabled us to bring you such outstanding programming. As always, we welcome your input, energy, and suggestions as we look forward to continued success in the coming year. ♦

Luncheon with Ferc General Counsel **by Warren Burke**

On June 27, the EENR Section, together with the FBA's Capitol Hill and D.C. Chapters, hosted a luncheon in downtown Washington, D.C., with the General Counsel of the Federal Energy Regulatory Commission (FERC) Michael Bardee. EENR Section's Chair-Elect Sheila Slocum Hollis, a former employee of FERC herself, having served as the agency's first director of the Office of Enforcement, presented Bardee. The luncheon was attended by a remarkable diversity of FBA leaders and members, including Capitol Hill Chapter President Matt McGhie, D.C. Chapter President Steven Miller, and incoming Pentagon Chapter President (and EENR board member) John Harms.

FERC is an independent agency which regulates the interstate transmission of electricity, natural gas, and oil. FERC also reviews proposals to build liquefied natural gas (LNG) terminals and interstate natural gas pipelines as well as licensing hydropower projects. The Office of the General Counsel, with a staff of approximately 200, represents FERC before the courts and Congress and is responsible for the legal aspects of FERC's activities.

Bardee began working at the FERC in 1990 as an attorney advisor in the Office of General Counsel. In addition to serving as an attorney advisor, Bardee has held a range of other positions in the Office of General Counsel and elsewhere in FERC. He also worked briefly in private practice. Before joining the FERC, he worked on utility issues at the Pennsylvania Office of Consumer Advocate and also litigated environment enforcement cases at the U.S. Department of Justice. He holds a B.A. in journalism from Oklahoma University and a J.D. from New York University Law School.

Bardee began the luncheon with a series of remarks about FERC's current slate of legal issues. He addressed FERC's recent issuance of a policy statement explaining how FERC will provide advice to the Environmental Protection Agency (EPA) in connection with EPA's Mercury and Air Toxics Standards (MATS). Under the authority of Section 112(i) of the Clean Air Act, the MATS require electric generating units (EGUs) to limit their emissions of mercury and other hazardous air pollutants. Under a FERC-approved reliability standard, an EGU that is critical to electric reliability may be required to continue to operate. Given the potentially conflicting Federal obligations of an EGU that is in noncompliance

with the MATS and therefore required to shut down, but also critical to the electric grid and therefore required to operate, EPA is expected to consult with FERC in ruling on requests to delay compliance with the MATS.

Bardee also discussed the ongoing controversy concerning whether to authorize extension of the Keystone pipeline so as to enable transport of fossil fuels from the oil sands of Alberta, Canada, to refineries on the Gulf Coast. Another topic of discussion concerned FERC's role in the licensing of facilities for the importation or exportation of LNG. Because of advances in the process of hydraulic fracturing and the corresponding drop in natural gas prices in the United States, the Federal Government has begun to receive and act upon applications to license facilities for exporting LNG.

After Bardee concluded his remarks, Hollis, in her capacity as moderator, gave attendees an opportunity to introduce themselves, and Bardee opened the floor to questions. This proved to be a unique opportunity for FBA members to combine a substantive legal discussion with an opportunity to learn more about their fellow members. As it turns out, about half of the attendees specialized in areas of law relevant to FERC's activities, and the other half were there out of professional and intellectual curiosity. The luncheon was the first in a new series of luncheons to be sponsored by the EENR Section in which federal officials will be invited to address substantive legal issues and provide useful insights on the practice of law before federal agencies. ♦

EENR at the Annual Meeting ***by Miles Tolbert and Kevin Desharnais***

This year, the Federal Bar Association's Annual Meeting and Convention was held from Sept. 20-22 in San Diego, Calif. The three-day meeting offered many hours of CLE opportunities covering civil and criminal practice, immigration, bankruptcy, and intellectual property. I think that we all know, however, that the highlight was the presentations on environmental law by John Cruden and Professor Donald Brown.

The remarkable John C. Cruden is the president of the Environmental Law Institute. He previously he served for twenty years as career deputy assistant attorney general at the Environment and Natural Resources Division of the U.S. Department of Justice. Cruden is a graduate of the U.S. Military Academy, the University of Santa Clara, and the University of Virginia. He served in Airborne, Ranger, and Special Forces units and clerked for Justice Stanley Mosk of the California Supreme Court.

Most recently, however, Cruden served as a delegate to the World Congress on Justice, Governance, and Law for Environmental Sustainability which was held in Rio de Janeiro, Brazil in June. The Rio+20 conference brought together world leaders, along with thousands of participants from governments, NGOs and other groups to discuss ways to advance social equality and environmental protection. For our annual meeting, Cruden discussed the Rio+20 Declaration on Justice, Governance and Law for Environmental Sustainability and addressed the principles of the declaration which include fair and clear environmental laws, public participation in decision-making, accountability and integrity of institutions and decision-makers, and the recognition of the relationship between human rights and the environment.

Joining Cruden at the podium was Donald A. Brown, scholar in residence for Sustainability Ethics and Law at the Widener University School of Law-Harrisburg and a contributing author to the Intergovernmental Panel on Climate Change 5th Assessment Report. Brown is on the faculty of Pennsylvania State University where he has served as director of both the Collaborative Program on the Ethical Dimensions of Climate Change and the Pennsylvania Environmental Research Consortium. He

has previously worked as an environmental attorney for the states of Pennsylvania and New Jersey and has published extensively on issues relating to climate change.

Brown's presentation for the FBA's Annual Meeting was entitled "Linking Developments in International Climate Change Negotiations with US Domestic Climate Change Policies and Legislation." His presentation included a discussion of the major elements that have emerged in the last 20 years to combat climate change internationally and a exploration of what how U.S. domestic climate policy and legislation can and should fit into that international framework.

The EENR was both excited and honored to sponsor these two distinguished scholars of environmental law, and we look forward to an educational and rewarding Annual Meeting next year in Puerto Rico! ♦

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

EENR Supports the Yosemite Environmental Conference

by Ann Clarke



Rick Ridgeway is currently Patagonia's vice president of environmental initiatives and special media projects. Rick and his team develop, implement, and promote the second two of the company's three-part mission statement to make the best product, cause no unnecessary harm, and use business to inspire and implement

solutions to the environmental crisis. In this capacity, his department oversees the company's environmental grant-making, internal and external environmental education, and special multi-year environmental projects including Freedom to Roam, a coalition founded by Patagonia to seek protection for wildlife corridors. Rick is also recognized as one of the world's foremost mountaineers and adventurers,

and is known to many through his writing, photography and Emmy-winning filmmaking. He is the author of six books, including the highly acclaimed *Seven Summits*, *The Shadow of Kilimanjaro*, and *Below Another Sky*. *Rolling Stone* magazine called Ridgeway "the real Indiana Jones," and recently National Geographic honored him with its "Lifetime Achievement in Adventure" award. The Federal Bar Association's EENR Section have been supporters of the Yosemite conference for several years, and Ann Clarke has been our representative at the program.

Energy, Environment, and Natural Resources Section Leadership

CHAIR

Sheila S. Hollis
Duane Morris LLP
505 9th St NW, Ste 1000
Washington, DC 20004
sshollis@
duanemorris.com
(202) 776-7810

DEPUTY CHAIR

Erik E. Petersen
USDOJ
601 D St NW
Washington, DC 20004
Erik.Petersen@usdoj.gov
(202) 305-0339

TREASURER

Kevin G. Desharnais
Mayer Brown LLP
71 S Wacker Dr
Chicago, IL 60606
kdesharnais@
mayerbrown.com
(312) 701-8079

PROGRAMS COMMITTEE

CHAIR

Kenneth A. Gelburd
PA Dept. of Environmental
Protection
2 East Main St
Norristown, PA 19401
kgelburd@pa.gov
(484) 250-5930

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 FY2014. There is no formal application process. You need merely send an email expressing your interest to Section Chair Sheila Hollis at sshollis@duanemorris.com.

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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