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CWAG Website

WESTERN ATTORNEYS GENERAL LITIGATION ACTION COMMITTEE
October 17 – 18, 2022
Westin San Diego Hotel | San Diego, California
All Times are Pacific Time Zone

October 17, 2022[1]

7:30 – 8:30 am	**Breakfast -** Provided by CWAG **Ivory Conference Room**
8:30 am	**Welcome and Announcements** **Pearl Conference Room** Announcements – Clive Strong CWAG Legal Director for Natural Resources and Environment Indian Law Deskbook Update – Clay Smith, Chief Editor of the Indian Law Deskbook, Fronda Woods, Assistant Editor, and Steve Strack, Assistant Editor
9:00 am – 11:45 am	**Roundtable Discussion** **Pearl Conference Room**
9:00 am – 11:45 am	Water Law
Noon	**Lunch** - Provided by CWAG **Ivory Conference Room**
1:00 pm – 5:00 pm	**Roundtable Discussion Continued** **Pearl Conference Room**
1:00 pm –3:00 pm	Indian Law/Indian Gaming

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3:00pm – 4:00 pm	Public Lands
4:00 pm – 5:00 pm	Energy and Mining
5:00 pm	**Adjourn**
5:30 pm – 7:30 pm	**Group Dinner - Dobson** (Hosted by CWAG))

October 18

7:30 am – 8:30 am **Breakfast** Provided by CWAG
Ivory Conference Room

8:30 am – 12:00 pm **Seminar: ENVIRONMENTAL AND INDIAN LAW AND THE CONSERVATIVE SUPREME COURT**
Pearl Conference Room

8:30 am – 9:15 am **The Supreme Court Then and Now**

Dan Schweitzer, NAAG Supreme Court Director and Chief Counsel

What does a 6-3 conservative majority mean? As a close observer of the Court, Dan will share his thoughts regarding what the shift from a closely divided to a conservative majority means for federalism and other issues of concern to States.

9:15 am – 10:15 am **Environmental Law in the Roberts Court**

Panelists: Lindsay S. See, West Virginia Solicitor General

Theodore A.B. McCombs, California Deputy Attorney General, Natural Resources Law Section, California Department of Justice

The Supreme Court majority announced in *West Virginia v. EPA*, that under the major questions doctrine, an agency must point to "clear congressional authorization" for the authority it claims to regulate a fundamental sector of the economy. Chief Justice Roberts' majority opinion, however, does not provide guidance for determining when an agency's proposed action triggers a major question that requires clear congressional authorization; and how to determine whether the claimed source of authority is sufficiently clear.

On October 3, 2022, in *Sackett v. E.P.A*., No. 21-454, the Supreme Court once again will visit the question of what constitutes Waters of the United States, aka WOTUS, a term that has eluded definitive definition for the past fifty years. In addition to revisiting the definition of WOTUS, the Court also may again consider the major question doctrine.

West Virginia and Sackett have the potential to significantly reshape federal environmental law and federal agencies authority to interpret those laws. The panel will discuss the implications of these cases as well as how lower courts are applying the major question doctrine in other contexts.

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10:30 am – 11:30 am **The Future of Indian Law in the Supreme Court**

Panelists:

Josh Patashnik, Deputy Solicitor General, California Department of Justice.

Mithun Mansinghani, Lehotsky Keller (Invited)

In a 5-4 decision, the U.S. Supreme Court in *Oklahoma v. Castro-Huerta* limited the impact of *McGirt v. Oklahoma* by finding that "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian Country." The majority stated that: "As a matter of state sovereignty, a State has jurisdiction over all of its territory, including Indian country." Prior to *Castro-Huerta*, it had been widely accepted that States did not have jurisdiction over non-Indian offenders who commit crimes against Indians in Indian Country. The implications of the decision are multi-faceted and the subject of much debate.

The Supreme Court will hear argument in *Haaland v. Brackeen*, No. 21-376, on November 9, 2022. The issues in this case are: (1) whether various provisions of the Indian Child Welfare Act of 1978 (ICWA) violate the anticommandeering doctrine of the 10th Amendment; (2) whether plaintiffs have Article III standing to challenge ICWA's placement preferences; and (3) whether 25 U.S.C. Section 1915(a)(3) and (b)(iii) are consistent with equal protection. California filed a bipartisan amicus brief on behalf of twenty-seven state attorneys general defending the statute.

The panel will explore the implication of these cases for future Indian law cases.

11:30 am – 12:00 pm	**A Comparative Study of Judicial Review Cases under the Trump and Biden Administrations** **Bethany A. Davis Noll,** Executive Director, State Energy & Environmental Impact Center, New York University School of Law.

Although federal agencies regulations are subject to judicial review, conventional wisdom has been that agencies will win most challenges to their rules. Bethany Davis Noll will explore the validity of this assumption through an empirical analysis of judicial review cases under the Trump and Biden Administrations.

12:15 pm to 1:15 pm	**Lunch** Provided by CWAG **Ivory Conference Room**
1:15 pm to 3:00 pm	**Roundtable Discussion (Continued)** **Pearl Conference Room**
1:15 pm – 2:30 pm	Environment and Endangered Species
2:30 pm – 3:00 pm	Takings and Federalism
3:00 pm – Adjourn	

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