ENVIRONMENTAL JUSTICE AND
CLIMATE CHANGE & ADAPTATION
WEBINAR SERIES

May 3, 5, 10, 17-19, 2022

OVERVIEW & AGENDA
All Virtual, Via Zoom or WebEx
All Times are Eastern

This live webinar series is designed by the Department of Justice's Environment and Natural Resources Division (ENRD) for attorneys and other professional staff who currently handle or supervise matters (or want to learn more about matters) involving environmental and Tribal justice issues and climate change and adaptation challenges, in litigation and settlement contexts. This series includes three overview sessions on May 3rd, 5th, and 10th to introduce participants to environmental justice, the current science and legal authorities concerning climate change, and the unique interests and concerns of Tribal communities at the intersection of environmental justice and climate change. The series continues with three days of sessions on May 17-19, which build on the overview sessions. Advance registration is required. Please see below for course descriptions and how to register.

The Three Overview Sessions described below are open to all attorneys and other professional staff from federal and state agencies and Tribal partners. *The first session on May 3rd and third session on May 10th are hosted by ENRD and will be on the Zoom platform. Registration is open as of April 11th and advance registration is required. The registration links are in the agenda below; questions may be directed to DOJ-ENRD-Training@usdoj.gov. The second overview session on May 5th is hosted by the Department's National Advocacy Center (the "NAC") and will be on the WebEx platform; registration also opened on Monday, April 11th, and registration information and link are here: May 5th Overview Session Registration.*

All of the sessions on May 17th are open for registration to Tribal, state, and federal practitioners and professional staff (e.g., paralegals and legal assistants). *The first two sessions invite participants to explore the intersection of environmental justice and climate change—sometimes referred to as "climate justice"—including how environmental justice communities across the Nation are affected by climate change, and how these effects could inform case considerations for state, Tribal, and federal agencies and opportunities for inter-governmental partnerships. The final session of the day will address the importance of community outreach and how to do it well, including when stakeholders include communities with limited English proficiency, and how to ensure effective coordination among federal agencies, state and Tribal partners, and local stakeholders.*

The sessions on May 18th and 19th are open for registration only to attorneys and other professional staff in the federal government. *These sessions can mostly be grouped by their*

posture of a given matter: either from the perspective of the government in enforcing environmental statutes or that of the government defending federal agency actions and rulemakings. There will also be an administrative law session that is relevant to all federal practitioners.

Again, all sessions hosted by the NAC opened for registration on Monday, April 11th. Registration for this conference is here: May 17-19 ENRD Webinar Conference Registration Link.

For events on May 17-19, participants will be required to register for the whole day; however, a participant is not required to attend all sessions that day. Finally, CLE is available as indicated on the agenda.

TUESDAY, MAY 3, 2022

2:00 – 3:30 pm **ENVIRONMENTAL JUSTICE OVERVIEW: THE HISTORY OF THE EJ MOVEMENT AND THE CURRENT LEGAL LANDSCAPE**

Instructors: **Robin Morris Collin,** Senior Advisor to the Administrator for Environmental Justice, U.S. EPA

Gwendolyn Keyes Fleming, Strategic Partner on Environmental Enforcement, Compliance & Policy Matters, Van Ness, LLP

This session will include a high-level history of the grassroots environmental justice movement to build a common understanding of what it is, its importance, and its impact; federal efforts on the road to environmental justice; the intersection of environmental justice and DOJ's mission and authorities; and opportunities and challenges to advancing environmental justice.

Register in advance here:
https://www.zoomgov.com/meeting/register/vJItdeuhqTwrGLi_IxziDNeXvNUlhCw0yQk

After registering, you will receive a confirmation email containing information about joining the meeting.

THURSDAY, MAY 5, 2022

2:00 – 4:30 pm **CLIMATE CHANGE OVERVIEW: THE SCIENCE ON CLIMATE CHANGE, THE LEGAL LANDSCAPE, AND THE FEDERAL GOVERNMENT'S ROLE IN ADDRESSING CLIMATE CHALLENGES**
(CLE, 2.25 hours of content plus a 15 minute break)

Instructors: **Jody Freeman,** Professor of Law, Harvard Law School, Harvard University

Richard Lazarus, Professor of Law, Harvard University, Harvard University

Jonathan Overpeck, Dean of the School for Environment and Sustainability, University of Michigan

Climate change is imposing stresses on communities and ecosystems, as well as on our federal legal authorities. Deploying traditional environmental statutes to achieve greenhouse reductions, and advising client agencies how to account for climate change in decision-making, will require creativity, sharp legal reasoning, and adaptive legal strategies. This training will summarize the current science on climate change, and the legal landscape for tackling this phenomenon. The speakers will draw on the Fourth National Climate Assessment and the Sixth Assessment Report of the Inter-governmental Panel on Climate Change – including projections

on sea level rise; drought and water shortages; wildfires; and extreme weather events – to set the stage for environmental litigation and policymaking in the context of climate change. The speakers will then describe the Supreme Court's environmental docket and discuss how decisions this term could shape future policy efforts to tackle climate change.

TUESDAY, MAY 10, 2022

2:00 – 3:30 pm **AN OVERVIEW OF THE UNIQUE CONCERNS AND INTERESTS OF TRIBAL COMMUNITIES FACING THE EFFECTS OF ENVIRONMENTAL INJUSTICE AND CLIMATE CHANGE**

Instructors: **Dylan Hedden-Nicely,** Associate Professor of Law and Director of the Native American Law Program, University of Idaho

Elizabeth Kronk-Warner, Dean and Professor of Law, S.J. Quinney College of Law, University of Utah

Many Tribal communities face environmental justice issues associated with ensuring their fair treatment and meaningful involvement in the development, implementation, and enforcement of environmental laws and policies that impact their homelands and natural resources. Tribal communities also face increasing risks from climate change: Rising sea levels, increased wildfires, water scarcity, degradation or loss of sacred sites or habitat for culturally important species may have profound impacts on indigenous communities throughout the United States, both in Indian country and in other areas where tribal resources are located. Understanding the unique relationship between the federal government and Tribal governments is critical to promoting the fair treatment and meaningful involvement necessary to protect Tribal lands, resources, and communities and to address effects of climate change. This session will provide background on some of the most relevant principles of federal Indian law, including the unique sovereign status of federally recognized Tribes, Tribal treaty rights, the federal trust relationship, consultation and coordination, and inherent tribal regulatory authority in the context of advancing environmental justice and addressing the effects of climate change.

Register in advance here:
https://www.zoomgov.com/meeting/register/vJItd-CtrDosHf-ZqzAZW2i2nUNxfFIMHts

After registering, you will receive a confirmation email containing information about joining the meeting.

TUESDAY, MAY 17, 2022

11:00 – 11:30 am **OPENING REMARKS AND WELCOME**

Bob Daley, Office of Legal Education, U.S. DOJ

Todd Kim, Assistant Attorney General, Environment & Natural Resources Division, U.S. DOJ

11:30 am – 12:30 pm **THE INTERSECTION OF ENVIRONMENTAL JUSTICE AND CLIMATE CHANGE: EMERGING ISSUES AS OUR COMMUNITIES AND THE ENVIRONMENT EXPERIENCE ACCELERATING IMPACTS**
(CLE, *60 minutes*)

Moderator: **Marianne Engelman-Lado**, Deputy General Counsel of Environmental Initiatives, Office of General Counsel, U.S. EPA

Instructors: **Margot Brown, Ph.D.,** Vice President of Justice and Equity, Environmental Defense Fund

Veronica Eady, Senior Deputy Executive Officer of Policy & Equity, Bay Area Air Quality Management District

This panel will discuss how climate change impacts historically overburdened communities and the manner in which environmental justice and climate issues present themselves in environmental cases. The panel will discuss emerging climate issues that involve environmental justice communities and how these issues set precedent for environmental policy and inform case strategy.

12:30 – 1:30 pm **LUNCH**

1:30 – 2:45 pm **A COOPERATIVE ENDEAVOR: HOW TRIBES, STATES, AND THE FEDERAL GOVERNMENT CAN WORK TOGETHER TO BETTER ADDRESS ENVIRONMENTAL JUSTICE AND THE EFFECTS OF CLIMATE CHANGE**
(CLE, *75 minutes*)

Instructors: **Allyson Bazan**, Assistant Attorney General, Ecology Division, Office of the Attorney General, Washington State

Ann Marie Chischilly, Vice President, Office of Native American Initiatives, Northern Arizona University; Director, Institute for Tribal Environmental Professionals

Sara K. Van Norman, Van Norman Law, PLLC, Minneapolis, MN

Tribes, states, and the federal government have separate, but sometimes complementary or overlapping, authorities and resources that can be brought to bear in addressing environmental justice issues and the effects of climate change. This panel will examine the work that Tribal and state governments do to advance environmental justice and address climate change and describe some of the authorities on which they rely in identifying options and in developing and presenting their legal positions, through litigation or otherwise. Participants will also learn about how Tribal, state, and federal government attorneys can use the latest scientific information and traditional ecological knowledge in cases involving both climate and environmental justice issues. Our panelists will share their experiences and perspectives on how participants can improve inter-governmental partnerships and develop additional opportunities to work together to advance shared interests in addressing these critically important matters.

2:45 – 3:00 pm **BREAK**

3:00 – 4:30 pm **EFFECTIVE COMMUNITY OUTREACH IN CIVIL ENFORCEMENT CASES (CLE, *90 minutes*)**

Instructors: **Meg Gorecki,** Midwest Regional Director, Community Relations Service, U.S. DOJ

Seema Kakade Assistant Professor and Director, Carey Law School Environmental Law Clinic, University of Maryland

Joel Minor, Environmental Justice Program Manager, Colorado Department of Public Health & Environment

Piyachat Terrell, Acting Deputy Director, Office of Environmental Justice, U.S. EPA

This session addresses the importance of conducting community outreach for cases that affect communities facing environmental justice concerns and explains how attorneys can ensure that community feedback plays an appropriate role in enforcement cases, including the development of remedies. Panelists will draw on their federal, state, and academic perspectives to describe the components of effective community outreach. They will provide guidance on how to develop outreach goals and an outreach plan tailored to the community of concern. They will also share recommendations for ensuring effective coordination among federal agencies, state partners, and local stakeholders when conducting community outreach. Government attorneys may encounter environmental justice communities that include Limited English Proficient (LEP) individuals. Therefore, the panel will address language access obligations – for example, how to provide LEP communities with "reasonable access" in civil enforcement matters – and the need

to consider cultural barriers to effective community outreach. The presentation will discuss the applicability of several foundational documents including Presidential Executive Order 13985 (2021) as well as Executive Order 13166 (2000) and its implementing guidance, DOJ's Language Access Plan (2012) and ENRD's Language Access Plan (2012). Attendees will gain the outreach skills necessary to improve relations, build credibility, and deliver results in the diverse communities we serve.

WEDNESDAY, MAY 18, 2022

11:00 am – 12:00 pm **ADMINISTRATIVE LAW PRIMER IN THE CONTEXT OF ENVIRONMENTAL JUSTICE AND CLIMATE CHANGE (CLE, *60 minutes*)**

Instructors: **Seth Barsky**, Chief, Wildlife and Marine Resources Section, Environment & Natural Resources Division, U.S. DOJ

Andy Mergen, Chief, Appellate Section, Environment & Natural Resources Division, U.S. DOJ

This session will provide an overview of federal agency statutory and regulatory authority. Panelists will discuss the applicability of Chevron and Auer/Kisor deference principles to agency interpretations concerning environmental justice and climate change challenges; best practices for ensuring that the administrative record reflects the agency's consideration of environmental justice and climate change policies; and responding to claims during litigation that the administrative record inadequately reflects considerations of environmental justice and climate change, or inadequately grapples with changes in agency positions (especially due to changes in administration). For enforcement matters under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as the Superfund law), which governs cleanup of hazardous waste sites, the session will discuss how the administrative record, created for Records of Decision that establish EPA's decision on cleanup actions and standards, must meet Administrative Procedure Act standards.

12:00 – 1:00 pm **LUNCH**

1:00 – 2:15 pm **ENVIRONMENTAL JUSTICE ENFORCEMENT STRATEGIES & USING DIVERSE LEGAL AUTHORITIES – PART 1 (CLE, *75 minutes*)**

Instructors: **David Cozad,** Senior Advisor, Office of Enforcement & Compliance Assurance, Headquarters, U.S. EPA (detail); Director, Office of Enforcement & Compliance Assurance, Region VII, U.S. EPA

Cynthia Ferguson, Senior Litigation Counsel for Environmental Justice, Environment & Natural Resources Division, U.S. DOJ

Daria Neal, Deputy Chief, Federal Coordination & Compliance Section, Civil Rights Division, U.S. DOJ

Rob Yalen, Chief, Environmental Protection Unit, U.S. Attorney's Office for the Southern District of New York, U.S. DOJ

This session explores the key elements and best practices of an effective environmental justice enforcement strategy in federal litigation and settlement efforts. The panelists will also analyze the various available legal authorities—statutory and regulatory, among others—that may apply in federal environmental justice matters. Additionally, this session will identify tools which may facilitate fact-finding in environmental justice enforcement matters. Finally, the panelists will discuss strategies and best practices to enhance DOJ's coordination with U.S. EPA and other federal agency partners in these matters.

2:15 – 2:30 pm **BREAK**

2:30 – 4:00 pm **ENVIRONMENTAL JUSTICE ENFORCEMENT STRATEGIES & USING DIVERSE LEGAL AUTHORITIES (continued)**
(CLE *90 minutes*)

Instructors: **David Cozad,** Senior Advisor, Office of Enforcement & Compliance Assurance, Headquarters, U.S. EPA (detail); Director, Office of Enforcement & Compliance Assurance, Region VII, U.S. EPA

Cynthia Ferguson, Senior Litigation Counsel for Environmental Justice, Environment & Natural Resources Division, U.S. DOJ

Daria Neal, Deputy Chief, Federal Coordination & Compliance Section, Civil Rights Division, U.S. DOJ

Rob Yalen, Chief, Environmental Protection Unit, U.S. Attorney's Office for the Southern District of New York, U.S. DOJ

4:00 – 4:15 pm **BREAK**

4:15 – 5:15 pm **INCORPORATING PRINCIPLES OF ENVIRONMENTAL JUSTICE INTO DOJ's DEFENSIVE CASES**
(CLE, *60 minutes*)

Instructors: **Lucy Brown**, Trial Attorney, Environmental Defense Section, Environment & Natural Resources Division, U.S. DOJ

Rich Campbell, Attorney, Office of Regional Counsel, Region IX, U.S. EPA

Andrew Doyle, Senior Attorney, Environmental Defense Section, Environment & Natural Resources Division, U.S. DOJ

Jacob Ecker, Trial Attorney, Natural Resources Section, Environment & Natural Resources Division, U.S. DOJ

This session will delve into the question of how environmental justice issues arise in ENRD defensive cases. The discussion will include how to distinguish cases where DOJ is defending an agency action that is expressly premised in part on environmental justice considerations from cases where the plaintiffs allege that the agency gave inadequate consideration to environmental justice.

The session will also provide a primer in how environmental justice issues arise in cases defending agencies' analysis under the National Environmental Policy Act (NEPA). It will examine the link between NEPA's procedural requirements and the goals of environmental justice. It will also discuss how the Council on Environmental Quality's regulations can implicate environmental justice issues.

THURSDAY, MAY 19, 2022

11:00 am – 12:30 pm **CLIMATE CHANGE SCIENCE, ECONOMIC ANALYSES, AND HOW THESE IMPACT FEDERAL AGENCIES' RULEMAKING AND OTHER ACTIONS**
(CLE, *90 minutes*)

Instructors: **Chris Frans, Ph.D., P.E.,** US Army Corps of Engineers

Christopher French, Deputy Chief for National Forest Systems, US Forest Service, U.S. Department of Agriculture

Guillermo Montero, Assistant Chief, Natural Resources Section, Environment & Natural Resources Division, U.S. DOJ

Michaela Noble, Senior Counsel for Environmental Policy, Office of the Solicitor, U.S. Department of Interior

Perry Rosen, Senior Attorney, Environmental Defense Section, Environment & Natural Resources Division, U.S. DOJ

Marcus Sarofim, Ph.D., Climate Science and Impacts Branch, Climate Change Division, U.S. EPA

This session will feature federal agency climate scientists discussing how the nature of the carbon cycle leads to net-zero carbon dioxide becoming a key climate goal, and describing some ways U.S. federal agencies use climate change information to inform their decisions around future water and energy security. The panelists will describe some of the agencies' specific work to adapt human systems and legal settlements to the climate change effects appearing now and projected to increase in future, and how that work fits with that of their state, local, and Tribal stakeholders.

The session will also include a discussion about: the Social Cost of Greenhouse Gases; the Department of the Interior's developing approach to analyzing GHG emissions relating to the Bureau of Land Management's onshore oil, gas, and coal leasing programs under the Mineral Leasing Act and the Bureau of Ocean Energy Management's offshore oil and gas leasing program under the Outer Continental Shelf Lands Act; and the value of and threat to the Nation's Forests in mitigating climate change.

12:30 – 1:30 pm **LUNCH**

1:30 – 2:45 pm **ENVIRONMENTAL ENFORCEMENT WORKSHOP #1: CLEAN WATER ACT AND SAFE DRINKING WATER ACT CASE STUDY (CLE, *75 minutes*)**

Instructor: **Karl Fingerhood**, Senior Counsel, Environmental Enforcement Section, Environment & Natural Resources Division, U.S. DOJ

In this workshop, participants will apply strategic thinking and legal analysis, along with Environmental Justice and Climate Change concepts learned in previous conference sessions, to a complex set of facts in an environmental enforcement case. Centered on a hypothetical, yet realistic, fact pattern, participants will analyze a coastal city's long-standing and ongoing Clean Water Act and Safe Drinking Water Act violations at its municipal wastewater and drinking water systems. The instructor will discuss the legal framework, provide guidance on options for legal remedies, and invite discussion on the confounding issues that are typically present in these types of Clean Water Act and Safe Drinking Water Act cases. In addition to strategizing options for injunctive relief, participants will evaluate Environmental Justice concerns presented by the fact pattern, and how to effectively engage community stakeholders using cultural competence and language access tools where at least one local stakeholder group has limited-English proficiency. Participants also will analyze Climate Change challenges such as storm resiliency, adaptation, and the city's relative resource scarcity, as a part of designing possible legal resolutions.

2:45 – 3:00 pm **BREAK**

3:00 – 4:00 pm **DEFENDING AGENCY ACTIONS IN CLIMATE CASES (CLE, *60 minutes*)**

Instructors: **Meghan Greenfield**, Senior Counsel for Appellate Matters, Environmental Defense Section, Environment & Natural Resources Division, U.S. DOJ

Luke Hajek, Senior Trial Attorney, Natural Resources Section, Environment & Natural Resources Division, U.S. DOJ

Fred Turner, Attorney, Wildlife and Marine Resources Section, Environment & Natural Resources Division, U.S. DOJ

This session will consider issues that arise in civil litigation related to renewable energy projects. It will discuss the contours of legal challenges to the development, permitting, and environmental review of renewable energy projects, including wind power projects. Relevant statutes will include, among others, the National Environmental Policy Act, Outer Continental Shelf Lands Act, Endangered Species Act, and Migratory Bird Treaty Act.

The session will also discuss the history of the Environmental Protection Agency's regulation of greenhouse gas emissions from coal-fired power plants and address a series of legal challenges brought against those rules, including the challenges to the Affordable Clean Energy rule, which are presently being litigated before the U.S. Supreme Court in West Virginia v. EPA.

4:00 – 4:15 pm **BREAK**

4:15 – 5:30 pm **ENVIRONMENTAL ENFORCEMENT WORKSHOP #2: CLEAN AIR ACT CASE STUDY (CLE, *75 minutes*)**

Instructors: **Jim Freeman**, Senior Attorney, Environmental Enforcement Section, Environment & Natural Resources Division, U.S. DOJ

Lauren Hammond, Senior Assistant Regional Counsel, Office of Regional Counsel, Region VIII, U.S. EPA

This workshop will provide participants with an opportunity to apply strategic thinking and legal analysis, along with Environmental Justice and Climate Change concepts learned in previous conference sessions, to a complex set of facts in a government environmental enforcement case. Participants will explore a hypothetical, yet realistic, fact pattern where the government has

alleged ongoing Clean Air Act violations at an oil drilling field that straddles federal and Tribal lands. The instructor will discuss the legal framework, provide guidance on options for legal remedies, and invite discussion on the confounding issues that are typically present in these types of Clean Air Act cases. In smaller groups, participants will step into the shoes of various identified stakeholder groups to identify their group's interests and concerns to be advanced as the government works to resolve the case. As the government plaintiff, participants also will explore their available legal authorities, identify potential climate change challenges in these cases, and consider stakeholder interests and concerns as part of resolving these kinds of cases.