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Winters 100 Years

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Winters 100 Years

DAY TWO: FRIDAY FEBRUARY 22, 2008**ETHICS: THE REVOLVING DOOR BETWEEN GOVERNMENT AND PRIVATE PRACTICE**

This panel provided an overview of the issues that legal practitioners face when they move between government and the private sector. Richard M. Frank, professor at the University of California Berkeley Boalt Hall School of Law moderated the panel and the panelists were Thomas Sansonetti of Holland & Hart, LLP in Cheyenne, Wyoming, and Heather Sibbison of Patton Boggs, LLP in Washington, D.C. Federal and state laws, as well as local bar association regulations, control what an attorney may and may not do when entering or leaving government service.

Mr. Sansonetti began by pointing out that there are good and bad consequences of these laws and regulations, but they largely serve their intended purposes of protecting the public and former clients. The panel then discussed the specific rules and requirements that attorneys must obey when entering and leaving government employment. The session ended with a brief discussion of the rising costs of public service as ethics laws become stricter in the post-Abramoff world. Professor Frank cautioned that if ethics laws become prohibitive, it will become increasingly difficult to get people to perform government service once, let alone multiple times.

Nora Pincus

WINTERS 100 YEARS

Tom Gede, Principal at Bingham Consulting Group LLC and Of Counsel at Bingham McCutchen LLP in San Francisco, California, moderated this session on the 100 year anniversary of the *Winters v. United States* Supreme Court decision.

John EchoHawk, Executive Director of the Native American Rights Fund in Boulder, Colorado, began by providing the background of NARF. NARF provides legal assistance to tribes in an effort to protect their sovereign status, their religion and culture, and their natural resources. Mr. EchoHawk stated that the Supreme Court reaffirmed the *Winters* Doctrine through the *Arizona v. California* case. Mr. EchoHawk also discussed statewide adjudications and the shift toward out of court settlements stating that there are currently nineteen negotiation teams with a request for more. He posits that settlement may be better than litigation because settlement involves all interested parties. Although there has been a lot of progress over the past 100 years since *Winters*, Mr. EchoHawk believes that there is still a long way to go.

Dean B. Suagee, Of Counsel at Hobbs Straus Dean & Walker LLP in Washington, D.C., discussed Seminole water rights in Florida. There was a great conflict between the tribe and state in the mid-1980s

because the tribe felt state law did not apply to them. This conflict led to a settlement and the creation of a tribal water code; however, Florida area flood control projects have affected the local water quality and vegetation. These flood control projects disrupted the entire ecological system and the Seminole tribes are attempting to remedy the issue.

Douglas W. MacDougal, Shareholder at Schwabe, Williamson & Wyatt in Portland, Oregon, distinguished the Klamath River Basin issues. He stated the Klamath is unique because it includes federal reserved rights, a general stream adjudication, and a habitat recovery program. Power generating dams create issues with fish passage and local tribes sought instream flows to maintain historical fishing rights. Settlement efforts are in place to restore the Klamath Basin.

Amy Petri Beard

ESA AND WATER LAW – THE IMPACT ON WATER PROJECTS

This panel provided an update on the ESA's current reach, the intersection between the ESA and other environmental statutes, and the ESA's impact on water projects. Thomas R. Wilmoth, Partner at Blackwell Sanders LLP in Lincoln, Nebraska, moderated the session.

Christopher Keifer at NOAA in Long Beach, California, began the panel by discussing some of the current issues under the ESA. Mr. Keifer suggested that one key provision of the ESA - to encounter significant litigation in the near future - is the requirement for a determination of the "action area" in a biological opinion. An important question to consider is whether an aggregate approach should be used, or rather a comparative approach.

F. Lorraine Bodi at the Bonneville Power Administration in Seattle, Washington, continued the panel discussion with her experience in the "religious wars" over the Columbia River dams. Although this litigation has been long-lasting, Ms. Bodi sees good news. She commented that the abundance of fish is up in the river and that the "shuttle diplomacy" is working to patch together a solution among the thirteen Indian tribes, seven states, and two countries. Some of the emerging issues currently on the Columbia include whether the parties must guarantee recovery from all sources of impact and how to effectively address climate change.

John Kostyack at the National Wildlife Federation in Washington, D.C., ended the panel with a discussion on the intersection of climate change, endangered species protection and western water management. Mr. Kostyack suggests that the ESA is a first generation environmental law and that a new approach is needed to effectively address climate change issues. His specific suggestions on creating a new strategic approach include involving the stakeholders, resolving issues of scale, and emphasizing locally available data.

Maria Hohn