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Program Schedule
May 10, 2012

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<td>Program Begins</td>
<td>1:30 p.m.</td>
<td>12:30 p.m.</td>
<td>11:30 a.m.</td>
<td>10:30 a.m.</td>
<td>9:30 a.m.</td>
<td>7:30 a.m.</td>
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<td>Adjournment</td>
<td>2:30 p.m.</td>
<td>1:30 p.m.</td>
<td>12:30 p.m.</td>
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Program:

All Times Eastern

1:30 p.m. Program Begins.

Our panelists will examine the important *Sackett v. EPA* decision and analyze its future application and expected fallout.

2:30 p.m. Program Ends.

Scope, Purpose:

The US Supreme Court's recent unanimous decision in *Sackett v. EPA*, gives property owners the right under the Administrative Procedure Act to challenge enforcement orders issued by the EPA at any time after they are issued in final form. This important decision has already resulted in the EPA terminating its enforcement action against Range Resources for alleged groundwater contamination from fracking in Texas.

Topics to be covered include:

History behind the *Sackett* case

Technical aspects of the Supreme Court decision

Impact on EPA enforcement of Clean Water Act and other environmental regulations using *Range Resources* (applies to Safe Drinking Water Act) as a specific recent example

Total 60-minute hours of instruction: 1; Total 50-minute hours 1.2

Suggested Prerequisite: Some familiarity with the EPA.

Educational Objectives: A deeper understanding of the impact of the *Sackett* decision.

Level of Instruction: Intermediate
NOTE: Nothing in this program, the program materials, or communications stemming from the program (including questions and answers) should be considered as the rendering of legal advice. Non-lawyers should seek the advice of a licensed attorney in all legal matters. Registrants/readers should assure themselves that these presentations/materials/communications are still current and applicable at the time they are delivered or read. Neither ALI-ABA nor the speakers/authors can warrant that these presentations/materials/communications will continue to be accurate, nor do they warrant them to be completely free of errors when delivered/published. Registrants/readers should verify statements before relying on them. These presentations/materials/communications reflect the viewpoints of their speakers/authors and do not necessarily express the opinions of ALI-ABA Continuing Professional Education or its sponsors. The members of this program's faculty are contributing their services to further the continuing legal education of their fellow members of the Bar.
ALI-ABA Topical Courses
EPA Enforcement Collides With APA Due Process:
From Sackett to Range Resources

May 10, 2012
Telephone Seminar/Audio Webcast

PLANNER AND FACULTY:

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FACULTY CHAIR

Mark McPherson  
McPherson LawFirm, PC, Dallas, TX  
www.texasenvironmentallaw.com

Mark McPherson has been developing his unique focus on environmental and water issues for over twenty years. His passionate commitment to this area of law creates an in-depth understanding of the complex issues that face regulated entities, oil and gas companies, landowners and communities. Mr. McPherson serves his clients’ interests with a dedication to research and knowledge, and is frequently asked to speak, teach and write on environmental law and water rights topics.

As the debate over Texas water regulation heats up, the business entities and community groups impacted are all contributing to the discussion. Mr. McPherson has conducted extensive research and offers valuable insight to clients involved in this critical issue. THE MCPHERSON LAWFIRM represents clients in all aspects of environmental law, including water rights and disputes, oil and gas issues, air quality and waste management and disposal. Clients of the firm include commercial land and property owners, real estate developers, energy companies and contractors, and other entities involved in regulating, maintaining and managing the natural resources of Texas.

Examples of Mark McPherson’s scope of work include:

- Air Quality, Solid Waste and Water Permits and Compliance
- Defense of TCEQ Enforcement Actions
- Comments to Proposed Agency Rules
- Water Purchase and Sales Transactions
- Environmental and Water Supply Due Diligence in Transactions
- Contested Case Hearings over Water Rights and Environmental Issues
- Texas Groundwater Ownership Rights and Regulation
- Effective Negotiations with Groundwater Conservation Districts
- State and Regional Water Planning in Texas

Mr. McPherson served as Course Director of the 2011 TexasBarCLE Advanced Real Estate Law Course, and is also an active lecturer for CLE programs. He has served in numerous leadership
positions with the State Bar of Texas’ Real Estate, Probate and Trust Law (REPTL) Section, including as a member of the REPTL Council (2007-2011), and Chair of its Real Estate Legislative Affairs Committee (RELACs) for the 79th and 80th Legislatures. He is currently Vice Chair of its Water Rights Committee and Editor-in-Chief of its official publication, The REPTL Reporter.

Mr. McPherson also administrates and hosts the TEXAS REAL ESTATE E-MAIL DISCUSSION GROUP, an e-mail based discussion group for professionals in the Texas real estate industry.

A graduate of Washington & Lee University School of Law in Lexington, Virginia (1990), Mark was awarded Best Brief and Best Oralist in the John W. Davis Moot Court Competition in 1989. He received his Bachelor of Science degree (cum laude) from Belmont University in Nashville, Tennessee (1987), where he majored in Political Science.

Follow Mark’s Twitter feed to receive his opinions and news on the environment: @enviropinions

Become a “Fan” of McPherson LawFirm, PC, on Facebook. “Link” to Mark McPherson on Linkedin
Damien M. Schiff
Principal Attorney, National Litigation Center
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Practice areas
Clean Water Act
Endangered Species Act

Background
Mr. Schiff is a Principal Attorney for Pacific Legal Foundation (PLF). At PLF, Mr. Schiff has worked on a number of cases pertaining to the Endangered Species Act (ESA) and the Clean Water Act (CWA).

Mr. Schiff was lead attorney in PLF’s successful legal challenge to force the government to make good on its promise to remove the bald eagle from the list of threatened species under the ESA, a promise that was five years overdue. He also was lead attorney in PLF’s challenge to the listing of the California tiger salamander, the National Marine Fisheries Service’s Hatchery Listing Policy, and the critical habitat designation of 15 vernal pool species in California and Oregon, among other cases.

Mr. Schiff also has been involved in a number of CWA cases concerning jurisdiction and judicial review. He was lead attorney in Great Northwest, Inc. v. United States Army Corps of Engineers, PLF’s successful challenge to the Corps’ assertion of CWA jurisdiction over wetlands in Fairbanks, Alaska. He was also lead attorney in Barnum Timber Co. v. Environmental Protection Agency, in which the Ninth Circuit Court of Appeals held that landowners have a right to challenge environmental regulations that reduce their property values. Currently, he is lead attorney in Sackett v. United States Environmental Protection Agency, which concerns whether CWA compliance orders can ever be judicially reviewable; and Board of Mississippi Levee Commissioners v. United States Environmental Protection Agency, which concerns EPA’s CWA veto of an important flood control project in the South Mississippi Delta.

Publications / Achievements
Mr. Schiff has appeared on television and radio programs and in newspapers throughout the country. He has appeared on National Public Radio, The Lehrer News Hour, and Lou Dobbs Tonight. He also has appeared on the Andy Caldwell, Inga Barks, Larry Elder, Peter Schiff, and Bill Wattenberg radio programs. He has been quoted in the Christian Science Monitor.

**Education**

Mr. Schiff obtained his law degree *magna cum laude* from the University of San Diego School of Law, and his undergraduate degree *magna cum laude* from Georgetown University. He is a former law clerk to the Honorable Victor J. Wolski, United States Court of Federal Claims.