

# APPROVED 6/13/09

## Environmental Law Section Council

### *Minutes*

*February 5, 2009*

**Present in Detroit:** Chuck Barbieri, Kurt Brauer, Michael Caldwell, Christopher Dunsky, Josh Gubkin, Craig Hupp, Lee Johnson, Jim O'Brien, Pat Paruch, Robert Schroder, John Tatum, Tom Wilczak

**Present by phone:** Charlie Denton, Dennis Donohue, Matt Eugster, Ken Gold, Cortney Goldberg, Sarah Gosman, Scott Hubbard, Tim Lozen, Dustin Ordway

Chuck Barbieri called the meeting to order at 6:05 p.m.

#### **1. MINUTES OF PRECEDING COUNCIL MEETING:**

Before the meeting Secretary-Treasurer Charlie Denton had circulated draft minutes of the Council's November 5, 2008 meeting. Josh Gubkin moved to accept the minutes and Kurt Brauer seconded. The motion passed.

#### **2. SECRETARY-TREASURER'S REPORT:**

Secretary-Treasurer Charlie Denton reported that according to the State Bar, the Section had a balance of \$67,950.66 as of November 30, 2008, including annual dues. The Section later received revenue from the November program that the Section co-sponsored with the Air and Waste Management Association ("AWMA").

The Council discussed the attached draft budget for fiscal year 2009, dated 11-5-08. The Council discussed whether the budget should plan on any income attributable to sales of the Deskbook. John Tatum explained that charging people to access the Deskbook would conflict with representations made to MDEQ that the Deskbook is intended as a public service project. MDEQ has assisted the Deskbook project on that understanding. However, it is possible that some revenue may be received from Google ads.

Barbieri and Dunsky both commented that figures in the proposed budget are not intended to be hard and fast, but are intended to serve as a guide for allocating expenditure of Section funds.

Craig Hupp moved to adopt the 11-5-08 draft budget. Pat Paruch seconded the motion, and it passed.

### **3. WATER COMMITTEE REPORT:**

Barbieri invited the Water Committee to provide its report early because its representative, Sarah Gosman, had to leave early. Ms. Gosman reported that the Water Committee is considering conducting a panel discussion, with support from the University of Michigan Law School, on the subject of invasive species in the Great Lakes. The Committee is also discussing with George Curran, Chair of the Sustainability and Climate Change Committee, how the Water Committee may be able to participate in the April 2009 program that the Environmental Law Section and the Business Law Section plan to sponsor concerning climate change. The Water Committee is also considering a program on industrial wastewater issues.

John Tatum suggested that the Water Committee consider a program for the Council's June 2009 meeting at Higgins Lake regarding how Michigan's wetland permitting process may be affected by Governor Granholm's proposal to have MDEQ cease issuing wetland permits and rely on the Federal program. Chair Barbieri supported Tatum's suggestion and asked Gosman to check with Joe Quandt to see whether the Natural Resources Committee would be interested in supporting a program on wetlands for the June meeting.

### **4. CHAIRPERSON'S REPORT**

#### **A. Articles For Michigan Bar Journal October 2009 Issue**

Barbieri asked Tatum to report to the Council regarding articles that Section members have proposed to write for publication in the environmental theme October 2009 State Bar Journal. Tatum reported that he had received proposals for 17 articles, but that his sense was that many of them would be difficult to develop within the 2,000-2,500 word limit required for publication in the State Bar Journal. He suggested that many of the proposed topics could be addressed by having the author write both a long version for publication in the Section's Michigan Environmental Law Journal and a shorter version of 2,000-2,500 words for publication in the State Bar Journal. Dunsky suggested that the State Bar Journal include not only the five articles selected for publication, but also the titles and authors of the other articles received with a statement that they are available in the Michigan Environmental Law Journal.

Barbieri asked Tatum to prepare a list of the five proposed articles that Tatum believes would be most appropriate for publication in the State Bar Journal and circulate that list to Council Members for their comment. He also asked Tatum to advise all proposed authors by e-mail of the deadlines for submitting drafts and final versions of their articles.

**B. Legal Milestone**

Barbieri reported that the State Bar's Legal Milestone Committee favors the proposal he submitted regarding the WMEAC v. Natural Resources Commission case, but that they requested that he revise the proposed commentary to further explain the importance of the Michigan Environmental Protection Act. The Chair will follow-up, so this can be established by this Fall.

**C. Goals For 2008-2009**

Barbieri referred to the goals identified in the Minutes of the Council's November 5, 2008 meeting, and noted that the goal of establishing a Committee on alternative energy and climate change has already been met. These goals will be reviewed by the Chair at each Council meeting.

**D. Inquiry From Engineering Society Of Detroit**

Before the meeting Barbieri distributed to Council Members a January 19, 2009 letter from the ESD Institute of the Engineering Society of Detroit regarding its "Michigan Green Enterprise Zone" initiative. After brief discussion by the Council, Barbieri stated that he will respond to the letter by telling the ESD Institute that he has circulated it to the Council and invited individual Council Members to comment on the proposed initiative on their own behalf.

**5. STANDING COMMITTEE REPORTS**

**A. Membership Committee**

Dustin Ordway, Chair of the Membership Committee, joined the Council meeting by phone, but was not available at the time a committee report was called for. Barbieri noted that Ordway had circulated a report by e-mail, which is attached. The report contains information concerning a final count of Section members for this year. The total membership count of 628 includes 114 new members, including students. However, 158 members from last year did not renew. Pat Paruch noted that membership in the Real Property Section declined by a comparable amount and that the Real Property Section is working to determine the reasons for the decline. Denton stated that he sends a form letter to each member who did not renew his or her membership in the ABA Environmental Litigation Committee of which he is chair in order to determine why they did not renew their membership, and learned that several had simply forgotten to renew. Barbieri suggested that Craig Hupp of the Membership Committee consider sending a similar e-mail to the 158 members who did not renew membership in the Environmental Law Section. John Tatum will send a list of such members to

Hupp for that purpose. Barbieri also asked Hupp to send an e-mail to the 114 new members welcoming them to the Section and inviting them to join a Committee.

Hupp noted that for the past several years his firm has hosted an evening event at his firm's Detroit office at which law students interested in environmental law met with practicing environmental law attorneys. He asked whether the Section wishes to support such an event this year and whether another law firm would be interested in hosting it. Dunsky noted that Anna Mauri had expressed some interest in this previously. Barbieri suggested that such an event might be held in Lansing and/or Grand Rapids as well as in Detroit.

## **B. Program Committee**

The Symposium on the U.S.-Canada Boundary Water Treaty, held at Wayne State's Law School preceding the Council meeting, was reportedly a success.

Kurt Brauer reported that the Committee is working with the Sustainability and Climate Change Committee on the climate change program that will be sponsored jointly by the Business Law Section and the Environmental Law Section in April. Skip Pruss of the Department of Energy, Labor and Economic Growth has expressed support for the program. The Sections have invited Governor Granholm to speak at the program. The program will probably be held at a location in the western suburbs of Detroit. Hupp asked whether the Section is willing to share in both the monetary risks and rewards regarding this program. Barbieri responded affirmatively.

Brauer reported that Lynelle Marolf of MDEQ has accepted an invitation for MDEQ's RRD staff to participate in the program at Higgins Lake in June 2009. Barbieri suggested that the Program Committee may also want to consider inviting the Army Corps of Engineers, because of the potential change in wetland permitting in Michigan.

Brauer reported that the Section is making plans for the State Bar annual meeting to be held the third week of September 2009 in Dearborn. Although Council Officers expressed a preference to hold the Section's program late Wednesday afternoon, September 16, 2009, Barbieri asked Brauer to check with Charles Toy about his proposal to invite former Attorney General Frank Kelly and former Governor William Milliken to a luncheon on Friday, September 18, and to have the Environmental Law Section program Friday afternoon. Brauer will consult with Toy about the luncheon proposal and report back to Barbieri with a suggestion regarding a day and time for the Environmental Law Section program.

Lee Johnson reported that the AWMA wants to collaborate again with the Environmental Law Section on a program to be held in Fall 2009, probably in Lansing.

**C. Michigan Environmental Law Journal**

Bob Schroder reported that the timing and contents of the next issue of MELJ will depend on the articles that authors plan to submit for publication in the State Bar Journal as discussed previously in these Minutes. He suggested that the Section consider publishing a special edition of the Michigan Environmental Law Journal, of greater length than normal, that could be published in hard copy or possibly on disk for distribution at the Annual Meeting in September, 2009. He estimated the cost of such a hard copy publication at around \$1,000. He also reported on the possibility of other special editions focused on a particular topic.

**D. Technology Committee**

John Tatum reported that he has finished updating the list-serv to account for membership changes in the Section. He also reported that the Section's website has been updated to include links to the articles that were published in the Environmental Law issues of the State Bar Journal published in December 2001 and November 2005.

**E. Deskbook Committee**

John Tatum reported that Jeff Haynes' chapter is close to being finished, and that there has been "incremental progress" on chapters assigned to other individuals. Tom Wilczak's chapter was finished some time ago. There was also discussion of links to administrative rules and court opinions.

**6. SUBJECT MATTER COMMITTEE REPORTS**

**A. Air Committee.**

Lee Johnson reported that the Air Committee met in December 2008 in response to the call for volunteers to write articles for the October 2009 State Bar Journal and proposed five articles as a result of that meeting. The Committee also met in late January to discuss plans for a conference to be held jointly with AWMA in Fall 2009. Steve Kohl and Kurt Kissling will take the lead on the Fall conference. The Air Committee will meet again on March 26, 2009.

**B. Hazardous Substances and Brownfield Committee.**

Josh Gubkin reported that the Committee met in Lansing on December 11, 2008 and that Lynelle Marolf made a presentation regarding MDEQ's proposed changes to the Part 201 and Part 213 programs.

**C. Sustainability and Climate Change Committee.**

Cortney Goldberg reported that approximately 100 individuals participated in person or by phone at the first meeting of this new Committee in November.

The Committee held a second meeting in Lansing January 14, 2009, at which Commissioner Monica Martinez of the Michigan Public Service Commission gave a presentation on new Michigan legislation regarding alternative energy and renewable energy. The Committee plans to meet again on March 19, 2009 at 4:30 p.m.

## **7. LIAISON REPORTS**

### **A. Real Property Section.**

Pat Paruch reported that the Real Property Section is considering whether to take a position regarding Senate Bill 187, which would adopt Governor Granholm's proposal to have the MDEQ stop issuing wetland permits.

### **B. Business Law Section.**

Barbieri reported that the head of the Business Law Section has expressed interest in working with the Environmental Law Section on issues, including climate change. Craig Hupp will explore these possibilities further with Diane Akers and consider whether the Business Law Section should be invited to appoint a liaison person to the Environmental Law Section (and vice versa).

## **8. OLD BUSINESS/NEW BUSINESS**

The Council had previously discussed a request from Community Legal Resources ("CLR") for financial or other support from the Section for its activities. Ken Gold had offered to follow up with the representative from CLR regarding this request. Kurt Brauer volunteered to check with Ken Gold on that issue.

## **9. NEXT COUNCIL MEETING**

Barbieri suggested that the Council meet again in late April, 2009 in conjunction with the program on climate change. Because no date has been set for the program, there is no definite date for the next Council Meeting.

The meeting adjourned at 8:20 p.m.

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**From:** envirolaw-council-bounces@groups.michbar.org on behalf of Ordway, Dustin P. [OrdwayD@millerjohnson.com]  
**Sent:** Thursday, February 05, 2009 9:53 AM  
**To:** envirolaw-council@groups.michbar.org  
**Subject:** RE: [EnviroLaw-Council] Membership Committee Report  
**Attachments:** ATT00001.txt

Chuck and Council Members -

I will try to join by phone at 6 PM. The following is a short report from the Membership committee:

1. We (and the Bar Association office, with help from John Tatum) have made updates to the web page as discussed before.
2. John has gotten the current section membership list from the Bar Association.
  - a. We will put together a PDF listing for distribution.
  - b. John's review of the membership figures yields the following notes:
    - Current member count is 628 including 18 students.
    - Last year's count was 679 including 37 students.
    - New members = 114 including students
    - Not renewing members = 158I would have to look back to prior years to compare, but that seems like a large number of non-renewing members. Thoughts, suggestions?
  - c. We have not reviewed the list for public official members to compare that. I will see what we can learn.
3. The committee is considering ways to reach out more effectively to students with information about the section, including inviting some of them to participate in the committee. Suggestions? Anyone with contacts with the law schools who would like to be involved, please let me know.

If I miss the call, I will check in with you, Chuck, to review the discussion. Thanks. Dustin

Dustin P. Ordway  
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4/21/2009

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**From:** envirolaw-council-bounces@groups.michbar.org [mailto:envirolaw-council-bounces@groups.michbar.org] **On**  
**Behalf Of** Chuck Barbieri  
**Sent:** Friday, January 30, 2009 5:37 PM  
**To:** envirolaw-council@groups.michbar.org  
**Subject:** [EnviroLaw-Council] Updated Agenda

1-30-09

Since today seems to be the day to circulate ELS council materials, I am sending out an updated or revised version of the agenda for the 2-5-09 meeting which includes the call-in number. Hope to see or hear you on Thursday.

Chuck

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