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COLORADOLAW
UNIVERSITY OF COLORADO **BOULDER**

Banks Named Executive Director of Getches-Wilkinson Center

The University of Colorado Law School announced that Britt Banks has been appointed as Executive Director of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment.

For over 20 years, Banks has been a leader in the international natural resources sector, as a senior corporate executive, attorney, consultant, researcher, and teacher, having most recently taught at Tokyo's Waseda University. He has previously taught at Colorado Law, where he graduated in 1988, and currently serves on the Center's Advisory Council.

In 2008, he retired as Executive Vice President, Legal and External Affairs, at Denver-based Newmont Mining Corporation, one of the world's largest



BRITT BANKS
EXECUTIVE DIRECTOR

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Dear Friend,

Since becoming Dean, my focus on our Natural Resources, Energy, and Environmental Program has remained constant. As I have said before, I had hoped to build on our excellent program and reputation with David Getches; with his passing, we are all working together to build up our program for him and to honor his legacy. A core part of this effort involved renaming and re-missioning the Natural Resources Law Center as the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment.

Last January, we hired Brad Udall, an expert in climate change and water policy, to be the newly named Center's Director. I am sorry to report that, as of December 1, 2013, Brad transitioned from Director to a Senior Fellow at the Center, enabling him to pursue a number of research projects and an exciting new professional opportunity. We are sorry to see Brad move on, but we are excited to welcome Britt Banks ('88) as our new Executive Director. Britt's experience in practice, industry, with non-governmental organizations, and in academia set him up well to lead the Center. Given Britt's long-time involvement with the Center, including on the Advisory Council, we look forward to a seamless transition and an opportunity to build on the successes of the last year in 2014.

The goal of the Getches-Wilkinson Center was to bring, under one umbrella, the range of natural resources, energy, and environmental programs at Colorado Law. A couple of years ago, the Center for Energy and Environmental Security, led by Professor Lakshman Guruswamy, and the Governor's Climate and Forest Task Force and Energy Innovation Initiatives, led by Professor William Boyd, were entirely separate from the Center. Today, both initiatives live under the mantle of the Getches-Wilkinson Center, with a Board of faculty members chaired by Professor Charles Wilkinson working together on a range of fronts.

The projects and aspirations of the Center developed over the last year in impressive fashion. The **Summer Martz Conference**, which brought a range of professionals to Colorado Law, grappled with the important topic of interstate water transfers and discussed the landmark *Arizona v. California* case. This winter, we will convene a Martz Sustainability Symposium on February 27-28, bringing a range of policy, NGO, academic, and industry leaders to Colorado Law to discuss the challenging of translating sustainability norms into action in the natural resources sector. This June 5-6, we will hold our summer Martz Conference, focusing on Water and Air Quality Issues Associated with the Oil and Gas Boom: The Evolving Framework of Regulation and Management. Please save both dates. Going forward, the expectation and goal is that we can have bi-yearly flagship conferences that honor the legacy of Clyde Martz, who founded both the natural resources program at Colorado Law and the Natural Resources Law Center.

Over the last two years, we made progress on a number of fronts, including securing permanent funding for and establishing a full-time Clinical Professor position for the newly-named Getches Green Natural Resources and Environmental Law Clinic. We also established the Getches Fellowship, supported by the Wyss Foundation, with Julie Nania serving that role in the academic year 2012-13 and Julia Guarino taking on this role in the academic year 2013-14. The Getches Fellow is able to pursue her own projects on natural resources policy as well as work with key Center initiatives. One important such initiative, led by Professor Sarah Krakoff, is the **Acequia Project**, where over thirty students are volunteering their time to help low-income Hispanic farmers in the San Luis Valley organize and structure their water administration challenges.

The Center's historic commitment to research and public



engagement remains one of its core pillars. To that end, the **Western Water Program**, led by Research Associate Doug Kenney and aided by the engagement of Professor Mark Squillace, one of our nation's experts on water policy, continues to develop and is now focusing on the challenges facing the Colorado River. The Energy Innovation Initiative, which partners with the Silicon Flatirons Center, put on a number of programs this summer and fall, including a discussion of Changing Regulatory Frameworks for Shale Development and "Social License to Operate" (with our newly named **Thomson Visiting Professor Bruce Kramer**), a lecture by Søren Hermansen—Renewable Energy and Community Action in Denmark, the **Schultz Lecture by FERC Commissioner Tony Clark**, and a conference on **Cross-Border Energy Transactions**. This spring, we will reprise the cross-sector insights from last spring's conference on **Towards Dynamic Markets in Electric Power, Water, and Wireless Spectrum**, holding a conference on Property Rights in Minerals, Water, and Wireless Spectrum (on April 3, with Professor Richard Epstein as our Keynote Speaker). Finally, in a conference co-hosted with the Colorado Law American Indian Law Program, the Center explored the issues around **Free, Prior, and Informed Consent**, with respect to natural resources development issues affecting native peoples.

In short, the Center has a dedicated faculty, an active research and conference agenda, and a terrific group of students interested in collaborating with its work. But most of all, we are blessed by a tremendous community of alumni and friends committed to its success. The Advisory Council, led by Chair Mike Gheleta, has provided invaluable counsel and support. As always, I am open to any ideas, suggestions, or questions you may have—please just reach out to me at 303.492.5417 or phil.weiser@colorado.edu. ♦

Cheers,

Phil Weiser Dean

GWCC

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Britt Banks

gold producers. At Newmont, he had oversight responsibility for legal affairs, environmental compliance, sustainable development, government relations, and security. He also has held numerous leadership positions with the International Council on Mining and Metals (ICMM), a London-based industry association working to improve member performance in the areas of sustainable development, environmental stewardship, employee health and safety, materials management and social responsibility.

Banks also co-chairs the Global Agenda Council on Responsible Mineral Resource Development at the World Economic Forum in Geneva, and was a founding member of the Forum's Partnering Against Corruption Initiative (PACI) Task Force.

"Britt is a natural leader who is deeply committed to engaging policy makers, civil society and the public, industry and

our students on our most pressing natural resources, energy, and environmental challenges," said Professor Charles Wilkinson. "With his appointment, the Center is well-positioned to significantly enhance Colorado Law's legacy of creative, interdisciplinary research; bold, inclusive teaching; and innovative problem solving."

"We are thrilled to have someone as talented as Britt leading such an important facet of Colorado Law," said Dean Phil Weiser. "We are particularly excited that he is one of our own, someone who developed under the guidance of our namesakes David Getches and Charles Wilkinson, and who has actively collaborated with the Center for many years and understands its vision and mandate well."

"Both David and Charles have been pivotal figures in my life and career, as friends and mentors, and I am honored and

excited to have the opportunity to work with the Center's tremendous faculty members and researchers to continue to build its important legacy," Banks said. "The Getches-Wilkinson Center offers a terrific platform for research, policy innovation and dialogue on some of the more significant issues of our day. I am also proud to follow in the footsteps of the Center's outstanding past directors, including outgoing Director Brad Udall."

Udall will return to full-time research as a Senior Fellow of the Center, while also pursuing other opportunities in climate change, water policy and governance. "I am delighted to pass the torch to Britt," said Udall, "and I look forward to continuing to collaborate with the Center team and the broader CU community going forward." ♦

NEW ARIZONA V. CALIFORNIA DIGITAL ARCHIVE FROM THE WISE LAW LIBRARY AT COLORADO LAW

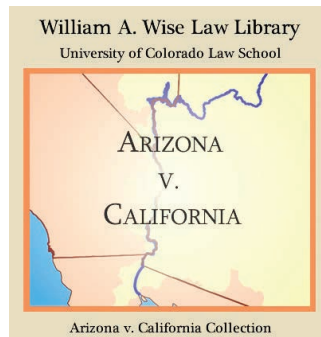
{ BY JANE ANDREWS }

The **William A. Wise Law Library** at the University of Colorado Law School debuted its newest digital archive, the **Arizona v. California Collection**, at the Getches-Wilkinson Center's Clyde Martz Summer Conference held on August 15-16, 2013. The Conference, entitled *Arizona v. California at 50: The Legacy and Future of Governance, Reserved Rights, and Water Transfers*, coincided with the 50th anniversary of the U.S. Supreme Court's landmark decision concerning rights to the use of Colorado River basin water.

The Wise Law Library's *Arizona v. California* Collection contains more than 160 full-text pleadings, briefs, orders, transcripts, and reports from the 12-year original proceeding (1952-1963) in the U.S. Supreme Court. Researchers can search documents by Year, Author (parties, attorneys, courts, special masters), Title Keywords, or Full Text Keywords. The Collection features many key filings by Arizona, California, Colorado, Nevada, New Mexico, Utah, Wyoming, and the United States, as well as the 1960 draft and final reports of Special Master Simon H. Rifkind and copies of the U.S. Supreme Court's opinion and

decree. It also includes Special Master Elbert P. Tuttle's 1982 report in the reopened *Arizona v. California* case decided by the U.S. Supreme Court in 1983. The *Arizona v. California* Collection is accessible to the public at www.lawlibrary.colorado.edu/arizona-v-california-collection, or by clicking on the Digital Collections link from the Library's website, www.lawlibrary.colorado.edu. The Collection will be accessible soon through the Western Waters Digital Library, www.westernwater.org, which "provides free public access to a wide range of significant resources on water in the Western United States."

Another digital archive of interest to natural resources and American Indian law attorneys and scholars is the **David H. Getches Collection** created by the Wise Law Library in 2012 and available at www.wiselawlibrary.org/library_services/digital_collections/getches_collection/. The Collection features Getches' scholarly articles; pleadings and briefs written or co-authored by Getches, and court opinions for cases in which Getches was attorney of record; his congressional testimony; and selected speeches from his deanship at Colorado Law. ♦



A MESSAGE FROM THE CHAIR OF THE ADVISORY COUNCIL

{ BY MICHAEL GHELETA }

The past few months have been an exciting time for the Getches-Wilkinson Center and those involved with it, including the Center's Advisory Council. The Council held its regular summer meeting on August 14 at the law school, and as always the discussion was dynamic and constructive. We were especially pleased to welcome Ann Getches as the newest member of the Advisory Council. Ann is well known to all in the law school community, and we look forward to having her legendary energy and commitment to the law school focused on the Getches-Wilkinson Center. The Advisory Council is also very pleased to welcome Britt Banks as the Center's new director. Britt has served on the Council for a number of years, and we commend his interest in stepping up to lead the Center.

Following the Advisory Council meeting, participants retired to Carelli's restaurant to catch up outside the agenda. We enjoyed a superb dinner in honor of Mark Squillace and his many years at the helm of the Natural Resources Law Center. It was an honor for me personally to be able to present a tribute to Mark, and to listen to Charles Wilkinson's sincere and entertaining tribute, for Mark's many years of service to the Center and law school.

The Center's 2013 annual Martz Summer Conference, celebrating the landmark case of *Arizona v. California* at 50, was a watershed event attended by many influential actors and commentators involved in the law and policy of the Colorado River. I was privileged to be part of a panel discussing the case's role in the areas of federal and Indian reserved water rights and settlements. It was stimulating being reminded of the key contributions of *Arizona v. California* to the law of federal reserved rights, and to reflect on my years in courtrooms, conference rooms and in the field as a federal water lawyer handling litigation and settlement negotiations concerning reserved rights.

On a personal note, I was extremely pleased to be able to chair the Center's Advisory Council meeting in Boulder, as a Colorado resident once again. After serving as Phoenix Field Solicitor for the U.S. Department of the Interior during 2012-13, I have relocated to the Rocky Mountain Regional Office of the Solicitor in Lakewood where I continue my work as an Attorney-Advisor. I enjoyed my time in Arizona both professionally and personally. As a farewell tribute of sorts, I had the opportunity to guide a rafting trip down the Grand Canyon, where I encountered old friends like Lava, Crystal and Hermit. One way or another, it seems I can't avoid for long returning to study and navigate the perilous course of the Colorado River! ♦



THE WESTERN WATER POLICY PROGRAM

{ BY DOUG KENNEY }

As Director of the GWC's Western Water Policy Program (WWPP), the majority of my research and development activities are focused on water policy issues. Over the past year, three major projects have been featured: the Colorado River Governance Initiative, the Energy and Water in a Warming World study, and the "conservation disincentives" project.

The Colorado River Governance Initiative (CRGI) is motivated by the desire to address the growing supply/demand imbalance in the basin through strategies emphasizing water certainty, equity among the states, and environmental sustainability. To that end, three major reports have been issued thus far in 2013 focused on (1) water marketing opportunities at "cross-boundary" scales (i.e., across state lines and/or reservation boundaries), a (2) "demand cap" concept (in which Upper Basin states voluntarily "cap" consumption at a negotiated level in exchange for immunity from an interbasin compact call), and (3) an article emphasizing how equity should be the basis for addressing the outstanding Law of the River interpretation issues:

- *Cross-Boundary Water Transfers in the Colorado River Basin: A Review of Efforts and Issues Association with Marketing Water Across State Lines or Reservation Boundaries*, COLORADO RIVER GOVERNANCE INITIATIVE (2013).

- *The “Upper Basin Voluntary Demand Cap” as a Means of Mitigating Legal Uncertainty in the Colorado River Basin: Modeling Results*, COLORADO RIVER GOVERNANCE INITIATIVE (2013).
- Jason Robinson and Douglas S. Kenney, *Equity and the Colorado River*, 42 ENVIRONMENTAL LAW 1157 (2012).

These (and many other) reports are available online at our Colorado River Information Portal: www.waterpolicy.info/projects/CRIP/index. The low-cost and environmentally friendly options explored in CRGI publications offer a stark contrast to the multitude of multi-billion dollar infrastructure options that dominate much of the current discourse about the Colorado River.

A further recent accomplishment of the CRGI was our recent (August 2013) conference entitled: *Arizona v. California at 50: The Legacy and Future of Governance, Reserved Rights, and Water Transfers*. As the title suggests, the well-attended event focused on the role of the landmark case in reshaping the relationship between these two Lower Basin states, and more importantly, between the states, federal government, and tribes. A special law review issue and

book is under preparation to highlight findings from the event, and a special *Arizona v. California* digital archive is now a part of the William A. Wise Law Library: www.lawlibrary.colorado.edu/arizona-v-california-collection.

Building on our earlier work on the water-energy nexus, Brad Udall and I completed our involvement in the Energy and Water in a Warming World (EW3) project led by the Union of Concerned Scientists. The report issued this summer — *Water-Smart Power: Strengthening the U.S. Electricity System in a Warming World* — illustrates how the future mix of technologies and fuels used to generate electricity in the U.S. will have huge implications on the water sector. Currently, power plants withdraw more water in the U.S. than farmers, but the ongoing transformation of the electricity sector offers a huge potential to reduce this stress on limited water resources. Specifically, the report shows that a future reliant on renewable energy and efficiency has the potential to reduce water withdrawals by 97 percent from current levels by 2050! If that were not sufficiently compelling, this approach also offers huge reductions in greenhouse gas emissions, and would result in reduced

electricity bills for most customers. This is a message we are conveying through writings, presentations, and webinars.

The “conservation disincentives” project is another highly interdisciplinary project that looks at some of the factors that can discourage urban water utilities from aggressively pursuing water conservation. Specifically, the report examines the phenomena of “demand hardening”—the concern that eliminating wasteful or nonessential water users today can reduce the ability to reduce consumption in future supply emergencies — and the “throughput incentive,” which speaks to the fiscal concern that water utility revenues can be significantly reduced through policies encouraging conservation. These conservation “disincentives” reflect the institutional environment within which water utilities exist; reshaping those rules has the potential to encourage (and reward) conservation, thereby limiting the strain on water resources and the need to develop increasingly expensive new infrastructure. The report is currently under review and is scheduled for publication in the *Journal of the American Water Works Association*. ♦





NATURAL RESOURCES EDUCATION AT COLORADO LAW

LEARNING **THE KLAMATH BASIN**

{ BY CHARLES WILKINSON }

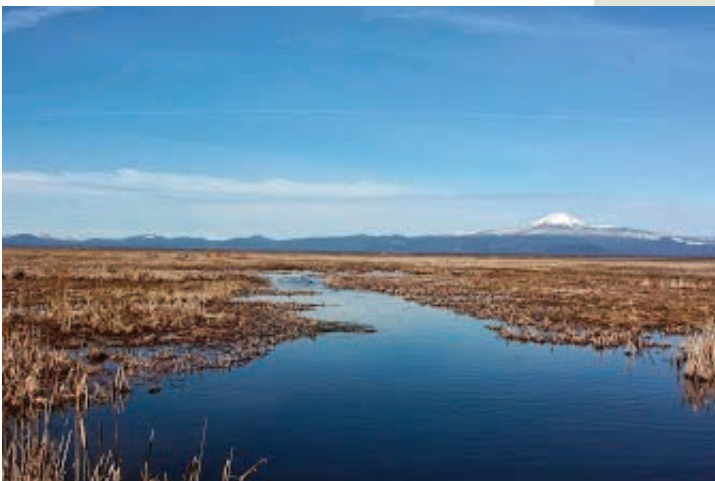
I began teaching an Advanced Natural Resource Seminar, with a field trip component, to students at the University of Oregon in 1986. At the University of Colorado, Professors Sarah Krakoff, Mark Squillace, and I have led a group of students in studying different regions around the West in-depth. The students are responsible for gathering the reading materials for the course, and for writing a paper on an issue they select. Over spring break, the students take a trip to the region, meeting with local leaders and visiting the places they have read about.

This year, given the current issues in the West, there was really only one possible choice: we would study the Klamath River Basin, which is the site of a truly historic proposed watershed agreement.

The Klamath Basin begins in the rural high desert of Southeastern Oregon, where the Klamath Tribes and irrigators have long clashed over the conflict between water for native wildlife and farms. The Klamath River then winds its way through the remote Klamath Mountains to the Northern

California Coast, where salmon spawn, sustaining several other groups of tribal peoples as well as coastal commercial fisheries.

The Klamath Basin is currently embroiled in a conflict over water allocation and management in the region, and is waiting for Congressional approval of a settlement reached in 2010 by a coalition of tribes, irrigators, commercial fishing organizations, environmental organizations, and the states of Oregon and California. Still, other tribes, irrigators, and environmental groups in the region are vocally →



→ opposed to the settlement. Central to the debate are four hydroelectric dams, which provide cheap power to irrigators and block hundreds of miles of salmon habitat. Further complicating the matter, the state of Oregon made a final determination of water rights in its long-running Klamath Basin adjudication, which provided a large and senior water right to the Klamath Tribes in the upper Klamath Basin, giving the tribes the power to make a “call” on most of the other users in the Basin, shutting off their water during the dry summer months, to protect traditional tribal fisheries.

By the time the 14 students enrolled in the seminar this year boarded a plane to Portland, Oregon in March, 2013 they were all experts in the Klamath Basin. They had learned its history, geography, and laws and had studied many aspects of the current natural resources issues in the region. And they were on the lookout for Sasquatch.

What the students had not anticipated, however, was the profound sense of *place* we were struck with when we arrived at Klamath Marsh, after a full day’s drive from Portland via Bend. In the Klamath Basin, the sense of place is palpable. The people feel connected to their homeland in a way many of us have never felt, even if we do not hesitate to tell you where “home” is. The Klamath is mystical, stunning, and the landscape defines its people, whether they have been there for five or five hundred generations.

The students returned to Boulder after meeting with tribal leaders, environmentalists, lawyers, and ranchers, much deeper experts than they had left a week earlier. Doubtless, many of them will be advocates for the Klamath country for many years to come. ♦



GETCHES-GREEN NATURAL RESOURCES AND ENVIRONMENTAL LAW CLINIC

{ BY MICHAEL SOULES }

Student attorneys in the Clinic continue to provide high-quality representation to environmental clients in an array of cases and non-litigation matters. The Clinic is currently litigating two cases in federal court, one aimed at protecting roadless areas in a Colorado national forest from off-road vehicle (ORV) use, and the other challenging a proposed coal strip mine in Wyoming. In the latter case, the student attorneys recently won an important procedural issue. The students’ briefing was so persuasive that, at a hearing on the matter, the court ruled in our favor before the student attorney could even deliver his argument.

Meanwhile, the Clinic has also been assisting several clients in several non-litigation matters. Earlier this year, two student attorneys submitted a petition to the Bureau of Land Management seeking to prevent the reopening of a uranium mine near Grand Canyon National Park. And over the summer the Clinic filed a petition, co-authored by two student attorneys, that sought to list an imperiled beetle species under the Endangered Species Act. If granted, these petitions would protect crucial natural resources in the Rocky Mountain region and Colorado Plateau. ♦



Michael Soules has left Colorado Law for a position with Earthjustice, where he will be working on coal issues. The Clinical Program is conducting a national search for a new Director.



ENERGY AND ENVIRONMENTAL POLICY INNOVATION

ENERGY INNOVATION INITIATIVE

{ BY WILLIAM BOYD }

*The Energy Innovation Initiative is launching its third year with a program of events that highlights important issues across the rapidly changing energy landscape. Søren Hermansen, an international expert on community action in renewable energy and a **Time** “hero of the environment,” kicked off our 2013-14 speaker series.*

Hermansen discussed the challenges and opportunities for renewable energy development, and his role in helping the Danish island of Samoa achieve energy independence using renewable resources. The Initiative also hosted FERC Commissioner Tony Clark for the Sixth Annual Shultz Lecture on October 22. Clark discussed the evolution of FERC’s efforts to ensure fairness in U.S. energy markets in the context of the Energy Policy Act of 2005, using recent FERC enforcement actions as illustrations.

Rounding out the Energy Innovation speaker series for the fall will be a conference on cross-border energy transactions in North America. Ongoing market integration has brought with it significant growth in cross-border energy transactions, and the conference will gather a group of experts to discuss the implications of unconventional oil and gas development, changing regulatory contexts for cross-border energy investments, and the policy and regulatory changes necessary to spur additional integration of North American energy markets.

The Initiative also continues to support and participate in ongoing research on state public utility commissions and clean energy innovation, cybersecurity and cloud computing in the energy sector, and natural gas development in the context of the “social license to operate.” This research benefits from the Initiative’s valuable and ongoing partnerships with NREL, JISEA, CU-Cleantech, and the Renewable and Sustainable Energy Institute (RASEI).

The Energy Innovation Initiative is a joint effort of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment and the Silicon Flatirons Center for Law, Technology, and Entrepreneurship, and is supported by Advanced Energy, Black Hills Corporation, Burleson LLP, Hogan Lovells, Holland & Hart LLP, Newmont Mining Corporation, Norton Rose Fulbright, Simple Energy and Tendril. ♦

GOVERNOR'S CLIMATE & FORESTS TASK FORCE (GCF)

{ BY WILLIAM BOYD }

With ongoing support from the Gordon & Betty Moore Foundation, the ClimateWorks Foundation, and the Norwegian Agency for Development Cooperation, Professor Boyd and his team (Carly Hernandez, Caroline Kert, Amelia Peterson, and Julie Teel Simmonds) continue to lead the Secretariat for the Governors' Climate and Forests Task Force (GCF), www.gcftaskforce.org. Established in 2009, the GCF is a unique subnational collaboration between 22 states and provinces from Brazil, Indonesia, Mexico, Nigeria, Peru, Spain, and the United States that seeks to advance jurisdictional programs for reducing emissions from deforestation and land use and to link these activities with emerging greenhouse gas (GHG) compliance regimes and other pay-for-performance opportunities.

More than 20 percent of the world's tropical forests are in GCF states and provinces, including more than 75 percent of Brazil's and more than half of Indonesia's. The GCF includes states and provinces that are leading the way in building comprehensive, jurisdiction-wide approaches to reducing deforestation and low emissions development as well as the only jurisdiction in the world (California) that is considering provisions that would recognize efforts to reduce emissions from deforestation and forest degradation (REDD+) as part of its GHG compliance system.

The GCF focuses on all aspects of the effort to reduce emissions from deforestation and establish lasting frameworks for low emissions development by sharing experiences and lessons across leading states and provinces, synchronizing efforts across these jurisdictions to develop policies and programs that provide realistic pathways to forest-maintaining rural development, supporting processes for multi-stakeholder participation and engagement, and securing financing for jurisdictional programs from a range of sources, including pay-for-performance public finance, carbon markets, and ongoing efforts to de-carbonize agro-food supply chains.

The GCF has also established an independent GCF Fund to support collective needs and innovative proof-of-concept activities in GCF states and provinces and has secured an initial seed grant from the U.S. Department of State for the GCF. Key partners in the GCF effort include IDESAM (Brazil GCF coordinator), Kemitraan (Indonesia GCF Coordinator), ProNaturaSur (Mexico GCF coordinator), IPAM (GCF science and technical advisor), Climate Focus (European Partnerships), Carnegie Institution for Science, Woods Hole Research Center, Google Earth Engine, and many others. ♦

www.gcftaskforce.org





ENERGY, PUBLIC LANDS, AND ENVIRONMENTAL DECISION MAKING

{ BY MARK SQUILLACE }

My recent work has pulled me in several different directions from fossil fuels, to public lands, to environmental decisionmaking, and of course, to water resources.

Most of my fossil fuels work relates to coal. I published a short article on the federal coal leasing program in the American Bar Association's Natural Resources and Environment Journal, entitled *The Tragic Story of the Federal Coal Leasing Program* (Winter 2013). This led to a tour of Wyoming and Montana where Tom Sanzillo, a resource economist with the Institute for Energy Economics and Financial Analysis, and I talked with policy leaders and the press about the financial losses that the states have suffered due to federal coal leasing policy. (See Mark Squillace & Tom Sanzillo, *Guest opinion: Time to reform the federal coal leasing program*, BILLINGS GAZETTE, Sept. 1, 2013).

On the fossil fuel front, I have also given several presentations on the Environmental Impacts of Unconventional Oil and Gas Development. My basic pitch is that we should not try to stop unconventional oil and gas development. That seems unlikely in any event. Rather, we should do a better job control the adverse impacts. Better water management might include closed loop systems that allow frack water to be recycled and reused

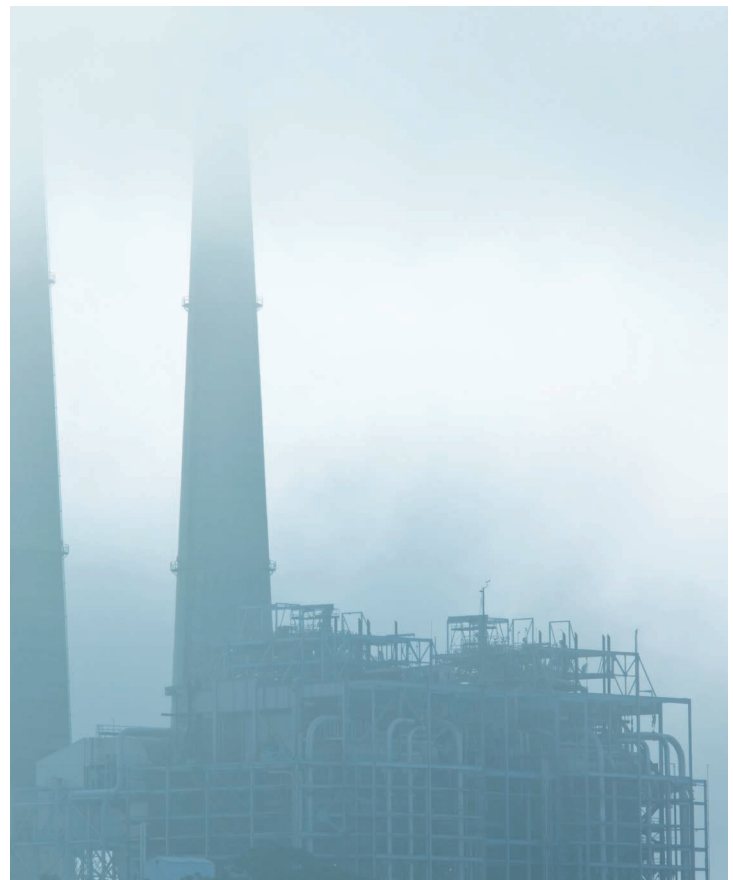
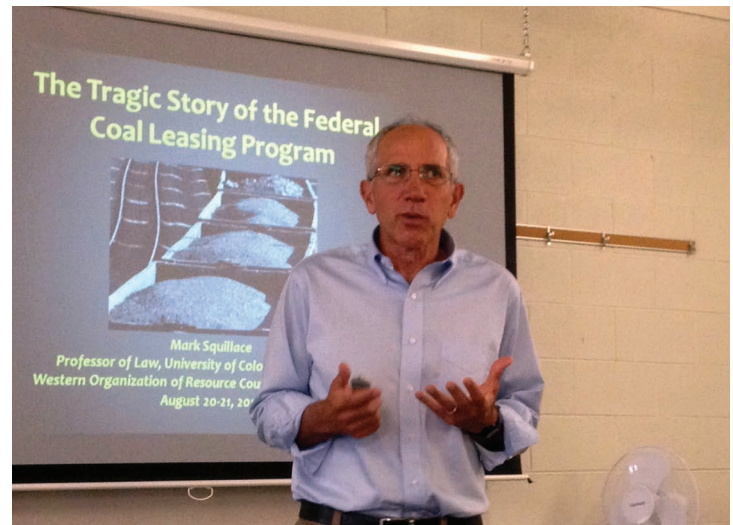
on site. Air emissions might be better controlled by setting strict standards for emissions during both development and production. Most controversially, we might better control the scale of development, perhaps by setting strict limits on truck traffic associated with oil and gas development. In the end, it is the U.S. that will be setting the benchmark for managing unconventional oil and gas development for the rest of the world that is just now beginning to discover this substantial resource. We owe to the world to get it right.

Regarding public lands, I have been involved with two particular projects. The first involves improving the decisionmaking process for public lands decisions. This led to an article and presentation at the Rocky Mountain Mineral Law Foundation's Annual Institute, held this summer in Spokane, Washington. The article is titled, *Meaningful Engagement in Public Lands Decisionmaking*, and urges government agencies to structure their proposal and their processes in ways that can more meaningfully engage the public in the decisionmaking process. I am also working on a project that considers ways to improve the public land use planning process. The current process used by both the BLM and the Forest Service is badly broken. It takes far too long – sometimes many years – and consumes too much of agency resources. More focus needs to be paid to monitoring and adapting and this can only be done if the agencies can find ways to conserve their planning resources. My work on this project will be presented at a conference held in the spring of 2014 at the George Washington University Law School. I am also presenting a paper on wilderness and grazing for a conference that will be celebrating the 50th Anniversary of the Wilderness Act, which will be held in Portland, Oregon on April 11, 2014.

Environmental decisionmaking has been a topic of great interest to me for many years. In addition to the Rocky Mountain article noted above, I have completed a draft manuscript for a new book on *Environmental Decisionmaking*. The manuscript is being considered for a publication by a major law publisher. A more discrete project combines my interest in coal with my interest in decisionmaking. Specifically, I am critiquing the process that government agencies use to make decisions involving coal, and encouraging agencies to better account for external costs when making such decisions.

Finally, my water research is focused on a couple of different issues. I have long been interested in water transfers and over the past couple of years have written articles on that subject. *Water Transfers for a Changing Climate*, 53 NAT. RESOURCES J. 55 (2013); *The Water Marketing Solution*, 42 ENVTL. L. REP. 10800 (2012). *The Judicial Assault on the Clean Water Act*, 59 FED. L. 33 (2012).

I am now working on an article on the public interest in Western water law. The article surveys the law in 12 Western states and all but Colorado explicitly require some protection of public interest values in administering their water rights. Many of these states, however, do little to implement these requirements and the article will suggest some ideas for reform. Finally, I am working with a group of students and former students on a project that is designed to promote better public access to waterways in Colorado. ♦



WATER AND AIR ISSUES

RELATED TO SHALE OIL AND GAS DEVELOPMENT

{ BY MATT SAMELSON }

The research project was divided into the three distinctive legal regimes: water quality, water quantity, and air quality.

Building on knowledge from the Intermountain Oil and Gas BMP project www.oilandgasbmps.org, Kathryn Mutz ('95) and Matt Samelson ('11) are conducting a comparative law research project of jurisdictions within the major shale oil and gas plays across the nation. The project involves water quality, water quantity, and air quality statutes and regulations in 11 states overlying major shale developments, including the **Marcellus, Eagle Ford, Piceance, Niobrara, Bakken, San Juan, Permian, Greater Green River, Powder River, Mancos, and Uinta shale.**

The broad scope of the project has provided the opportunity to work with a variety of groups interested in the intersection of air and water issues associated with the development of shale oil and gas. As a result, the project is part of a federal grant administered by the Environmentally Friendly Drilling System Technology Integration Program www.efdsystems.org and the University of Colorado-led team AirWaterGas www.airwatergas.org/index, which is funded by the National Science Foundation.



The research project was divided into the three distinctive legal regimes: water quality, water quantity, and air quality. During the summer of 2013, six research assistants helped establish parameters and conducted research on water quality: Sean Owens ('14), Dana Harbaugh ('15), Karl Hoffman ('15), Shaula Eakins, University of Vermont Law, and two undergraduate students Keely Wray, University of Colorado, and Rebecca Lavietes, Colorado College. The water quality component was completed last fall and the information is publicly available on LawAtlas, www.lawatlas.org. Run by the Public Health Law Research program at Temple University, LawAtlas is a comprehensive content management system. The laws database is not intended to provide a comprehensive catalogue of law or to substitute for on-line legal research resources. Rather, the database is intended to allow comparison and analysis of laws that will both highlight provisions important for community and environmental protection and to identify provisions that unnecessarily impede development.

The water quantity component will be tackled next in coordination with Kevin Doran ('03) of the Renewable and Sustainable Energy Institute, a joint institute of the National Renewable Energy Laboratory and the University of Colorado at Boulder. The air quality project will follow upon completion of water quantity. ♦

www.oilandgasbmps.org
www.efdsystems.org
www.airwatergas.org
www.lawatlas.org

MY YEAR AS A GETCHES FELLOW:

TRIBAL WATER USES IN THE COLORADO RIVER BASIN

{ BY JULIE NANIA }

In 2012, I applied for the Getches-Wyss fellowship with a proposal to invest the scope of tribal federal reserved rights, specifically how tribes may use these rights in a modern era. Uncertainty surrounding the *Winters* doctrine has had real implications for tribal nations as well as for state water rights holders implicated by the exercise of these rights. My proposal involved interviewing tribes in the Colorado River basin to determine how tribes are using and planning to develop their water resources. One of my goals from these conversations was to determine what are the legal barriers to certain water uses, to investigate creative ways to circumnavigate unsettled legal issues, and to note potential legislative solutions. Much of what I discovered is either shared on the [tribalwateruses.org](#) website or included in a forthcoming legal article. Here I would like to share a few lessons learned and a bit about my experience.

What did I learn?

Real solutions grow from real compromise. For tribes, this does not necessarily mean sitting down at the negotiating table and agreeing to restrict the use of reserved rights to uses more easily accommodated in the state prior appropriation system. Instead, the path forward will be about creating an environment where parties can fully recognize the rights and responsibilities on the

Change is inevitable. Threats once considered theoretical are having very real implications in the Colorado River basin, including challenges presented by climate change and scarcity issues.

What did I experience?

I was challenged. Conversations were not always easy. Navigating sensitive issues required respecting the very real concerns expressed during interviews and understanding when the exchange of information was necessarily limited. On a more personal level, speaking on new tribal water uses at the GWC's Martz Conference was terrifying but exhilarating.

I was inspired. At the Colorado River User Association's annual conference I witnessed the Ten Tribes Partnership stepping up to the plate and asserting tribal water issues at the forefront of Colorado River management issues. I met with brilliant young tribal professionals, determined to better their communities through using tribal water for domestic, agricultural, and economic development. I met with Leona Kakar, who in the 70s worked tirelessly to bring water to the Ak-Chin Community through countless flights to D.C. and endless phone calls to federal officials. She is still serving as head of the Farm Board, 35 years after playing an instrumental role in the first-ever tribal reserved rights settlement.



table while having a safe discussion about potential creative solutions. For other stakeholders, this may require acknowledging that federal reserved rights are unique from state water rights while recognizing that there are still opportunities for state water users to benefit by collaboration with tribes.

Never underestimate the power of a face to face conversation. The legal profession does not tend to lend itself to explorative discussions. I recognize that traveling the Colorado River basin was a luxury which may not be readily available outside of a fellowship-type assignment. However, I am certain that many of the insights, stories would not have been possible unless I had been able to make myself available in person for a meaningful, and at times, meandering conversations.

After a year of conversations with stakeholders across the basin, I am optimistic. Difficult issues once swept under the rug are being discussed in earnest outside of the litigation context. Municipal water providers and tribes are agreeing to mutually beneficial leasing and even non-consumptive use agreements. Agreements such as these have made me hopeful that the path forward will be driven by mutually beneficial negotiated agreements.

I am overwhelmed with gratitude. To the professors, practitioners, and Getches-Wilkinson staff who volunteered their time and guidance to help me navigate a complex and evolving area of the law. To the students who enthusiastically dealt with endless citation checks and obscure settlement questions. And, above all, to those who live these "issues" and were willing to set aside the time to sit down with me to discuss these delicate topics. ♦



NATIVE COMMUNITIES AND ENVIRONMENTAL JUSTICE

{ BY SARAH KRAKOFF }

The Project assists low-income farmers from the San Luis Valley with the protection of their water rights. Acequias are legal and cultural institutions for sharing water on a common irrigation ditch.

Professor Sarah Krakoff and key partners have instituted the **Acequia Project** within the Native Communities and Environmental Justice Program. The Project assists low-income farmers from the San Luis Valley with the protection of their water rights. Acequias are legal and cultural institutions for sharing water on a common irrigation ditch. Acequia communities, composed predominately of Hispanic families, have been farming in Colorado since before statehood. Despite their lengthy history, many Acequia members now find their rights threatened as drought and scarcity bring scrutiny to bear on their practices. Sarah Parmar, Land Protection Specialist with Colorado Open Lands, and Peter Nichols, of counsel at Berg, Hill, Greenleaf, and Ruscitti, are crucial partners in the Project. They supervise the work of more than 25 first, second, and third year law students who volunteer their time. The Project also receives invaluable assistance from lawyers Allan Beezley, Karl Kumli, and Ryan Golten. This fall, our new Getches-Wilkinson Fellow, Julia Guarino, has joined the Project as well. Together, the teams of students and lawyers represent four Acequias who want formal by-laws, as well as several groups of Acequia irrigators whose water rights require recognition under Colorado law. In addition, under the supervision of third year student Jens Jensen, the students have produced a draft Handbook on Colorado water law for Acequias, which they shared at the Congreso of Colorado Acequias in October, 2014. The Acequia Project has received funding from the Rocky Mountain Mineral Law Foundation and the University of Colorado Outreach Program.

Otherwise, Professor Krakoff is using her sabbatical leave to work on her book, *Parenting the Planet*, which examines how communities near and far are implementing values and practices that may allow them to navigate the social, political, and environmental challenges of the Anthropocene. ♦

RECENT PUBLICATIONS

WILLIAM BOYD

- *Public Utility and the Low Carbon Future*, 61 UCLA LAW REVIEW ___ (forthcoming 2014) (symposium article).
- *Natural Gas and the Transformation of the U.S. Energy Sector: Electricity*, Joint Institute for Strategic Energy Analysis, NREL/TP-6A50-55538, 1-240 (NREL 2012) (with J. Logan, G. Heath, E. Paranhos, H. Carlson, K., and J. Macknick).
- *Responding to Climate Change and the Global Land Crisis: REDD+, Market Transformation, and Low-Emissions Rural Development*, 368 Phil. Trans. R. Soc. B 20120167 (2013) (with D. Nepstad, C. Stickler, T. Bezerra, and A. Azevedo).
- *Genealogies of Risk: Searching for Safety, 1930s-1970s*, 39 ECOLOGY LAW QUARTERLY 895 (2012).
- *Law, Environment, and the Non-Dismal Social Sciences*, 8 ANNUAL REVIEW OF LAW & SOCIAL SCIENCE 183 (2012) (with Douglas A. Kysar & Jeffrey J. Rachlinski).
- *The Curious Case of Greening in Carbon Markets*, 41 ENVIRONMENTAL LAW 73 (2011) (with James Salzman).
- *Ways of Seeing in Environmental Law: How Deforestation Became an Object of Climate Governance*, 37 ECOLOGY LAW QUARTERLY 843 (2010), selected for publication in 43 LAND USE & ENVIRONMENTAL LAW REVIEW 295 (2012).

KRISTEN CARPENTER

- *The Jurisgenerative Moment in Indigenous Human Rights*, 102 CALIFORNIA LAW REVIEW (with A. Riley) (forthcoming 2014).
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- *Limiting Principles and Empowering Practices in American Indian Religious Freedoms*, 45 CONNECTICUT LAW REVIEW 387 (2012).
- *Property and Peoplehood, in THE POWER OF PEOPLEHOOD: REGENERATING INDIGENOUS NATIONS*, (J. Corntassel and T. Holm, eds.) (University of Texas Press) (forthcoming 2012).
- *Individual Religious Freedoms in Tribal Constitutional Law, in THE INDIAN CIVIL RIGHTS ACT AT FORTY*, (K. Carpenter, M. Fletcher, and A. Riley, eds.) (UCLA American Indian Studies Center Publications) (2012).
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JULIA GUARINO

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LAKSHMAN GURUSWAMY

- *Development and Dissemination of Clean Cookstoves: A Model Law for Developing Countries*, 24 COLORADO NATURAL RESOURCES, ENERGY & ENVIRONMENTAL LAW REVIEW 319 (2013).
- *Energy Poverty*, 36 ANNUAL REVIEW OF ENVIRONMENT & RESOURCES 139 (Nov. 2011).

DOUGLAS KENNEY

- *Cross-Boundary Water Transfers in the Colorado River Basin: A Review of Efforts and Issues Association with Marketing Water Across State Lines or Reservation Boundaries*, COLORADO RIVER GOVERNANCE INITIATIVE (2013).
- *The "Upper Basin Voluntary Demand Cap" as a Means of Mitigating Legal Uncertainty in the Colorado River Basin: Modeling Results*, COLORADO RIVER GOVERNANCE INITIATIVE (2013).
- "Equity and the Colorado River" in *Environmental Law* (2012) (with Jason Robison).
- "The Water-Energy Nexus: A Problem or Opportunity?" in *Colorado Water*, (Sep./Oct. 2012).
- *The Colorado River and the Inevitability of Institutional Change*, 32 PUBLIC LAND & RESOURCES LAW REVIEW 103 (2011) (with Sarah Bates, Anne Bensard, & John Berggren).
- *The Water-Energy Nexus in the Western United States* (2011) (ed. with Robert Wilkinson).
- *Relative Costs of New Water Supply Options for Front Range Cities: Phase 2 Report* (2011) (Report to the Colorado Water Conservation Board).
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SARAH KRAKOFF

- (with Jon-Daniel Lavallee), *Natural Resource Development and Indigenous Peoples, in CLIMATE CHANGE AND INDIGENOUS PEOPLES: THE SEARCH FOR LEGAL REMEDIES* 199 (Randall S. Abate ed., 2013).
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- *Inextricably Political: Race, Membership and Tribal Sovereignty*, 87 Washington Law Review 1041 (2012).
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- *American Indian Law: Cases And Commentary*, 2nd ed. (Thomson/West, 2010) (with Anderson, Berger & Frickey)

- *Planetary Identity Formation and the Relocalization of Environmental Law*, 64 Florida Law Review 87 (2011)
- *Radical Adaptation, Justice and American Indian Nations*, Environmental Justice 207, Volume 4, no. 4, (2011)

KATHRYN MUTZ

- *BMPs for Minimizing Environmental Impacts: A Resource for Communities, Government and Industry* (2011) (with K.L. Rice, L. Walker, A.C. Palomaki, and K.D. Yost). Society of Petroleum Engineers, SPE-147503, Annual Technical Conference and Exhibition held in Denver, Colorado, USA, 30 October–2 November 2011.

JULIE NANIA:

- Doug Kenney, Julie Nania, Logan Calihan Brandon Dittman, et. al. White Paper: *Cross-Boundary Water Transfers in the Colorado River Basin, A Review of Efforts and Issues Associated with Marketing Water Across State Lines or Reservation Boundaries*. Colorado River Governance Initiative. June 2013. Available at www.waterpolicy.info/docs/CrossJurisdictionalWaterMarketingCRBJune2013.pdf
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MARK SQUILLACE

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- *The Water Transfers Solution*, 42 ENVIRONMENTAL LAW REPORTER 10800 (2012).
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CHARLES WILKINSON

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UPCOMING EVENTS

→ THE 2014 MARTZ WINTER SYMPOSIUM: NATURAL RESOURCE INDUSTRIES AND THE SUSTAINABILITY CHALLENGE

FEBRUARY 27 - 28, 2014

WOLF LAW BUILDING, BOULDER, COLORADO

An International Conference hosted by The Getches-Wilkinson Center for Natural Resources, Energy, and the Environment and The Colorado Law Energy Innovation Initiative

For more than two decades, sustainability has gained currency as a broad organizing principle for efforts to develop and use energy, natural resources, and the environment in ways that allow society to meet its needs without compromising the ability of future generations to meet their needs. More recently, sustainability has been embraced by businesses across multiple sectors as part of a broader movement of corporate social responsibility. Hardly a day goes by without news of another corporate initiative on sustainability. Much of the enthusiasm for sustainability in the business community has been centered in “new economy” sectors and among retail giants such as Wal-Mart. Much of it has likewise been motivated by the realization that companies can actually save money by embracing more sustainable practices.

In the traditional natural resources industries, there is an increasing recognition of the considerable challenges facing efforts to operationalize this broad concept in the context of resource extraction and development. In the long run, the promise of sustainability will depend on the natural resource industries—those that provide energy, water, fiber, and raw materials for a growing population—translating this concept into action.

This conference will draw together people from different disciplines and backgrounds to discuss the specific challenges confronting efforts to operationalize sustainability in the context of natural resource industries broadly understood. The symposium will discuss the idea of sustainability and how it is taking shape in particular places and sectors; rigorously explore current efforts to re-organize certain business practices under the rubric of sustainability; and endeavor to identify practical, meaningful actions to deepen ongoing efforts to make sustainability a central tenet of our economic, social, and environmental future.

This will be the first annual Martz Winter Symposium hosted at the University of Colorado Law School. For more information visit www.colorado.edu/law/martzwinterSymposium.

→ GETCHES-WILKINSON CENTER INAUGURAL DISTINGUISHED LECTURE WITH BRUCE BABBITT

MARCH 17, 2014

WITTEMYER COURTROOM, WOLF LAW BUILDING, BOULDER, CO

→ CLYDE MARTZ SUMMER WATER CONFERENCE WATER AND AIR QUALITY ISSUES ASSOCIATED WITH THE OIL AND GAS BOOM: THE EVOLVING FRAMEWORK OF REGULATION AND MANAGEMENT

JUNE 5-6, 2014

WOLF LAW BUILDING, BOULDER, CO

Hosted by the Getches-Wilkinson Center, in conjunction with the Air-Water-Gas Sustainability Research Network.

For more information, visit: www.colorado.edu/law/martzsummerconference.

PAST EVENTS

→ EPA ADMINISTRATOR GINA MCCARTHY AT COLORADO LAW

On August 14, 2013, recently appointed EPA Administrator Gina McCarthy and Colorado Senator Mark Udall discussed President Obama's Climate Action Plan with the Colorado Law community. The event filled Wolf Law's Wittemeyer Courtroom, as well as an overflow room of nearly 100 more attendees. The event also featured a panel discussion with former Colorado Gov. Bill Ritter, director of the Center for the New Energy Economy at Colorado State University; Colorado Oil and Gas Association President Tisha Schuller; and GWC's director, Brad Udall. McCarthy emphasized the need for a bipartisan effort to address climate change in this country. In particular, she pointed to the need for Americans to lower greenhouse gas emissions.

Those who were unable to attend can watch the event online: www.youtube.com/watch?v=K0_KM2SOe1s.

→ CLYDE MARTZ SUMMER CONFERENCE: Arizona v. California at 50: The Legacy and Future of Governance, Reserved Rights, and Water Transfers

On August 15-16, 2013, the GWC hosted its annual conference on natural resource issues in the American West. The focus of this summer's conference was the 50th anniversary of the Supreme Court's historic decision in *Arizona v. California*, which has had far-reaching consequences for water rights on the Colorado River within both states. Tribal peoples, in particular, have been affected by the decision, as has the states' treatment of lower basin tributaries to the Colorado River. The decision will likely continue to affect many governance and water allocation issues into the future.

Those who were unable to attend can watch the event online: www.youtube.com/watch?v=fUE3vQ7GAIM&list=PLwFq2GL-i5UgmjicL4dwYZs2aaUcOLrqv.



→ **ENERGY INNOVATION SERIES AND 6TH ANNUAL SCHULTZ LECTURE:**

Tony Clark, Commissioner, Federal Energy Regulatory Commission

On October 22, 2013, the University of Colorado Law School and Silicon Flatirons Center for Law, Technology, and Entrepreneurship presented Tony Clark as our featured speaker for the Energy Innovation Series and the 6th Annual Schultz Lecture. Transitioning to a sustainable low-carbon energy system poses one of the great challenges of the 21st century. The Energy Innovation speaker series brings leaders from government, law, finance, industry, and academia to discuss key aspects of this challenge and some of the innovative approaches and solutions being fashioned across a range of sectors. The Schultz Lectureship Series on oil and gas, energy, and natural resources provides valuable information to policymakers, practitioners, business executives, and the academic community on emerging issues in the field. The lectureship fund was made possible by the generosity of John H. and Cynthia H. Schultz.



→ **THE AMERICAN INDIAN LAW PROGRAM AND GETCHES-WILKINSON CENTER FOR NATURAL RESOURCES, ENERGY & THE ENVIRONMENT PRESENT:**

Free, Prior And Informed Consent: Pathways For A New Millennium

On November 1, 2013, the Getches-Wilkinson Center and the American Indian Law Program hosted an all-day conference discussing the role of “free, prior, and informed consent” in national and international natural resources law and policy. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), along with treaties, instruments, and decisions of international law, recognizes that indigenous peoples have the right to give “free, prior, and informed consent” to legislation and development affecting their lands, natural resources, and other interests, and to receive remedies for losses of property taken without such consent. With approximately 150 nations, including the United States, endorsing the UNDRIP, this requirement gives rise to emerging standards, obligations, and opportunities – and creates considerable uncertainty – for governments, industries, and investors who work with indigenous peoples.

In this conference, the very first to address “FPIC” on a global and national scale, Colorado Law convened leading experts to discuss legal standards, best practices, and new partnerships with respect to FPIC implementation in natural resource development, climate change, and cultural heritage matters. It was a cutting-edge, high-level discussion of interest to attorneys, indigenous nations, governmental agencies, NGOs, environmental advocates, institutional investors, and industry leaders in energy, natural resources, pharmaceuticals, biotechnology and others.

Highlights included an opening keynote address by U.S. Assistant Secretary for Indian Affairs Kevin Washburn and an evening book lecture and signing by human rights advocate and author Walter Echo-Hawk.

STUDENT GROUP UPDATES

{ BY KELSEY PETERSON }

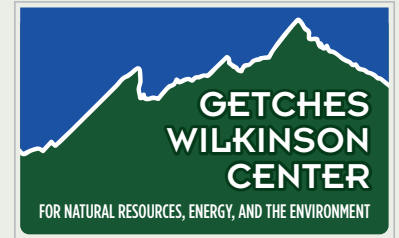
→ **ENVIRONMENTAL LAW SOCIETY**

The Environmental Law Society (ELS) started the year off strong with a group hike up Green Mountain during Orientation and a good turnout to the first organizational meeting. For the fall semester, we worked on planning a Private Sector Career Panel, planning outdoor activities and social hours, and jumpstarting the Public Comment Project. Professor Mark Squillace is back leading the Public Comment Project this year and we are looking forward to working on stream access issues and anything else the group decides to tackle. Looking forward to the spring semester, we are planning more career panels, group activities and speakers, and working on sending a group to the Public Interest Environmental Law Conference (PIELC) in Eugene, OR in March. Overall, ELS is looking forward to a strong year with a solid executive board, great faculty support, and a bunch of enthusiastic 1Ls! If you are an ELS alum or would like to get involved with ELS activities, please contact us at coenvlawsoc@gmail.com.

→ **NATIVE AMERICAN LAW STUDENTS ASSOCIATION**

The Native American Law Students Association (NALSA) has a lot on its plate this year. We kicked it off with a Welcome Potluck at Professor Collins’ house in September, then launched into a full plate of events, speakers and activities. On October 10, NALSA co-sponsored a presentation on Tribal Whaling with the Dean’s Committee on Diversity and Inclusiveness. NALSA also worked closely with the American Indian Law Program (AILP) and the Getches-Wilkinson Center to support the AILP/GWC Conference on Free, Prior, and Informed Consent on November 1. In between the officially planned events, we are planning social hours and help sessions to build NALSA into a strong community and support system for its members. If you are a NALSA alum or would like to get involved with NALSA activities, please contact culawnalsa@gmail.com.

*Serving the people of the
American West, the nation,
and the world through creative,
interdisciplinary research,
bold, inclusive teaching, and
innovative problem solving
in order to further true
sustainability for our lands,
waters, and environment.*



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