



GETCHES-WILKINSON CENTER

FOR NATURAL RESOURCES, ENERGY, AND THE ENVIRONMENT

Newsletter | Fall 2018

FEATURE



GWC Welcomes New Getches-Green Clinic Director

This summer, Colorado Law welcomed Sean Helle as an associate clinical professor to lead the Getches-Green Natural Resources and Environmental Law Clinic. He will also serve on the GWC Board.

Founded in 1978, the Getches-Green Clinic is one of the country's first environmental law clinics. Students engage in litigation and related advocacy efforts, most commonly on behalf of national or local environmental groups. Students draft pleadings and briefs, counsel their clients, develop case theories and legal strategies, participate in settlement negotiations, and occasionally, present oral arguments in court.

Before joining Colorado Law, Helle worked as a litigator and lobbyist at Earthjustice's Bozeman, Montana, office; a staff attorney at the Southern Environmental Law Center; an associate at Arnold & Porter Kaye Scholer LLP; and a lecturer at the University of Chicago's Abrams Environmental Law Clinic. He also served as a law clerk to Judge Diana E. Murphy on the U.S. Court of Appeals for the 8th Circuit and Judge Ellen Segal Huvelle on the U.S. District Court for the District of Columbia.

Helle grew up in Iowa and graduated from the University of Iowa College of Law in 2004. While at Earthjustice, Helle was involved in the successful challenge of the National Park Service decision to expanded snowmobile use in Yellowstone National Park, in addition to challenges to U.S. Fish and Wildlife Service decisions to strip Endangered Species Act protections from the gray wolf and grizzly bear in the Northern Rockies.

Helle's work on public lands, in addition to his experience litigating cases under the Endangered Species Act and the National Environmental Policy Act, will guide the focus of the Getches-Green Clinic. Helle has explored several projects for the 2018-19 academic year with regional and national environmental groups with a focus on protecting public lands.

The Getches-Wilkinson Center welcomes Helle and looks forward to a continued collaboration between the Getches-Green Clinic and the GWC.

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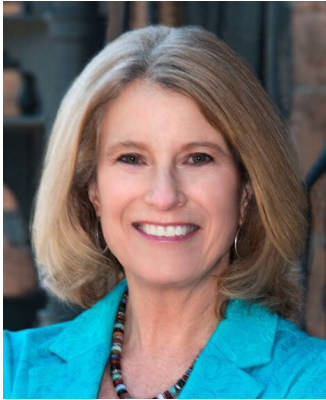
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A Message from the Executive Director

by Alice Madden ('89)



Enjoying the spectacular fall in Colorado reminds us daily of why we work so hard to protect our precious Western landscapes. Those efforts were recently recognized, and Colorado Law's environmental law program is now ranked fifth in the nation by U.S. News & World Report. In this publication, we are happy to share news about our programs, curriculum, and research that continue to advance our longstanding reputation for excellence.

40 Years of Environmental Clinical Work

Founded in 1978, the Getches-Green Natural Resources and Environmental Law Clinic is one of the country's first environmental law clinics. You can read more about how Sean Helle is now leading the clinic on page 1. His initial focus will be on protecting public lands, which will provide our students experience with both federal administrative processes and litigation in federal court.

30 Years of On-the-Ground Learning

In 1988, Professor Emeritus Charles Wilkinson started the Advanced Natural Resources Seminar, which examines issues facing a specific geographic area and culminates in a field trip. Seminar classes have studied and traveled to the Pacific Northwest, the Colorado Plateau, the Greater Yellowstone ecosystem, and the Grand Canyon. I remember my 1989 seminar trip to Yellowstone as a 3L like it was yesterday. It helped shape my love of the West, fascination with the challenges of managing our natural resources, and sealed my commitment to public service. I was lucky enough to teach the 2018 spring seminar, which included leading 12 law students on a trip through the Colorado Plateau and meeting with leaders who affect policy in the Four Corners region every day.

The 2019 seminar, The Law of the Colorado River, will be taught by Professor Sarah Krakoff. Four months of intensive study will culminate in a two-week float through the Grand Canyon portion of the Colorado River. These unique trips are simply life-changing.

Something New

In partnership with CU's Masters of the Environment Program, Professor Mark Squillace is co-teaching a new May-semester course focused on the impacts of climate change on the Mont Blanc region. Students will spend two weeks in the classroom learning about the history, culture, and ecology of the Mont Blanc region before venturing to the Chamonix, France, area for 10 days of field work and meetings with local officials.

This year also marked the launch of our GWC Student Fellows program. A select group of students work directly with their faculty mentors on special projects, gaining unique work experience. Tarah Bailey ('18) is our new GWC Graduate Fellow.

Convening Excellence

On November 9, we will host the inaugural Ruth Wright Distinguished Lecture in Natural Resources with a talk by Lisa Heinzerling, the Justice William J. Brennan Jr. Professor of Law at the Georgetown University Law Center. Her talk is titled, "Cost-Nothing Analysis: Environmental Economics in the Age of Trump," and she will work with the editors of the Colorado Natural Resources, Energy, & Environmental Law Review to publish a related article.

Additionally, the Schultz Lectureship in Energy will be presented January 24, 2019, by Jody Freeman, the Archibald Cox Professor of Law and founding director of the Harvard Law School Environmental and Energy Law Program.

2019 Clyde Martz Winter Symposium Featuring Secretary Sally Jewell

From February 28 to March 1, 2019, the GWC will convene an array of national experts from Harvard, Cornell, Duke, Vanderbilt, Georgetown, UC Berkeley, UCLA, Oregon, Texas, and Washington to discuss "The Changing Landscape of Public Lands." Speakers will address a broad spectrum of topics including constitutional law, regulatory innovation, energy, wildlife, intergenerational justice, and tribal concerns. Several speakers have agreed to work with the editors of the Colorado Law Review to contribute articles generated from the symposium.

40 Years of Summer Conferences Addressing Natural Resources

Over its rich history, our summer conference has addressed many different natural resource issues. In more recent years, it largely focused on water law while the Martz Symposium touched on a wide variety of emerging issues concerning public lands, natural resources, energy, and the

environment. Keep an eye out for news about our June 2019 celebration of this milestone.

Thanks To You!

And, of course, all of these efforts are made possible by the support we receive from people like you. Your tax-deductible donation can be directed to support programs like the Ruth Wright Distinguished Lecture, student field trips, our conferences, or our student fellows.

We hope you enjoy the GWC newsletter and would love to hear from you. Please do not hesitate to reach out. To stay informed throughout the year, please check out the center's website and our new blog, *From the Baseline*, which includes blog posts written by our faculty, senior fellows, and select students. If you would like to submit a piece for our blog, let me know. You can reach me at alice.madden@colorado.edu or 303-492-1288.

A Message from the Advisory Board Chair

by Scott Miller ('98)



Natural resources, energy, and environmental law and policy seem to be changing faster and more dramatically than in many decades. From energy markets to the regulatory agenda, and from the judiciary to our public lands themselves, the changes are more than one person can keep up with.

Nowhere is this more apparent than the dramatic transformation of the energy sector. After dominating the national electric power market for decades, coal continues its precipitous decline, and nuclear is also beginning to succumb to the strength of natural gas and renewables. According to the International Energy Agency's *World Energy Outlook 2017*, the U.S. is projected to "match the highest sustained period of oil output growth by a single country in the history of oil markets."

It was not long ago that "energy independence" seemed an unattainable slogan, but with it now well within reach, "energy dominance" is the administration's new aspiration. For example, the policies of energy dominance are dramatically shifting the Bureau of Land Management's focus to

increasing fossil fuel extraction from our public lands. Inadvertently released documents by the Department of the Interior recently revealed that energy and mineral development was an important part of its strategy in advocating for President Trump to revoke millions of acres of national monuments—the largest rollback of public land protections in history.

In one of the shortest and most controversial tenures of an EPA administrator, Scott Pruitt initiated a deregulatory agenda that has dominated the news. The White House Council on Environmental Quality is proposing the first major revisions to the National Environmental Policy Act regulations in 40 years. Major regulatory revisions to the Endangered Species Act are underway too, and bills to overhaul the act itself are pending in the House and Senate.

Between the flurry of new regulations promulgated at the end of the Obama administration and the flurry of efforts to dismantle those same regulations well underway in the current administration, the federal courts' dockets are bursting with challenges and defenses. The BLM and EPA's efforts to roll back regulations to reduce methane waste have already led to a dizzying array of cases and differing judicial opinions.

Meanwhile, President Trump is successfully shifting the judiciary through a Senate unshackled from the judicial filibuster and the "blue slip" tradition of deferring to the opinions of home-state senators. He has already appointed nearly triple the number of judges to the courts of appeals as President Obama did by this point in his first term. The Senate worked through its traditional August recess to focus on moving more nominations, and is on track to work more days than any Senate in nearly 50 years.

With so much unprecedented change, the Getches-Wilkinson Center Advisory Council and its array of experts in natural resources, energy, and environmental law and policy helps the GWC keep up with it all so it can continue to provide critical information, analyses, discussion, and facilitation to keep the legal community and the public up to speed on these and many other important issues.

Inaugural Ruth Wright Distinguished Lecture in Natural Resources

Since 2014, the Getches-Wilkinson Center has hosted some of the best environmental minds addressing topics ranging from public lands and watershed sustainability to climate litigation through our annual distinguished lecture.

Colorado Law is excited to announce a new endowment to support the distinguished lecture so that we can bring this important event to our community for years to come. This endowment was launched through a generous gift from Ruth Wright ('72). We are thrilled to be able to honor her inspiring legacy as a leader in western natural resources, land conservation, and environmental policy and advocacy.

On November 9, 2018, the GWC will present the inaugural Ruth Wright Distinguished Lecture in Natural Resources. Ruth Wright has had an illustrious career as a legislator, environmentalist, and historian: a lifetime of connecting



Ruth Wright

Coloradans with the land and protecting our most precious western natural resource—water. Wright graduated cum laude from Marquette University in 1950 with a bachelor's of philosophy. She moved overseas after college, living in Germany, Austria, and Saudi Arabia. Along the way, she married her husband, Ken, in 1954.

The pair eventually moved back to the States, where, as a citizen activist, Wright

led efforts to preserve Boulder's open space and limit the height of buildings to 55 feet to protect enjoyment of the unique landscape for the ages.

Wanting to optimize her policy and advocacy work, Wright began her law studies. She graduated from Colorado Law in 1972, but not with the intent of joining a law firm.

"A major reason for getting a law degree was to become a more effective environmentalist," she said. "So I never really 'practiced' law."

Wright nonetheless often applied her legal education, such as when she wrote an amicus brief for the League of Women Voters in support of the constitutionality of in-stream flows. Her time at Colorado Law also drove her toward public service, and she later served on the Colorado Water Control Commission and the State Health Board.

After enjoying many successes, Wright decided to take the next step and try her hand in the legislature. She was elected to the Colorado House of Representatives in 1980, where she represented Boulder until 1994. She was the second woman ever to become the House Minority Leader, a role she held from 1986 until 1992.

"A major reason for getting a law degree was to become a more effective environmentalist."
—Ruth Wright

While serving in the House, Wright continued to be a strategic champion for the environment. Over the years she has received well-deserved recognition from such groups as the Colorado Wildlife Foundation, the ACLU, the Sierra Club, and Colorado Open Lands.

Georgetown Law Professor Lisa Heinzerling will present the first lecture in this now-endowed series. Professor Heinzerling is a nationally renowned environmental lawyer who held a high-level position at the EPA and has been a visiting professor at Harvard, Vermont, and Yale law schools. She—and all future lecturers—will work with the editors of our *Natural Resources, Energy and Environmental Law Review* to publish a related article.

Please join us Friday, November 9 as we celebrate the future of the distinguished lecture and the amazing legacy of Ruth Wright.

Support the Ruth Wright Distinguished Lecture in Natural Resources

The GWC is able to launch the endowed lecture through the generous support of Ruth Wright. In order to keep up this powerful momentum, we will be raising additional funds to make sure the series is sustainable for years to come. We hope you will consider donating in honor of Ruth Wright's environmental legacy across Colorado and beyond.

Make a gift online at giving.cu.edu/GWC or contact Shaun LaBarre, GWC Program Manager at 303-492-1286 or shaun.labarre@colorado.edu.

Inaugural Ruth Wright Distinguished Lecture in Natural Resources



Cost-Nothing Analysis: Environmental Economics in the Age of Trump

Professor Lisa Heinzerling

Friday, November 9

5:30 p.m.

Wolf Law Building, Wittemyer Courtroom

This event is free and open to the public. A celebratory reception will follow in Boettcher Hall for all registered attendees.

Cost-benefit analysis has always resisted environmental protection. For this reason, presidents since Nixon have used cost-benefit analysis to stifle environmentally protective regulation. The present administration has taken this practice one step further by ignoring or eliminating benefits entirely in many instances—thus ushering in an era of cost-nothing analysis. Cost-nothing analysis assumes it costs us nothing to degrade the environment, even as the evidence grows that it may cost us everything.

More information available at
getches-wilkinsoncenter.cu.law

Professor Sarah Krakoff Recognized with CU's Highest Faculty Honor



The University of Colorado Boulder named Professor Krakoff the 2018 recipient of the Hazel Barnes Prize, the most distinguished award a faculty member can receive from the university. Since 1992, the Hazel Barnes Prize has been awarded each year to a CU Boulder faculty member who best exemplifies the enriching interrelationship between teaching and research and whose work has had a significant impact on students, faculty, colleagues, and the university.

Professor Krakoff also received the Chase Faculty Community Service Award, administered by the Office of Academic Affairs and sponsored by an endowment from the Chase Corporation through the CU Foundation.

Professor Krakoff is the Moses Lasky Professor of Law at Colorado Law. Her areas of expertise include American Indian law, natural resources and public land law, and environmental justice.

Assisting indigenous communities remains central to her work and scholarship. She leads Colorado Law's Acequia Assistance Project, which offers free legal services for low-income farmers in Colorado's San Luis

Valley. Her seminar, The Law of the Colorado River, concludes with a rafting trip on the Colorado River through the Grand Canyon.

This fall, she is the Natural Resources Law Institute Distinguished Visitor at Lewis & Clark Law School, where she will sit in on classes, meet with student organizations and faculty, and deliver a public lecture, "The Roots of Environmental Injustice and the Limits of Environmental Law."

Professor Justin Pidot Visits Colorado Law



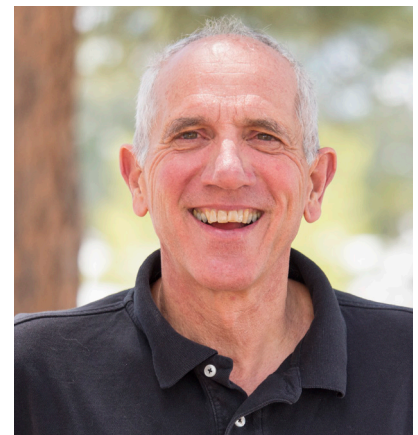
The GWC and Colorado Law faculty are excited to welcome Justin Pidot to campus this fall.

Professor Pidot is a dynamic and energetic scholar who is engaged in a variety of efforts to protect public lands and ensure environmental protection.

He graduated with high honors from Wesleyan University before attending Stanford Law School, where he graduated with distinction and was editor-in-chief of the Stanford Environmental Law Journal. Professor Pidot served as the deputy solicitor for land resources for the Department of the Interior during the Obama administration. He also clerked for Judge Judith W. Rogers of the U.S.

Court of Appeals for the District of Columbia Circuit. Prior to joining the University of Denver faculty, he was an appellate litigator at the Environment and Natural Resources Division of the U.S. Department of Justice, where he presented argument in more than a dozen federal appellate cases and acted as the staff attorney on two cases before the U.S. Supreme Court. Professor Pidot also completed a fellowship at the Georgetown Environmental Law & Policy Institute. His scholarship and teaching focus on environmental law, natural resources law, and federal courts.

New Articles Forthcoming from Professor Mark Squillace



Professor Mark Squillace has had a busy summer, having completed two articles that have been in progress for several years. He expects to submit both articles for possible publication later this year.

The first is tentatively titled "Restoring the Public Interest in Western Water Law." With the notable exception of Colorado, the positive law in all other Western states expressly requires consideration of the public interest in the allocation of water resources.

Surprisingly, however, many states effectively ignore the requirement and few address the public interest routinely, as appears to be required by law. The article begins with an extended discussion of the meaning of the phrase “public interest” and why its application is critical to the protection of the public values associated with water.

It then examines how 12 Western states address the public interest in administering their water resources, finding that many states fall far short of what appears to have been intended when public interest requirements were introduced into the law. This leads to a discussion of how states might restore consideration of public values without unduly impact private water rights.

Although the article focuses on the water law of Western states, it recognizes that public interest standards are ubiquitous in the water laws of many other states and many countries around the world, and the recommendation that the article makes are thus of importance well beyond the American West.

The second article, tentatively titled “Rethinking Public Land Use Planning,” looks at the expensive, time-consuming, and cumbersome nature of public land use planning, especially by the primary multiple use agencies, the U.S. Forest Service and the Bureau of Land Management. A recent BLM director testified before the Senate that it takes, on average, eight years to produce a land use plan. That is just too long, Squillace argues, especially if the agencies are committed to adaptive management, which seems a particularly important planning device in the face of our changing climate. The article proposes a different framework for planning that breaks the decision down into smaller chunks and avoids premature evaluation of matters that are not sufficiently ripe for consideration. This “layered planning” approach has the potential to streamline the planning process

without sacrificing substantive analysis of the key issues, even as it allows for more meaningful engagement between the agency and the public.

This fall, Professor Squillace will teach a courseload that includes Legislation and Regulation for first-year law students and Environmental Decision-making—a course that is cross-listed with both the law school and the Environmental Studies Program. Pre-enrollment for the latter course is at a record level this year with 22 students from each program.

Come spring, he will be off to the Melbourne Law School in Australia where he will be on sabbatical and working on a new book that will describe how interested parties can effectively engage their government to achieve better environmental decisions. The book, which will be written for a sophisticated lay audience, will be designed to give readers a comprehensive understanding of how the administrative state works and how people can influence government decisions in a meaningful and productive way.

conservation, resource preservation, renewable energy solutions, and protecting indigenous rights.

Last summer, Tarah served as a law clerk for the Native American Rights Fund (NARF) where she focused her work on protecting tribal water rights and defending the Bears Ears National Monument. She stayed on as a legal extern with NARF through the fall semester while she finished her last year in law school.

Prior to that, Tarah interned for Judge Fox at the Colorado Court of Appeals. During law school, she served as the Class of 2018 vice president and was a member of the Native American Law Students Association. She was also a staff writer on the *Natural Resources, Energy & Environmental Law Review* and her student note on meaningful consultation with Indian tribes was published in the law review’s Winter 2018 edition. She earned a Bachelor of Arts in philosophy from the University of Colorado.

This semester, Tarah is working with Professor Sarah Krakoff researching several public land law issues in support of an amicus brief regarding the Bears Ears National Monument litigation. Tarah is excited to put her legal education to good use in her new position, and we are thrilled to welcome her!

Tarah Bailey Joins GWC as Graduate Fellow



Tarah Bailey graduated from Colorado Law in May 2018. She focused her studies on natural resources and American Indian law, and is passionate about environmental

Acequia Project

Student-Attorney Spotlight

Law students Gregor MacGregor ('19) and Leah Fugere ('20) led the Acequia Project through its sixth year of assisting low-income farmers in the San Luis Valley with water rights protection.

For the last two years, Gregor has worked with volunteer attorney Kelcey Nichols to help trace the water rights of the Montez Ditch, which runs through San Luis, the oldest town in Colorado. Leah joined the project and the Montez Ditch team during the fall of her first year. Under the supervision of Professor Sarah Krakoff, the project's faculty director, Leah and Gregor worked together to organize water law trainings for students and assigned teams of student-attorneys and pro bono water lawyers to new clients.

Gregor grew up in Boulder, Colorado, and is participating in an Army program to transition to the JAG Corps. His extended family includes farmers in the Arkansas Valley, including Colorado water expert Frank Milenski. That family legacy drew him to law school and the Acequia Project.

"This is a great way to assist a distinct agricultural community to protect its heritage," he said. "Being welcomed into the valley by incredible people to practice water law is the best experience I could have hoped for from law school."



Fugere and Goodson conduct title research in the Costilla County Clerk and Recorder's Office, researching property documents dating back to 1866.



Charles Goodson ('20) (back, center), Leah Fugere (right), and Gregor MacGregor (front) meet with Charlie Jacquez of the Montez Ditch in San Luis to discuss progress on the Montez case.

Maymester Course in Chamonix, France

Colorado Law and CU's Masters of the Environment Program in Environmental Studies will co-host a three-credit Maymester course focused on the impacts of climate change on the Mont Blanc ecoregion. Mont Blanc is

Europe's highest peak, topping out at 15,781 feet.



CU will partner with the Chamonix-based non-governmental research organization CREA-Mont Blanc (the Research Center for Alpine Ecosystems), a scientific and educational organization working

on the ecology of mountain ecosystems. Students will visit Chamonix's high-altitude research sites and learn about the efforts to document the impacts from climate change on and around Mont Blanc. The course begins in mid-May with two weeks in the classroom in Boulder learning about the history, culture, and ecology of the Mont Blanc region before venturing to Chamonix and its environs for eight to 10 days of field work and meetings with local officials.

To learn more about this exciting new course for which you can receive law school credit, contact Professor Mark Squillace at mark.squillace@colorado.edu.

Governors' Climate and Forests Task Force

by Lauren Mulhern, Graduate Research Assistant, and Katie Krupnick, GCF Intern

The Governors' Climate and Forests (GCF) Task Force has had a busy and productive year, attending meetings in Oslo, Norway; hosting the 10th Anniversary GCF Task Force Annual Meeting in San Francisco; and continuing to facilitate partnerships between the 38 states and provinces that are part of the global GCF network.

Oslo Tropical Forest Forum

From June 27-28, GCF staff, governors, and delegates participated in the biannual Oslo Tropical Forest Forum (OTFF) in Oslo, Norway. Five hundred participants attended, including high-level officials from tropical forest countries, NGOs, the private sector, indigenous peoples' representatives, and academia. This year's conference focused on the successes and remaining challenges in the 10 years since Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (REDD+) was incorporated into international negotiations surrounding climate change. Professor William Boyd moderated a panel that featured partnerships between subnational governments from Brazil, Indonesia, the U.S., private sector actors, and indigenous communities. The GCF held two side events to further the work of its Global Steering Committee on Agricultural Production and Tropical Deforestation and the Indigenous Peoples and Local Communities Working Group. Colorado Law Dean James Anaya also participated, providing expertise to the indigenous peoples working group meeting.

GCF Task Force Annual Meeting Focuses on Power of Partnerships

The GCF Task Force 2018 Annual Meeting, held September 10-12 in San Francisco, was hosted by California and Mexican Member States Yucatán, Quintana Roo, and Campeche. Governors, delegates, and stakeholders came together to discuss progress in their jurisdictions.

In keeping with the meeting's focus on the power of partnerships, the highlight was a unanimous endorsement by all GCF states and provinces and representative indigenous and local community groups and NGOs of the world's first set of guiding principles that outline ways in which subnational governments can better align with indigenous peoples and local communities by GCF states and provinces, representative indigenous and local community groups, and NGOs.



Jason Gray (right) and William Boyd (center), on behalf of the 2018 GCF Task Force co-chair California, hand delivering an annual invitation to Governor Mandacan of West Papua.

Called the Guiding Principles for Collaboration and Partnership Between Subnational Governments, Indigenous Peoples and Local Communities, the document reinforces that GCF Task Force states and provinces recognize that indigenous peoples and local, forest-based communities often lead the way in building and maintaining successful, territorial approaches to forest conservation and low-emissions development. At the same time, indigenous and local community leaders recognize that working with governments at all levels is critical in their efforts to secure territorial and human rights and benefits for their communities from their forest conservation and low emissions development leadership.

The GCF's Indigenous Peoples and Local Communities (IP/LC) Working Group led the development of these principles over the last two years. This working group was formed at the 2016 Annual Meeting with the goal of developing concrete strategies for partnerships and collaboration between indigenous peoples, local communities, and subnational governments in the effort to reduce deforestation and promote low emissions development.

The group's inaugural meeting in August 2017 involved 34 leaders who gathered on the Yurok tribal lands in Klamath, California, to draft a strategy for collective action that incorporated efforts for forest conservation, climate mitigation, and recognition of indigenous peoples' rights and entitlement to participation in subnational decision-making and climate finance. This strategy was crafted into a set of principles which were widely socialized and presented for a vote of endorsement in the full assembly of the GCF Task Force 2018 Annual Meeting.

While a unanimous endorsement of the principles is a win across the GCF, they have also been endorsed by indigenous peoples' groups around the world including the Alliance of Indigenous Peoples of the Archipelago, the Coordinator of Indigenous Organizations of the Amazon River Basin, the Acre Association of Indigenous Teachers, Brazil's Association of Indigenous Peoples, Metareila, the Amazon Indigenous Peoples Organization, the Mesoamerican Alliance of Peoples and Forests, the Yurok Tribe, and the Confederation of Amazonian Nationalities of Peru. Going forward, these principles will provide a platform for deepening governmental-community level partnerships across the GCF Task Force.



Dean James Anaya and Victoria Tauli-Corpuz, the former and current United Nations Special Rapporteur on the Rights of Indigenous Peoples.

While governmental-indigenous-community level partnerships were the key outcome and focus of the 2018 Annual Meeting, this meeting also provided an opportunity for the GCF's other working groups to come together. The Global Steering Committee on Agricultural Production and Tropical Deforestation comprises representatives from foundations, agricultural supply chain companies, NGOs, commodity roundtables, and GCF delegates from Brazil, Colombia, Indonesia, Mexico, and Peru. Its goal is to capitalize on synergies between corporate supply chain pledges, sustainability certification systems, and jurisdictional programs to reduce deforestation. Recognizing the impact of agricultural production on the forest frontier, GCF states and provincial governments have advanced ambitious partnerships across 15 jurisdictions to collaborate with the private sector in efforts to address commodity driven deforestation.

Visit gctff.org to learn more about the GCF Task Force 2018 Annual Meeting.

The GCF is also always looking for motivated legal interns. Contact Debra Haffey at debra.haffey@colorado.edu.



Francisca Arara and Beto Borges at a GCF side event at the OTFF for the Global Steering Committee on Agricultural Production and Tropical Deforestation.



A panel at the OTFF that featured partnerships between subnational governments from Brazil, Indonesia, and the U.S., private sector actors, and indigenous communities.

Food for His Children: A Podcast About U.S. v. Washington

by Eric Dude ('19)

The Getches-Wilkinson Center is proud to announce the launch of a student-produced podcast. The first series, *Food for His Children*, will tell the story of how a salmon fishing rights case reflects Pacific Northwest tribes' struggle—over the course of nearly 40 years—to reassert their tribal sovereignty by insisting the states uphold U.S. treaty promises. On June 11, 2018, the Supreme Court decided *Washington v. United States*; colloquially known as the culverts case. The opinion is one sentence long: “The judgment is affirmed by an equally divided court.” An anticlimactic decision in a case that has been percolating through the federal court system since just before President Nixon's resignation in 1974.

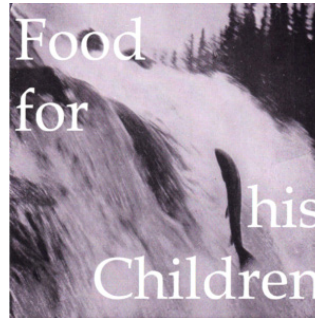
Colorado Law Distinguished Professor Emeritus Charles Wilkinson describes the culverts case as, “a dream case! . . . You can't pass up an opportunity like this for an extraordinary doctrine that's so good for the tribes, so good for the rivers, so good for the salmon, so good for every person in the Northwest that you've just got to bring it.”

This hugely important case deserves the kind of attention given to other high-impact cases this term. The idea to create the podcast was born out of the realization that tribal sovereignty victories—and losses—are often buried beneath other headline-grabbing struggles for justice in this country.

We do not intend to address our show to only a legally trained audience. Our hope is to focus public attention on the legal history of Europeans' colonization of American indigenous people. The sovereignty movement in Indian Country is uniquely entangled with the law. To understand the movement requires an understanding of the legal doctrine. To understand the law requires an understanding of the waves of federal Indian policy which have shaped Indian Country over the last two hundred years. This podcast aims to provide that bridge.

Over the course of six episodes we will break down this case into all of its constituent parts. We will trace the legal underpinnings of our nation's own colonialism back to early European contact and the “doctrine of discovery” that gave rise to the paternalistic plenary power doctrine. We will look at the radical movement to assert tribal sovereignty on the riverbanks of the Pacific Northwest. And we will explain how all of this is captured by a case about salmon

fishing.



The June 11 decision involved only a small aspect of this sprawling case: whether the state of Washington had violated a series of treaties between the U.S. and a number of tribes by building and maintaining barrier culverts in critical salmon streams—land that was, for most of human

history, rich fishing grounds for a number of tribes. Simply put, a culvert allows water to pass underneath a roadway. But it often makes it impossible for salmon to pass upstream during spawning season.

That is a problem for the tribes and, consequently, the U.S. In 1855, Isaac Stevens, governor of the then-territory of Washington, negotiated a number of treaties with the Tribes whose ancestral land was quite rapidly being occupied by white settlers from the east coast. Almost every Tribe bargained for a guarantee that cessation of their land would not mean diminishment of their right to fish where they had always done so: “The right of taking fish at usual and accustomed grounds and stations . . . in common with all citizens of the United States.”

While each treaty may vary, that sentence is ubiquitous.

As one leader of the radical 1960s and 70s fishing rights movement, Nisqually tribal member Billy Frank, Jr., said, “We'll die for that salmon.”

Despite the relative complexity of other provisions in the Stevens Treaties, that seemingly straightforward promise has made it before the Supreme Court on three separate occasions. First in 1905, the *United States v. Winans* case confirmed that the fishing rights were not subordinate to private or state interests: the tribes could not be excluded from their traditional fishing grounds merely because a private party had acquired title to the land.

Then, in 1979's *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, the Court decided that the treaties guaranteed the tribes up to half of the annual salmon harvest on off-reservation watersheds. Hinted at, but never directly addressed, was an ancillary issue: did the treaties impose a duty on the state of Washington to refrain from materially diminishing the annual harvest? The tribes have always thought so.

The tribes of the Northwest have been fighting for full recognition of their fishing rights for as long as the Stevens Treaties have existed. Before litigation began, tribal activists asserted their rights on the rivers of the Northwest.

Billy Frank, Jr. was arrested by state police more than 50 times in the 1960s and 70s. He and other tribal activists felt the state was violating its treaty obligation not only by excluding tribal members from their historical fishing grounds, but also by allowing the salmon run to significantly diminish over time.

The state—and many of its citizens, including commercial fishermen whose livelihoods depended on being able to take a significant amount of fish from these runs—felt the Tribes were asking too much. It was in that heated and at times violent environment that the culverts case began.

Beyond hard-bargained rights embedded in the Stevens Treaties, the outcome of this case implicates a broader, more nebulous question: what is the status of tribal sovereignty today? Federal Indian law jurisprudence is convoluted at best, and the relationship between tribal and state sovereignty might very well be the most difficult doctrinal developments to predict. Consequently, this case was closely followed by tribes across the country, and lawyers who practice in the field.

Something we hope the podcast will convey is that driving these important legal developments is a strongly felt cultural connection to salmon fishing. In many ways, this is not our story to tell. So my co-host Rachel Calvert ('19) and I will share this story through the words of those who have lived it, with the help of our associate producers Marisa Hazell ('19) and Shelby Krantz ('19). From the attorneys who argued this case to the tribal members whose rights were at stake, we hope our listeners will be as deeply captivated by their stories as we are.

The first of the series will be released this fall, sponsored by the Getches-Wilkinson Center and through a partnership with the University of Colorado's Radio 1190. Stay tuned!

This article first appeared in the GWC Blog-From the Baseline. See more posts at getches-wilkinsoncenter.cu.law/blog



Calvert and Dude in the studio.

Western Water Policy Program

The Colorado River remains a major focus area of the GWC. Recently, one of the most notable features of this work has been its diversity. In addition to the Law of the River-Advance Natural Resource Seminar (featured in the Fall 2017 GWC Newsletter), other recent scholarship on this topic includes a book chapter produced for the SERIDAS project (Sustainability of Engineered Rivers in Arid Lands) and the report on “aridification” produced by the Colorado River Research Group (CRRG).

As part of the SERIDAS project, the GWC’s Western Water Policy Director Doug Kenney spent a week as a guest at the Rockefeller Foundation’s Bellagio Center at Lake Como, Italy, where the Colorado was one of several rivers internationally chosen for analysis. Meanwhile, the historically low snowmelt this spring brought intense media attention to the CRRG aridification report, leading to public radio and TV features:

When is a Drought not Drought? Drought, Aridification, and the “New Normal”, a publication of the Colorado River Research Group bit.ly/CORiverResearch

Colorado Public Radio, July 5, 2018: Colorado Matters welcomed Doug Kenney to discuss aridification bit.ly/COMatters

The Colorado River work has also been the catalyst for bridge-building between the GWC and a broader coalition of academics, professionals, and water managers throughout the region.

One notable example is the recently completed Colorado River “science agenda” effort. That project, a joint effort of the University of Arizona and the GWC, took the form of two workshops that identified themes and issues where the interests of Colorado River researchers, decision-makers, and other professionals most productively overlap.

We featured a similar mix of expertise at our June water conference, focused on groundwater use and management in the Southwest (see getches-wilkinsoncenter.cu.law/2018/06/08/2018-gwc-summer-conference/), which drew 168 highly engaged participants.

Student Group Updates

Environmental Law Society

ELS is excited to welcome the 1L class at New Student Orientation! We took new members on a hike to the Flatirons in early September. This year, in addition to lunch-time lectures and networking events, ELS will partner with CU Boulder's Environmental Center to help bring more sustainability initiatives to the law school, including a plastics-reduction campaign. As always, students remain eager to hear from individuals working in the field of environmental law, so please email us at els@colorado.edu if you are interested in connecting with students or participating in one of ELS's many events during the school year.

Colorado Natural Resources, Energy, and Environmental Law Review

The Colorado Natural Resources, Energy, & Environmental Law Review (ELR) will celebrate its 30th anniversary this school year. In honor of our roots as an international environmental journal, our first issue will feature articles by authors from Africa, Europe, and South America.

ELR welcomed 19 new staff writers from the classes of 2019 and 2020: Colleen Adams, Jordan Becker, Alan Bickings, Hannah Cope, Luke Davis, Robert DeMarco, Danika Douglas, Daniel Franz, Allie Galvan, Griffin Hay, Erin Hogan-Freemole, Cody James, Hunter Knapp, Stone MacBeth, Joshua Naftulin, Abby Parker, Jessica Serrano, Katherine Struthers, Holly Tokar, and Leah Travis. These writers will be led by a strong team of 3L editors who have already started reviewing articles, preparing our production schedule, and editing student notes and comments.

Student notes that will be published in Volume 30 include analyses of approaches to environmental advocacy, hydraulic fracturing, the effect of the Congressional Review Act's resubmit provision, climate change and emergency responses to accidental chemical release, and an alternative to the absolute bar effect of statutes of repose. To learn more about publishing in ELR, please contact Lead Articles Editor Lauren Mulhern at elrarticles@colorado.edu.

Finally, in collaboration with the Colorado Law Review and the GWC, ELR looks forward to hosting prominent academics, practicing attorneys, and policy advocates with deep ties and vast experience in public lands law and policy at the Martz Symposium on American public lands in spring 2019.

ELR alumni are welcome to contact Editor-in-Chief Meredith Healy at envtl.law.review@colorado.edu for more information and to participate.

Native American Law Students Association

NALSA invites you to join us as we kick off the year with our annual Fall Harvest Feast, where students, faculty, family, and friends gather together for a celebration and delicious fry bread tacos. We are starting to plan other events and book speakers which will educate students about Native issues and give students a chance to engage with members of the Native community. We look forward to working with the GWC to strengthen and improve the platform for addressing native concerns.

Follow us on Facebook (facebook.com/CULAWNALSA) to keep up with our events and outings.



NALSA students, staff from the Native American Rights Fund, and Colorado Law faculty and staff at last year's Spring Feast, held in April.



Inaugural Ruth Wright Distinguished Lecture in Natural Resources

Professor Lisa Heinzerling
Georgetown Law

November 9
5:30 p.m.
Wolf Law Building, Wittemyer Courtroom



11th Annual Schultz Lecture in Energy

Professor Jody Freeman
Harvard Law School

Archibald Cox Professor of Law
Founding Director, Harvard Law School Environmental and Energy Law Program

January 24, 2019
Wolf Law Building, Wittemyer Courtroom



6th Annual Clyde Martz Winter Symposium

The Changing Landscape of Public Lands

Keynote by Sally Jewell, former U.S. Secretary of the Interior

February 28–March 1, 2019

More information and registration for upcoming events coming soon to getches-wilkinsoncenter.cu.law

Video and content from past events available at gwc.cu.law/category/past_events

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A big thanks to departing GWC board member
Ann Morgan (The Trust for Public Land)



L-R: Colleen Scanlan Lyons, Dean S. James Anaya, Sean Helle, Sharon Jacobs, Mark Squillace, Sarah Krakoff, Charles Wilkinson, Alice Madden, Doug Kenney, and Shaun LaBarre.



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Founded in 1983 as the Natural Resources Law Center (NRLC) and now known as the Getches-Wilkinson Center for Natural Resources, Energy and the Environment, the center is the oldest and preeminent law school institute in the country dedicated to natural resources law. The Getches-Wilkinson Center has expanded upon the legacy of the NRLC with a broader agenda and aspirations for deeper influence in law, policy and practice. We proudly support our mission:

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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