



ENVIRONMENTAL AND NATURAL RESOURCES LAW

Tackling the most important environmental & natural resources issues of our time

FALL 2010 newsletter



Director's Notes



Since we last wrote you in the spring of 2010, many key developments have taken place within the Environmental and Natural Resources Law (ENRL) Program at the Sturm College of Law. Perhaps the most important development has been the formal recognition of our program as a "Flagship Center" within the College of Law's Strategic Plan. This recognition will allow the program to continue to expand and grow, with support from the College of Law specifically and the University of Denver more generally. You will read more about this in this issue's main story, "Sturm College of Law Adopts Strategic Plan, Sets Course for the Future."

As part of the Strategic Plan, which was adopted by a nearly unanimous faculty vote, a decision was made to "integrate" the program's strong JD, LLM, and Masters in Resource Law Studies specialties. This will allow us, for the first time, to bring together our JD students, most of whom are from the U.S., with our LLM and Masters students, who come to study here from countries on every continent in the world. The

result will be an enriched student experience, including the opportunity to make friends and contacts with individuals who will play major roles as the world moves forward in the 21st century.

Finally, I would like to thank Professor K.K. DuVivier, the former director of the program, for all she has done to strengthen the ENRL Program, and for her support and advice as I have taken on new responsibilities as director. Professor DuVivier and her predecessor, Professor Fred Cheever, will be hard acts to follow. However, I, like each of them, am committed to enhancing the strength and reach of our program. In particular, I am hoping to reach out to the many, many individuals who have played—and are playing—such important roles in the history and tradition of the ENRL program. Please let me hear your ideas and observations.

Sincerely,

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STURM COLLEGE OF LAW ADOPTS STRATEGIC PLAN, SETS COURSE FOR THE FUTURE



Several months ago, the Sturm College of Law faculty overwhelmingly approved one of the most important matters to come before the law school in many years—a strategic plan aimed at positioning the College of Law as a “true leader in modern legal education,” as described by Dean Martin J. Katz. One of the core pillars of the plan was a commitment to continuing to build distinctive excellence and expanding engagement in environmental and natural resources law, which was recognized in the plan as one of several “Flagship Centers.”

The planning process for the eventual strategic plan began in the summer of 2009. During the fall of 2009 the plan was refined and improved through meetings and consultations with numerous stakeholders. Particular emphasis was placed on reaching out to the law school’s environmental and natural resources alumni, full-time and adjunct faculty, and students, as well as many other members of the larger DU community, including those in the environmental, natural resources, and energy sectors.

Time and again the drafters of the environmental and natural resources section of the plan heard from stakeholders that the law school’s long-standing dedication to playing an active role in addressing the critical issues that link the environmental, natural resources, and energy sectors should be continued and enhanced. As noted above, the faculty agreed as did the University’s Board of Trustees.

The recognition of the Environmental and Natural Resources Law (ENRL) Program as a “Flagship Center”—thus placing the program at the top of the College of Law priority list—reflected the entire institution’s belief that this program can and should “acquire significant additional national recognition,” with the aim of being one of the top programs of its kind in the U.S. and the western hemisphere.

The Strategic Plan said this about the ENRL Flagship Center:

“This program, including energy law, will be a Flagship Center... Existing international offerings in this area provide a valuable opportunity for synergies with international and comparative law. Our well-established Environmental Law Clinic provides opportunities for synergy with our clinical program. The *Water Law Review* and Rocky Mountain Land Use Institute provide important opportunities

for ground breaking scholarship, conferences, and policy initiatives. Our extensive environmental and natural resources externships provide opportunities for integrated learning.”

As this academic year unfolds, the Environmental and Natural Resources Law Program is well into the “implementation phase” of the plan. In this phase, progress towards specific goals and objectives will be measured on a year-by-year basis. Among the key elements of the implementation plan will be:

- Establishing an “Environmental and Natural Resources Certificate” for students who meet certain academic requirements
- Expanding externship opportunities, both domestically and internationally
- Providing students more interaction with domestic and international leaders in the field
- Reaching out from the College of Law to both domestic and international graduates
- Establishing advisory groups to provide support and guidance to the program

This year marks only the beginning of the law school’s efforts to become an even more prominent player in both domestic and international discussions about the future of the planet.

“There is a sense among the faculty and our ‘extended community’ that this is a very important time,” says Don C. Smith, director of the ENRL Program. “Our students need to be prepared to go out into the world, to think about different and new opportunities, to think in ways that they perhaps have not thought about before. Our program’s commitment is to prepare students to meet those opportunities,” he continues, “and to help build a world that is more economically and environmentally sustainable, and in which the many share in the hope of a healthy planet and a better tomorrow for all the generations to come.”

Editor’s note: The full-text of the strategic plan is available here: <http://law.du.edu/documents/about/SCOL-Strategic-PlanFinal.pdf>



WHAT ARE ENRLP FACULTY UP TO?

Publications

K.K. DuVivier (with Roderick E. Wetsel) "Jousting at Wind Mills: When Wind Power Development Collides with Oil, Gas, and Mineral Development," *55 Rocky Mtn. Min. Law Inst. Paper No. 9* (2009), reprinted in Part I MMX No. 3 *National Association of Division Order Analysts 29* (July-September 2010) and Part II (October-December 2010).

Michael Harris "Environmental Deliberative Democracy and the Search for Administrative Legitimacy: A Legal Positivism Approach," to be published in the *University of Michigan J. of Law Reform* (November/December 2010).

Jan Laitos and **Edward Ziegler** "The Social Benefits of Property Rights Protection, Government Interventions, and the European Court on Human Rights' Decision in the *Hutten-Czapska* Case," to be published in the *Univ. of Indiana Int'l and Comparative L. Review* (2010-2011).

Rock Pring (with Catherine Pring) Book launch and press conference with live webcast held in Washington, D.C., for *Greening Justice: Creating and Improving Environmental Courts and Tribunals*, published by the Access Institute (July 2010); full text of publication is available here: http://www.accessinitiative.org/sites/default/files/Greening%20Justice%20Final_31399_WRI.pdf.

Edward Ziegler "Some Thoughts on Sustainable Development and the Next American Landscape: Transportation, Regionalism, and Urban Planning Law Reform in the 21st Century," ABA publication, *The Urban Lawyer* (winter 2010).

In Other News

K.K. DuVivier Appointed co-vice chair of Public Service for the Renewable, Alternative, and Distributed Energy Resources (RADER) Committee of the ABA Section of Environment, Energy, and Resources (SEER) (October 2010).

Michael Harris In the case of *Friends of Animals et.al. v. Ken Salazar* (U.S. District Court for the District of Columbia, Civil Action 10-357), the Environmental Law Clinic, headed by Prof. Harris, obtained a court order requiring U.S. Interior Secretary Ken Salazar to determine whether 12 parrots warrant federal protection.

Jan Laitos Chaired a session on "The New Property," at the Conference on the Evolution of Property Rights, sponsored by the Lincoln Institute of Land Policy, Cambridge, Mass. (September 2010).

Don Smith Reappointed editor-in-chief of *Utilities Policy: Strategy, Performance, Regulation*, a peer reviewed international journal published by Elsevier Science, Ltd., Oxford, England.

Don Smith and **Lucy Daberkow** In August welcomed the most diverse group of LLM and Masters in Resource Law candidates—from 14 countries—in the history of the environmental and natural resources law graduate program.

Edward Ziegler "Megapolitan Growth Management and Sustainable Development in the 21st Century," previously published in *International Journal on Law and the Built Environment* (peer reviewed) by Emerald Press recently received a 2010 Literati Network Award for Excellence by the Emerald Press editorial advisory board as one of the three best articles published last year.

Presentations

Fred Cheever "Defining the Scope of NEPA Review: 'Small Handles' and Connected Actions," at the Rocky Mountain Mineral Law Foundation Special Institute on NEPA (October 2010).

K.K. DuVivier Testified about problems with coal fly ash at a U.S. EPA Recovery and Waste Management Division Office of Resource Conservation and Recovery Materials hearing concerning proposed new regulation (September 2010).

Jan Laitos "The Emergence of a Third Player in the Natural Resources Law Game," at the Second Annual Conference of the Society of Environmental Law and Economics at Emory University Law School (March 2010).

Rock Pring (with Catherine Pring) "Judicial Challenges in Creating and Improving Environmental Courts," to 80 justices and judges from around the world at the Australasian Conference of Planning and Environment Courts and Tribunals, Sydney, Australia (September 2010).

William Shutkin "Regional Sustainability," at Urban Futures: Opportunities and Challenges for Transforming the Urban Landscape, Loeb Fellowship 40th Reunion, Harvard Graduate School of Design (October 2010).

Annecoos Wiersema "Trade and Environment Redux: What the WTO can Learn From International Environmental Law About Risk, Science, and the Precautionary Principle," First Annual Fall Colloquium on Environmental Scholarship, Vermont Law School (October 2010).

ENRLP: Highlights

Highlights from the Environmental and Natural Resources Law Program can be found by visiting the program blog "*Environment and Natural Resources in the 21st Century: Environment21*," which is found at <http://www.enrlgp.blogspot.com/>.

Environment21, which is edited by Don C. Smith, program director, and Lucy Daberkow, ENRLP assistant director, covers the people and events that make ours one of the top programs of its kind in the world. From profiles of successful graduates to coverage of law school events to opinion pieces about the key issues of the day, *Environment21* provides an on-going and timely look into the program.



UNIVERSITY OF
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Sturm College of Law

ENRLP Speaker Series



This fall the Environmental and Natural Resources Law Program kicked off its new "Speakers Series," featuring monthly remarks from leaders in the environmental and natural resources sectors.

Both Professor Emeritus John A. Carver Jr. and Rebecca C. Watson, JD'78, served as former Assistant Secretaries of the U.S. Interior Department. They also have lifelong ties to the University of Denver.

Professor Carver, who taught at DU Law from 1972 to 2005, served in the U.S. Interior Department from 1961-1966 during the Kennedy and Johnson administrations. Ms. Watson, a partner in the Denver-based firm of Welborn Sullivan Meck & Tooley, served from 2002-2006 during the administration of President George W. Bush.

Secretary Carver began by describing the relationship between the nation's public lands and the history and development of the United States. He noted that during much of the country's history the matter of "what should be the ultimate disposition of these public lands" has been debated and pondered.

Among the key issues during his tenure were the role of public lands in the provision of forage for cattle and the resulting grazing fees as well as undertaking a major land survey of Alaska, which at that time had only recently been admitted to the U.S. He also noted with some

humor the challenges he faced between the policy officers in the department and the solicitor's office.

Secretary Watson mentioned the Sept. 11, 2001, terrorist attack that took place just before she took office. That event played a large role in the projects in which she was ultimately involved, including how to protect energy infrastructure and the role of energy as a national security issue. A second key focus was the matter of catastrophic wild fires and what could be done to reduce the risk of such catastrophes. Finally she described the concept of "cooperative conservation," which was emphasized by her boss, former Secretary of the Interior Gale Norton (also a DU Law graduate), and her ultimate boss President Bush.

Despite the 40 years that separated Secretaries Carver and Watson, several observations were clear. First, they both loved their time at the Department of the Interior. Secretary Carver said his time there represented "the best job I ever had." Second, the desire to serve the public was considered a high honor as well as an important responsibility to both secretaries. Third, they voiced their pride in and loyalty to the College of Law, an institution that has been and continues to be an important part of their lives.

As one person said at the end of the program, "When we watch individuals from different times, different generations, and different political backgrounds provide thoughtful and respectful commentary about their careers and the challenges they faced we are reminded of the powerful positive examples that can be reflected in how one conducts his or her career."