



ENVIRONMENTAL AND NATURAL RESOURCES LAW

Tackling the most important environmental issues of our time

SPRING '10
newsletter



UNIVERSITY OF
DENVER

Sturm College of Law

Director's Notes



This year, I served as chair of our Faculty Executive Committee, which along with our new dean, Martin Katz, crafted a Strategic Plan for the law school. Under the plan, the Environmental & Natural Resources Program earned the status of becoming one of the school's only two substantive "Flagship Centers." The other substantive Flagship Center is International & Comparative Law, and many of our faculty also do work in this area.

The Clinic is our third Flagship Center and ties into the second component of our strategic plan: a Modern Learning Initiative that, in addition to a well-balanced foundation of courses, aims to better prepare students for their professions by offering integrated and experiential learning opportunities.

Our fall newsletter gave you a glimpse into our Externship Program, one of the largest in the country. This newsletter features our Practitioner-in-Residence seminar, which provides our students with unique opportunities to gain experience from top practitioners in environmental and natural resources fields.

Ours is one of the oldest and most varied environmental and natural resources law programs in the country. Pioneers settled in Colorado because of its rich resources: from hard rock minerals like gold, silver, and molybdenum, to fossil fuels like coal, oil, and natural gas, to alternatives like geothermal & uranium. We also are blessed with stunning scenery, wide open spaces, diverse wildlife, crisp air, mountain streams that feed rivers in more than 15 other states, and abundant wind and sun. Since our founding in the late 1800's, the law school has offered natural resource courses, and we are proud to continue with the basics while we innovate to teach our students to become policymakers and to serve the legal needs of each of these sectors.

– Professor K.K. DuVivier



RMLUI

ROCKY MOUNTAIN
LAND USE INSTITUTE

RMLUI CONFERENCE RECAP

The Rocky Mountain Land Use Institute (RMLUI) hosted its 19th Annual Land Use Conference: The New American Landscape March 4-5, 2010, at the University of Denver campus. More than 400 attendees and speakers from 27 states and Canada attended sessions centered on the theme, "The New American Landscape." DU Law Associate Dean Federico Cheever, Professor Ed Ziegler, and adjunct professor Thomas J. Ragonetti engaged the crowd during their presentations at the conference.

Student members of the University of Denver Sturm College of Law's Land Use Law Society partnered with RMLUI by hosting a networking luncheon for conference speakers. Guests and speakers alike were grateful for the unique networking opportunities and the comprehensive treatment of sustainability and renewable energy during conference sessions.

New Addition to Faculty



Annecoos Wiersema received her first law degree (LL.B.) from the London School of Economics in England and her S.J.D. (Doctor of Juridical Science) degree

in International and Environmental Law from Harvard Law School. She will be coming to the Sturm College of Law from the Moritz College of Law at The Ohio State University, where she was an Assistant Professor. Prior to teaching, she worked in the Denver office of Arnold and Porter LLP as a litigation associate. Prof. Wiersema was the George W. Foley, Jr. Fellow in Environmental Law at Harvard Law School from 1999-2000 and spent time as a Visiting Scholar at the International Monetary Fund (IMF) in 2001.

Prof. Wiersema's teaching and research interests span Environmental Law, International Law, International Environmental Law, Administrative Law, and Property Law. Her research focuses on how we can develop legal institutions both nationally and internationally that can effectively protect species and ecosystems in the face of ecological complexity and scientific uncertainty.

WATER LAW REVIEW SYMPOSIUM

Water Law and Climate Change – Planning in an Uncertain Future

This year, the students of the *Water Law Review* tackled an ambitious topic: water law and climate change. In planning for such a topic, it would have been easy to let the discussion degenerate into a debate on whether global warming is occurring. While this debate still preoccupies much of the nation, many water users have quietly planned for a future with less water. The students followed this pragmatic approach and designed the symposium accordingly, focusing instead on the changes and future concerns necessary within water law to cope with climate change.

The University of Denver *Water Law Review* was very proud to host a collection of water law scholars and practitioners of such distinguished quality. These speakers kindly donated their time and expertise; without their support and interest, such an event would not be possible.

- **Professor Dan Tarlock**, Chicago-Kent School of Law, Illinois Institute of Technology
- **Professor Christine A. Klein**, University of Florida, Levine College of Law
- **Justice Gregory Hobbs**, Colorado Supreme Court
- **George "Rock" Pring**, Professor of Law, University of Denver Sturm College of Law
- **Brad Udall**, Director of CU- NOAA, Western Water Assessment
- **Casey Funk**, Attorney, Denver Water Department
- **Marc Waage**, Planner, Denver Water Department
- **Melinda Kassen**, Director of Trout Unlimited, Western Water Project
- **Amy Beatie**, JD'00, Executive Director, Colorado Water Trust
- **Bart Miller**, Water Program Director, Western Resource Advocates
- **Doug Kemper**, Executive Director, Colorado Water Congress

LLM student **Glauce Coelho** and MRLS student **Matthew Wagner** were honored as 2010 Outstanding Students of the Year within their respective graduate programs. Congratulations!

THE DISTINGUISHED NATURAL RESOURCES PRACTITIONER-IN-RESIDENCE SEMINAR

Established in 1987, the **A.T. Smith/Gerald J. Schissler Distinguished Natural Resources Practitioner-in-Residence Seminar** is an independently endowed "capstone" skills seminar, taught by a distinguished member of the Colorado natural resources or environmental bar. The 2010 Practitioner-In-Residence is **Howard Kenison, JD'72**.

The seminar's purpose is to bring together all of the substantive law classes a student might have already taken, and place them in the context of what lawyers actually do, and how to do it well. Students learn critical lawyer skills, such as: acquiring and working with clients; assisting clients before administrative agencies; working with senior partners or general counsel; dealing with expert witness issues; arguing before trial and appellate courts; conducting oneself in an ethical fashion; mediating disputes; and developing an international practice.

Each practitioner-in-residence creates a seminar syllabus that typically includes a wide array of guest lecturers who address timely specialized topics of interest. A short list of past guest speakers includes:

- A Justice from the United States Supreme Court
- Judges from the 10th Circuit Court of Appeals and the United States District Court of Colorado
- The Attorney General of the State of Colorado
- A former Secretary of the Interior; lawyers from the United States Department of Justice and the Department of the Interior
- The Executive Director of the Colorado Department of Natural Resources
- CEOs of major energy and utility companies
- Natural resources attorneys who have a specialized international practice.

Past Practitioners-in-Residence have included:

Don Sherwood • Charles Kaiser • Randy Parcel • Stephen Alfors • Laura Lindley, JD'80 • Peter Bjork • Howard Boigon • Frank Erisman, JD'68 • Terry Fiske • David Ebner • William Odell • Randy Pharo • John Shepherd, JD'79 • Elizabeth Temkin • Jim Piconne • Jan Stereit • John Watson, JD'75 • James Sanderson, JD'69 • John Fognani • Steve Bain • Alan Gilbert • Robert Comer • Howard Kenison, JD'72

Practitioner-in-Residence Seminar By Howard Kenison, JD'72 Natural Resources Practitioner-in-Residence



The 2010 seminar explores the practice of law in its many forms - private (big firm and small), public (political and government), judicial, and in-house counsel. Distinguished guest lecturers provide the basis for the seminar's interactive

exploration of the practice of law today. All lecturers are successful leaders, and have a personal story about their road from law school to their place in the legal profession today.

The course focuses, to a large extent, on the environmental lawyer; however, many of the presentations will go far beyond the boundaries of environmental law. Commonalities emerge when the careers of successful lawyers, regardless of practice area, are examined.

Guest lecturers this year include: **Wiley Daniel**, Chief Judge, US District Court for Colorado; Colorado Attorney General **John Suthers**; **Martha Rudolph**, Executive Director of the Colorado Department of Public Health and Environment; **Ken Reif**, General Counsel, Tri-State Generation and Transmission Association, Inc.; **Sheila Slocum Hollis, JD'73**, an international energy lawyer; **Richard Dehncke, JD'73**, a successful personal injury lawyer; **Marie Knazier**, deputy attorney general; **Monica Marquez**, assistant solicitor general; **Dave Ebner**, a successful natural resources practitioner; and, **Tiffanie Stasiak**, managing partner of Lindquist & Vennum's Denver office.

There is no single route to success in the practice of law. Rather each lawyer - each person - has achieved success in a very personal way. From their stories, students can see that there are important fundamental attributes and characteristics that make a lawyer respected in today's legal community.
- Howard Kenison, JD'72

Environmental Law Clinic: Update

Student attorneys in the DU Environmental Law Clinic are hard at work protecting public health and developing their litigation skills. This spring, **Chris Brown ('10)**, **Sarah Colman ('11)**, **Allison Vetter ('11)** and **Ahson Wali ('11)** argued and won two motions in the U.S. District Court for the District of Colorado. In both cases, the student attorneys fully briefed the cases, participated in hours of moot court preparation, and appeared in court to represent their clients. The cases involve Section 112 of the Clean Air Act, which limits emissions of hazardous air pollutants from major sources like power plants. Working on behalf of WildEarth Guardians and members of the communities of Pueblo and Lamar, Colorado, student attorneys in the Environmental Law Clinic are seeking to address violations of section 112(g) at two new Colorado coal-fired power plants that can emit in excess of 10 tons per year of toxic pollutants, including mercury. According to Jeremy Nichols, WildEarth Guardian's Climate and Energy Director, "the work of the DU Environmental Law Clinic is an extremely important tool in holding Colorado public officials and companies accountable for their commitment to develop an environmentally responsible business culture in our state."

WHAT ARE ENRLP FACULTY UP TO?

Publications

K.K. DuVivier Review of "*Split Estate*" by Bullfrog Films <http://www.bullfrogfilms.com/catalog/split.html>

Guest Commentary, *Retain Solar Access In Code*, Denver Post, October 28, 2009 (11B). http://www.denverpost.com/opinion/ci_13653895

Mike Harris "Standing in the Way of Judicial Review: Assertion of the Deliberative Process Privilege," in APA Cases, *53 St. Louis L. J.* 349 (2009).

New Weekly Blog: **A Just West** available at: <http://www.hcn.org/greenjustice/blog>

Jan Laitos Finalized 2d edition to Foundation Press casebook on *The Regulation of Toxic Substances and Hazardous Wastes* (forthcoming 2011); annual update and supplement to treatise, *The Law of Property Rights Protection* submitted to Aspen Law and Business (2010).

Don Smith "Políticas de energía y cambio climático de los Estados Unidos al inicio de la administración Obama: Legislación, regulación o ambas" ("Energy and Climate Change Policies in the United States at the beginning of the Obama Administration: Legislation, Regulation, or Both"), trans. Lucy Daberkow, in "Revista de Derecho Ambiental" (*Journal of Environmental Law*) 19:257.

Rock Pring *Greening Justice: Creating and Improving Environmental Courts and Tribunals* (with Kitty Pring), The Access Initiative (TAI) of the World Resources Institute (WRI), Washington, D.C. (2010).

"International Environmental and Human Rights Law Affecting Mining Law Reform," Chapter 2 in *Mining: Environment and Health Controls*, C.S. Krishna ed., Amicus Books (2010).

"Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment," (with Kitty Pring) *11 Ore. Rev. of Int'l Law* 301 (2010).

"Specialized Environmental Courts and Tribunals: Improved Access to Justice for Those Living in Poverty," (with Kitty Pring), in *Environment and Poverty, International Union for the Conservation of Nature (IUCN) Academy of Environmental Law (AEL)* (forthcoming 2010).

Ed Ziegler Semi-Annual Cumulative Supplement, Rathkopf's *The Law of Zoning and Planning*, 5 Vols., Thomson West (4th ed., 1983-2010).

In Other News

Appointments & Awards

K.K. DuVivier Appointed member of the Executive Committee for the Section on Natural Resources of the American Association of Law Schools (January 2010).

Founding member, Renewable Energy Steering Committee for Interdisciplinary Colloquia Series across the University of Denver (March 2010).

Don Smith Invited to join the editorial advisory board of the *Manual of European Environmental Policy (MEEP)*, the leading publication about European Union environmental law (Institute for European Environmental Policy).

Misc.

K.K. DuVivier Testified about solar access problems related to the proposed Denver Zoning Code at The Denver Zoning Code Task Force Meeting (October 28, 2009), West University Community Association (November 11, 2009) and the Denver City Council Board of Adjustment Zoning Listening Session (November 18, 2009).

Interviewed and quoted in "Sustainability' Still Undefined, Elusive in New Zoning Code," by Paul Kashmann, *Washington Park Profile* (December 2009). http://washingtonparkprofile.com/index.php?option=com_content&task=view&id=781&Itemid=1

Don Smith The Environmental and Natural Resources Law & Policy Graduate Program has its most diverse class in history. In the spring 2010 semester, students from 13 countries (including the U.S.) are enrolled in the program.

WHAT ARE ENRLP FACULTY UP TO?

Presentations

Fred Cheever "Wildfire and Causation," at Fire in the Eastern United States, Penn State Law (April 1, 2010). http://www.dsl.psu.edu/news/fire_in_the_eastern_us

K.K. DuVivier "International Issues for Sustainable Energy," American Branch, International Law Association, 2010 International Law Weekend—Midwest (February 12-13, 2010) (co-chair of panel and presenter).

"Jousting at Windmills—Wind Power Rights & Conflicts Update," at the Denver Association of Petroleum Landmen, Spring Land Workshop (March 25, 2010).

"The New Energy Frontier: The University of Denver's Partnership with the National Renewable Energy Laboratory," organized and co-presented with Robert J. Noun, Chief Spokesman for NREL, University of Denver's 2010 Winter Quarter Provost's Lecture and Luncheon (March 2, 2010).

"Solar Access and Denver's Code Rewrite," before the Energy Committee, Rocky Mountain Chapter Sierra Club (February 4, 2010).

"Solar Access," presentation to Government Affairs Committee of the Denver Board of Realtors (December 3, 2009).

Mike Harris Panelist, "The Clean Air Hammer Falls: Revisions to the National Ambient Air Quality Standards," at the University of Oregon's 28th Annual Public Interest Environmental Law Conference (February 2010).

Jan Laitos "Encouraging Cooperative Natural Resource Games by Granting Resources a Right of Nonuse," peer reviewed, at the 2d annual conference of the Society of Environmental Law and Economics, Emory University Law School (March 2010).

Ed Ziegler "Transportation Planning, Density, and Sustainable Development in the 21st Century, A 2020 View of Urban Infrastructure: A Festschrift in Honor of Julian Conrad Juergensmeyer," Georgia State University Law School Center for the Comparative Study of Metropolitan Growth (March 25, 2010).

"Local Bouillabaisse Regulation: A Critical Overview of the New American Landscape," University of Denver Sturm College of Law's Rocky Mountain Land Use Institute Annual Conference (March 4, 2010).

"Urban Planning Law and Places of Worship: Local Controls and National Protection in the United States," University of Barcelona Law School, Barcelona, Spain (February 17, 2010).

"Private Property Rights, the Rule of Law, and Economic Prosperity in the United States: An International Perspective," University of Barcelona Law School (February 16, 2010).

Rock Pring Interviewed by Japanese journalist Hiro Ugaya on the prevalence in Japan of "Strategic Lawsuits Against Public Participation" ('SLAPPs';) about which Pring co-authored the leading 1996 treatise on the subject (Feb. 22, 2010).

Principal organizer (with Kitty Pring) of the Brazil Federal Judges Association conference "Judicial Symposium on United States Law," held at the Sturm College of Law. Presented lectures on "Environmental Law in the U.S." and "U.S. Administrative Law" (Feb. 15-18, 2010).

Invited back as a visiting professor to present 2 day-long seminars: "U.S. Environmental Law" and "U.S. Energy Law" in the Graduate LLM Program in Environmental and Energy Law, University of Leuven, Leuven, Belgium (Jan. 25-26, 2010).

"Specialized Environmental Courts & Tribunals: A Global Study," (with Kitty Pring) address at the Annual Colloquium of the International Union for the Conservation of Nature—Academy of Environmental Law (IUCN-AEL), Wuhan, China (Nov. 2, 2009).

"How Environmental Courts Work" and "Judicial Remedies in Environmental Cases" (with Kitty Pring) at a 2-day conference for Chinese Environmental Court Judges in Guiyang, China (Sept. 29-30, 2009).



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