

KEVIN J. LYNCH

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ACADEMIC EMPLOYMENT

- Ronald V. Yegge Clinical Director,** July 2022 – present
University of Denver Sturm College of Law
- Associate Professor, University of Denver Sturm College of Law** August 2018 – present
Courses: Environmental Law Clinic, Civil Procedure, Administrative Law
- Assistant Professor, University of Denver Sturm College of Law** August 2012 – July 2018
Courses: Environmental Law Clinic, Environmental Appellate Advocacy
- Clinical Fellow, University of Denver Sturm College of Law** July 2009 – July 2012
Courses: Environmental Law Clinic, Environmental Appellate Advocacy

EDUCATION

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, New York
J.D., *magna cum laude*
Honors:

- Order of the Coif
- Environmental Law Journal, Editor-in-Chief

RICE UNIVERSITY, Houston, Texas
B.A. in Biology, *magna cum laude*

PUBLICATIONS

Forced Pooling: The Unconstitutional Taking of Private Property, 75 UC LAW SF JOURNAL ____ (forthcoming 2024). This article applies modern takings doctrine to the century-old practice of forced pooling. Under forced pooling laws, states will force property owners to lease their mineral rights to private oil companies who then go onto their land and install industrial equipment to extract oil and gas from the subsurface. This activity amounts to a taking of the right to exclude and a taking of natural resources under the recent Cedar Point and Horne takings cases from the U.S. Supreme Court.

Preemption: Opportunities and Obstacles for Climate Adaptation, in ADAPTING TO HIGH-LEVEL WARMING: EQUITY, GOVERNANCE, AND THE LAW (Roesler & Kuh, eds.) (forthcoming 2023). This book chapter envisions a future where our climate has dramatically changed, in order to start thinking now about how our laws will need to adapt to cope with this potential future reality. Drawing on the experience of how preemption law was used to block efforts at climate mitigation, the chapter argues for a more deferential approach to local efforts at climate adaptation, while retaining the ability of states to preempt local policies that are counter-productive to climate adaptation.

Western Water Rights in a 4°C Future (with Shi-Ling Hsu and Karrigan Börk), in ADAPTING TO HIGH-LEVEL WARMING: EQUITY, GOVERNANCE, AND THE LAW (Roesler & Kuh, eds.) (forthcoming 2023). This book chapter envisions a future where our climate has dramatically changed, in order to start thinking now about how our laws will need to adapt to cope with this potential future reality. The balance of water systems in the Western United States is already changing in response to climate change, with more extremes expected for the future, particularly in the Colorado River Basin. This chapter examines how water law will need to adapt, at least in its implementation and perhaps more fundamentally, in order to respond to the rapidly changing situation.

Preliminary Injunctions in Public Law: The Merits, 60 HOUSTON L. REV. 1067 (2023). This article examines the evolving standard for preliminary injunctions, focusing on how courts assess the likelihood of success on the merits at the early stage of litigation. The article explores the historical bases of equity jurisdiction which guided courts in issuing preliminary injunctions, and how more recently the U.S. Supreme Court and some circuit courts have moved away from equity towards a more rigid heightened showing necessary for an injunction to issue, particularly in cases they disfavor. The article makes the case for a flexible approach to assessing the merits that allows courts to preserve the status quo while litigation plays out, which raises important issues in public law cases.

Western Water Rights in a 4°C Future, (with Shi-Ling Hsu and Karrigan Börk) in *Adapting to a 4°C World*, 52 ENVTL L. REP. 10211 (Mar. 2022). This short piece, part of a collection of proceedings of the 2021 meeting of the Environmental Law Collaborative, examines areas where existing law and legal institutions might need to change in order for our state and inter-state water rights regimes to adapt to a future where climate change occurs beyond the most optimistic of scenarios.

Fracking the Public Trust, 10 SAN DIEGO J. CLIMATE & ENERGY L. 69 (2019). This essay examines the role that the public trust doctrine plays in the regulation of oil and gas development and extraction. Key insights involve the use of the public trust doctrine as a background principle of law to defend against takings claims based on government regulation of fracking and also the obligations that the public trust doctrine imposes on governments to protect natural resources such as air, water, and wildlife from the impacts associated with fracking, including climate change.

A Fracking Mess: Just Compensation for Regulatory Takings of Oil and Gas Property Rights, 43 COLUM. J. OF ENVTL. L. 335 (2018). This article uses potential takings claims related to regulation of oil and gas to evaluate the proper measure of just compensation. By exploring the theoretical underpinnings of the just compensation requirement, grounded in fairness and efficiency, the article identifies several ways in which available methods of valuing these takings claims falls short of achieving the theoretical goals. The article ultimately concludes that several limitations on just compensation are required to achieve the goals of just compensation.

Regulation of Fracking is Not a Taking of Private Property, 84 U. CIN. L. REV. 38 (2016). This article critically examines claims that regulations on fracking, including bans or other regulations which prevent extraction of oil and gas reserves, amounts to an uncompensated taking of private property. Using case studies based on regulations and laws in New York and Colorado, the article discusses the obstacles a potential takings claimant would face at each stage of takings litigation, concluding that takings claims would be unlikely to succeed in this context.

The Lock-In Effect of Preliminary Injunctions, 66 FLA. L. REV. 779 (2014). This article examines a cognitive bias known as the lock-in effect and applies it to help resolve the uncertainty regarding what should be the standard for deciding preliminary injunctions in federal court.

When Staying Discovery Stays Justice: Analyzing Motions to Stay Discovery When a Motion to Dismiss Is Pending, 47 WAKE FOREST L. REV. 71 (2012). This article fills a gap in the scholarly literature by suggesting a framework for judicial analysis of discovery stays when a motion to dismiss is pending in federal civil litigation. The article discusses the factors and considerations that affect both the standard that judges should apply as well as the outcome of the judicial decision.

Application of the Public Trust Doctrine to Modern Fishery Management Regimes, 15 N.Y.U. ENVTL. L.J. 285 (2007). This note analyzed the scope of the federal public trust doctrine and whether market-based mechanisms to manage marine fishery populations are consistent with the public trust doctrine.

PRESENTATIONS & MEDIA

Grading and the Curve: Rebuilding Hope and Confidence in Students, Moderator and Panelist, Association of American Law Schools 2023 Clinical Conference, San Francisco, CA, May 2023.

Adapting Law to a Warming World, Panelist, Hubbell Environmental Law Initiative, Adapting to a Warming World: Perspectives from the Environmental Law Collaborative, Iowa City, IA, April 2023.

Adapting Governance to a Warming World, Panelist, Hubbell Environmental Law Initiative, Adapting to a Warming World: Perspectives from the Environmental Law Collaborative, Iowa City, IA, April 2023.

Factoring Environmental Justice into Climate Action, Panelist, American Meteorological Association Annual Meeting, Denver, CO, January 2023.

Radio Ed: The Colorado River, A Political Climate Crisis, University of Denver (Sept. 20, 2022), available at <https://www.du.edu/news/podcast/the-colorado-river-a-political-climate-crisis>.

Social Justice Impacts of Neighborhood Drilling in Colorado, Global Day of Action on Climate Change, Seattle, WA. November 2019.

Forced Pooling as Private Eminent Domain, Association of Law Property and Society, Syracuse, NY. May 2019.

Takings Primer and Regulation of Oil and Gas (with Richard Collins), Colorado Bar Association - Civil Rights Section, Denver, CO. March 2019.

SB 19-181 - Fiscal Impacts of Leaving Oil and Gas in the Ground, Testimony to Colorado Senate Finance Committee, Denver, CO. March 2019.

SB 19-181 - Definition of Waste, Testimony to Colorado Senate Transportation and Energy Hearing, Denver, CO. March 2019.

COGCC v. Martinez - *What's Next?*, Moderator of Panel with State Sen. Mike Foote, Attorney Kate Merlin, and Community Activist Patricia Nelson. Denver, CO. Feb. 2019.

Fracking the Public Trust, Leslie K. McAllister Symposium on Energy and Climate, University of San Diego School of Law, San Diego, CA. November 2018.

Amendment 74: A Pandora's Box of Property Rights, Environmental Law Society Debate on Colorado Ballot Initiatives, University of Colorado Law School, Boulder, CO. October 2018.

Fracking and Takings: A Forum on Colorado's Ballot Initiatives, Rocky Mountain Land Use Institute and Natural Resources and Environmental Law Program, University of Denver Sturm College of Law, Denver, CO. October 2018.

Forced Pooling as Private Eminent Domain, Sixth Annual Sabin Colloquium on Innovative Environmental Law Scholarship, Columbia Law School, New York, NY. June 2018.

Valuing Fracking-Takings Claims, Colloquium on Environmental Scholarship, Vermont Law School, South Royalton, VT. September 2017.

Policy-Making & Regulation for the Government, Moderator, 2016 Rocky Mountain Public Interest & Social Justice Retreat, University of Denver Sturm College of Law, Denver, CO. September 2016.

Fracking-Takings, Colloquium on Environmental Scholarship, Vermont Law School, South Royalton, VT. October 2015.

Regulation of Fracking Is Not a Taking, Testimony to House Committee on State, Veterans, & Military Affairs, Colorado General Assembly, Denver, CO. February 2015.

Regulation of Fracking Is Not a Taking, Presentation to Governor's Oil and Gas Task Force, Rifle, CO. December 2014.

Emerging Trends in Cost Awards Against Environmental Plaintiffs, Panelist/Organizer, Public Interest Environmental Law Conference, Eugene, OR. March 2014.

Hydraulic Fracturing: An Overview of Policies and Regulations Developing to Address Fracking, Panelist, Public Interest Environmental Law Conference, Eugene, OR. March 2014.

The Lock-In Effect of Preliminary Injunctions, Fifth Annual Junior Faculty Federal Courts Workshop, William & Mary Law School, Williamsburg, VA. October 2012.

The Lock-In Effect of Preliminary Injunctions, Colloquium on Environmental Scholarship, Vermont Law School, South Royalton, VT. October 2012.

The Lock-In Effect of Preliminary Injunctions, Clinical Law Review Writer's Workshop, NYU School of Law, New York, NY. September 2012.

E-Discovery: Practical Elements and Proactive Aspects for Lawyers, Clients, and NGOs, Panelist, Public Interest Environmental Law Conference, Eugene, OR. March 2012.

The Future of Aquaculture: The Role of Legal Challenges in Shaping the Finfish Farming Industry, Panelist, Public Interest Environmental Law Conference, Eugene, OR. March 2012.

Motions to Stay Discovery When a Motion to Dismiss Is Pending, ABA National Solo and Small Firm Conference, Denver, CO. October 2011.

Stays of Discovery Due to Pending Motions to Dismiss, Clinical Law Review Writers' Workshop, New York, NY. October 2010.

LEGAL AND OTHER EXPERIENCE

ENVIRONMENTAL DEFENSE FUND, Boulder, Colorado
Attorney – Climate & Air Program, August 2007 – June 2009

NEW YORK STATE ATTORNEY GENERAL, New York, New York
Law Clerk – Environmental Protection Bureau, July 2006 – August 2006

UNITED STATES DEPARTMENT OF JUSTICE, Washington, District of Columbia
Law Clerk – Environmental Enforcement Section, May 2006 – July 2006

NEW YORK UNIVERSITY SCHOOL OF LAW, New York, New York
Research Assistant – Dean Richard L. Revesz, May 2005 – May 2007

ENVIRONMENTAL DEFENSE, Washington, District of Columbia
Legal Intern, Oceans Program, June 2005 – August 2005

ACCENTURE, Houston, Texas & Walldorf, Germany
Consultant – Upstream Oil and Gas Industry, May 2001 – August 2004
Provided information technology and business consulting for major oil and gas companies around the world, including work on a joint venture with business software leader SAP.

BAR ADMISSIONS

Colorado, U.S. District Court for the District of Colorado, U.S. Court of Appeals for the Third Circuit, U.S. Court of Appeals for the Tenth Circuit.