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Birth: 1945, Fort Benton, Montana

Admitted to Practice: Montana, United States Court of Appeals for the Federal Circuit, United States Supreme Court

EDUCATION

Post-Doctoral (Raymond) Fellow, University of Chicago Law School, 1972-1973

J.D., University of Chicago Law School, 1972

M.A., Fletcher School of Law and Diplomacy, Tufts University, 1969

B.S., Montana State University, 1967

EXPERIENCE

Erskine Wood Sr. Professor of Law, 2000-present

Dean, Lewis and Clark Law School, 1994- 2006

Acting Dean, Lewis and Clark Law School, 1993-1994

Professor of Law, Lewis and Clark Law School, 1978-2000

Bradley Resident Scholar, The Heritage Foundation, 1993

Visiting Professor, Universidad Francisco Marroquin, Guatemala, 1990

Fulbright Professor, University of Athens, Greece, 1988

Visiting Professor, University of Oregon Law School, 1988

Fellow, Institute for Humane Studies, 1981

Visiting Professor, Auckland University, New Zealand, 1980-1981

Associate Dean, Lewis and Clark Law School, 1978-1980

Associate Professor, Lewis and Clark Law School, 1976-1978

Assistant Professor, Lewis and Clark Law School, 1973-1976

Legislative Drafting and Revision, Department of Planning and Economic Development, State of Montana, 1972

Research Economist, TAP, Inc., Economic Consultants, Bozeman, Montana, 1968-1969

Intern, Community Development Division, United States Agency for International Development, Quito, Ecuador, 1968

Research Assistant, Montana State University, Eastern Guatemala Project, 1967

CORPORATE BOARDS

Pacific One Bank, Portland, Oregon, 1997-1999

Bishop Street Funds, Honolulu, Hawaii, 1999-2003

MEMBERSHIPS AND AFFILIATIONS

State Bar of Montana, Member, 1988-present

National Environmental Justice Advisory Council, 2004-2005

American Law Deans Association Board of Directors, 1998-2006

The Federalist Society; Environmental Law & Property Rights Practice Group, Member
1998 - present, Chair, 2003-2005

American Judicature Society Board of Directors 2001-2005. Natinal Advisory Council
2005-present. Editorial Committee 2001-2005. Executive Committee, 2003-2005

Cato Supreme Court Review, Editorial Board, 2002-present

Citizens for Independent Courts' Task Force on Federal Judicial Selection, 1999

Foundation for Research on Economics and the Environment, Board of Directors, 1997-
present

American Bar Association Section on Legal Education Questionnaire Committee, 1999-
2006

Arlington Club, Board of Directors, 2001-2004

The Explorers Club, Member, 1998-present

IUCN Commission on Environmental Law, Member, 1998-present

American Bar Foundation, Fellow, 1998-present

Children's Scholarship Fund, Portland, Board of Advisors 1999-present

Kinship Conservation Institute, Board of Advisors, 2000-2004

Portland Citizens Crime Commission, 1998-2006

Classroom Law Project, Board of Directors, 1996-present

Rocky Mountain Mineral Law Foundation, Board of Trustees, 1978-present

Oregon State Advisory Committee, United States Commission on Civil Rights, Member,
1985-1994, Chairman, 1985-1990

Cascade Policy Institute, Academic Advisory Board, 1991-present

Oregon Public Policy Institute, Board Member, 1991-1994

Oregonians in Action, Legal Center, Board Member, 1991-present

Pacific Legal Foundation, Pacific Northwest Advisory Committee, 1992-present

International Council on Environmental Law, 1988-present

American Society for Legal History

American Association of Law Schools (Constitutional Law and Natural Resources Law
Sections, Chair of Natural Resource Section, 1994-1995)

Committee on Public Interest Determination, Oregon Water Resources Commission, 1986-1988

Catlin Gabel School, Board of Trustees, 1979-1981

National Academy of Sciences Committee on Socioeconomic Effects of Earthquake Prediction, 1977-1978

Phi Kappa Phi

Septemviri, Montana State University

CONSULTING

Attorney General, State of Oregon, 1995, 2004

International Foundation for Electoral Systems (Pre-Election Assessment Mission to Moldova), 1993

Pacific Rim Associates (Teaching environmental law courses for United States Army Corps of Engineers), 1990-1997

Washington State Seismic Safety Council, Division of Emergency Management, State of Washington, 1986

Federal Emergency Training Center, Federal Emergency Management Agency, 1984

National Research Council, Committee on Earthquake Engineering Research, 1982

Council of State Governments, Earthquake Project, 1978-1979

United States Fish and Wildlife Service (Teaching water law courses), 1977-1980

University of Minnesota, Project on Natural Hazard Warning Systems, 1977-1980

PUBLICATIONS

Books:

GOVERNMENT LIABILITY AND DISASTER MITIGATION: A COMPARATIVE STUDY (University Press of America, 1986)

Articles:

Speaking of Inconvenient Truths - a History of the Public Trust Doctrine (forthcoming)

Beware of Greens in Praise of the Common Law (forthcoming)

From Legal History to Legal Theory: Or Is It the Other Way Around, 40 TULSA LAW REVIEW 579 (2005)

American Legal Education: Past, Present and Future, 12 HAKKUOH REVIEW OF LAW AND POLITICS 298 (2005)

A Dialogue on Private Property, 4 THE GREEN BAG 403 (2004)

Environmental Perspectives: Moving Toward a Market-Oriented Middle Ground, 28 HARVARD JOURNAL OF LAW & PUBLIC POLICY 61 (2004)

Water Marketing in Western Prior Appropriation States: A Model for the East, 21 GEORGIA STATE UNIVERSITY LAW REVIEW 429 (2004)

Making Environmental Regulation More Adaptive Through Decentralization: The Case for Subsidiarity, 52 KANSAS LAW REVIEW 1377 (2004)

Limited Prospects for Privatization of Public Lands: Presidio and Valles Caldera May Be as Good as It Gets, 44 NATURAL RESOURCES JOURNAL 475 (2004)

Politics and Judicial Independence: A Proposal for Reform of Judicial Selection in Oregon, 39 WILLAMETTE LAW REVIEW 1425 (2003)

Either You're With Us or Against Us: No Room for the Skeptical Environmentalist, 53 CASE WESTERN LAW REVIEW 391 (2002)

American Legal History According to Horwitz: The Rule of Law Yields to Power, 37 TULSA LAW REVIEW 953 (2002)

Marketing Biodiversity, 38 IDAHO LAW REVIEW 421 (2002)

The Impact of Land Use Regulations on Small and Emerging Businesses, 5 THE JOURNAL OF SMALL AND EMERGING BUSINESS LAW 49 (2001) (with Elizabeth Howard).

Retroactivity, the Rule of Law, and the Constitution, 51 ALABAMA LAW REVIEW 1095 (2000)

The Impact of Regulation on Small and Emerging Businesses, 4 THE JOURNAL OF SMALL AND EMERGING BUSINESS LAW 307 (2000)

The Past and Future of Environmental Law, 30 ENVIRONMENTAL LAW 23 (2000)

Conservation and the Public Trust Doctrine: A Roundtable Discussion, CENTER FOR PRIVATE CONSERVATION (1999)

Land Ownership and Environmental Regulation, 25 ECOLOGY LAW QUARTERLY 591 (1999)

The Public Interest in Private Property Rights, 50 OKLAHOMA LAW REVIEW 377 (1997); reprinted in 35 THE PUBLIC LAND AND RESOURCES LAW DIGEST 339 (1998)

Managing America's Public Lands: Proposals for the Future -- Introductory Remarks, 18 PUBLIC LAND AND RESOURCES LAW REVIEW 143 (1997)

The Future of Environmental Law, 4 ENVIRONMENTAL LAW NEWS #4 at 47 (1995-1996)

Judge Plager's "Sea Change" in Regulatory Takings Law 6 FORDHAM ENVIRONMENTAL LAW REVIEW 597 (1995)

Managing the Northern Forests: Lessons From the West 19 VERMONT LAW REVIEW 477 (1995)

Dolan v. City of Tigard: Another Step in the Right Direction, 25 ENVIRONMENTAL LAW 143 (1995)

Round Table Discussion: Science, Environment, and the Law, 21 ECOLOGY LAW QUARTERLY 351 (1994)

The Inevitability of Private Rights in Public Lands, 65 UNIVERSITY OF COLORADO LAW REVIEW 241 (1994)

Markets, Regulation, and Environmental Protection, 55 MONTANA LAW REVIEW 425 (1994)

Lucas: A Small Step in the Right Direction, 23 ENVIRONMENTAL LAW 901 (1993)

A Case for Principled Judicial Activism, THE HERITAGE LECTURES #456 (1993)

Do Species and Nature Have Rights?, 13 PUBLIC LAND LAW REVIEW 51 (1992)

An Exploratory Essay on Native Americans and Environmentalism, 63 UNIVERSITY OF COLORADO LAW REVIEW 901 (1992)

Protecting the Environment from Orthodox Environmentalism, 15 HARVARD JOURNAL OF LAW & PUBLIC POLICY 349 (1991)

Advisory Opinions and Canadian Constitutional Development: The Supreme Court's Reference Jurisdiction, 74 MINNESOTA LAW REVIEW 1251 (1990) (with Mardilyn Saathoff)

Public Lands Management in an Age of Deregulation and Privatization, 10 PUBLIC LANDS LAW REVIEW 29 (1989)

A Fish Out of Water: The Public Trust Doctrine in a Constitutional Democracy, 19 ENVIRONMENTAL LAW 527 (1989)

Law, Comparative Legal Study, and Disaster Taxonomy, 7 INTERNATIONAL JOURNAL OF MASS EMERGENCIES & DISASTERS #3 (1989)

Phillips Petroleum v. Mississippi: A Hidden Victory for Private Property, 19 ENVIRONMENTAL LAW REPORTER 10051 (1989)

Avoiding the Takings Clause Through the Myth of Public Rights: The Public Trust and Reserved Rights Doctrines at Work, 3 JOURNAL OF LAND USE & ENVIRONMENTAL LAW 171 (1987)

Chicken Law in an Eggshell: A Dissenting Note, 16 ENVIRONMENTAL LAW 761 (1986)
Reprinted in R. M. Jarvis, T.E. Baker and A.J. McClurg, AMICUS HOMORIAE 183 (2003)

Trusting the Public Interest to Judges: A Comment on the Public Trust Writings of Professors Sax, Wilkinson, Dunning and Johnson, 63 DENVER UNIVERSITY LAW REVIEW 565 (1986)

Justificacion Legal: La Importancia de la Distincion de Hart Entre Descripcion y Prescripcion, in EL CONCEPTO DE DERECHO DE H.L.A. HART (special edition of REVISTA DE CIENCIAS SOCIALES, Universidad de Valparaiso, Chile) (1987)

From Legal History to Legal Theory: A Comment on the Work of Lawrence Friedman 63 UNIVERSITY OF OREGON LAW REVIEW 671 (1984)

The Commerce Clause and State-Owned Resources: South-Central Timber v. LeReche, WESTERN NATURAL RESOURCE LITIGATION DIGEST 36 (Winter, 1984)

Government Liability and Natural Hazard Mitigation in Japan, The Soviet Union, China, New Zealand and The United States, #1 THE INTERNATIONAL JOURNAL OF MASS EMERGENCIES AND DISASTERS 379 (1983)

Governing America's Resources: Federalism in the 1980's, Vol. 12, ENVIRONMENTAL LAW 863 (1982)

Allocative Impacts of Mineral Severance: Implications for the Regulation of Surface Mining, 22 NATURAL RESOURCES JOURNAL 201 (1982)

Government Liability for the External Costs of Earthquake Prediction (presented at UNESCO Conference, Paris, April, 1979) (reprinted in RECENT DEVELOPMENTS IN WORLD SEISMOLOGY, Peking, 1982)

Wilderness and Freedom, 16 IDAHO LAW REVIEW 407 (1980)

Agriculture and the Columbia River: A Legal and Policy Perspective 10 ENVIRONMENTAL LAW 281 (1980)

Toward a Theory of Land Use Planning: Lessons from Oregon (with Reuben C. Plantico), 14 LAND AND WATER LAW REVIEW 1 (1979)

A History of Forest Policy in the United States, 8 ENVIRONMENTAL LAW 239 (1978)

Individual Liberty and Environmental Regulation: Can We Protect People While Preserving the Environment?, 7 ENVIRONMENTAL LAW 431 (1977)

Allocative and Energetic Implications of Land Use Planning, 5 ENVIRONMENTAL LAW 477 (1975)

Energy: The Limit to Growth, 5 ENVIRONMENTAL LAW 1 (1974)

Chapters:

- "Indian Property Rights and American Federalism," (with Miller, Robert) in T. Anderson, B. Benson and T. Flanagan (eds.), SELF-DETERMINATION: THE OTHER PATH FOR NATIVE AMERICANS (2006)
- "Science and Values in Species Protection," in J. Baden and P. Geddes (eds.), SAVING A PLACE: ENDANGERED SPECIES IN THE 21ST CENTURY (2000)
- "Free Market Environmentalism and Fairness," in Bosselman and Ricahrson (eds.), ENVIRONMENTAL JUSTICE AND MARKET MECHANISMS: KEY CHALLENGES FOR ENVIRONMENTAL LAW AND POLICY (1999)
- "Institutional Constraints on Transboundary Water-Marketing," in T. Anderson and P.J. Hill (eds.), WATER MARKETING -- THE NEXT GENERATION (1997)
- "Comments on *Earth in the Balance*," in J. Baden (ed.), ENVIRONMENTAL GORE (1994)
- "In the Interests of Wildlife: Overcoming the Tradition of Public Rights," in T. Anderson and P.J. Hill (eds) WILDLIFE IN THE MARKETPLACE (1995)
- "A Brief History of North American Water Diplomacy," in T. Anderson (ed.) N ORTH AMERICAN TRANSBOUNDARY WATER MARKETING ((1994)
- "A North American Water Marketing Federation," in T. Anderson (ed.) N ORTH AMERICAN TRANSBOUNDARY WATER MARKETING (1994)
- "NAFTA and Water: Dare We Talk About Water Markets? in A.R. Riggs and Tom Velk (eds.) BEYOND NAFTA: AN ECONOMIC, POLITICAL AND SOCIOLOGICAL PERSPECTIVE at 97 (1993).
- "A Federal System for North American Water Marketing," in J.E. Windsor (ed.) WATER EXPORT: SHOULD CANADA'S WATER BE FOR SALE? (1992)
- "Liberalism and Community in Feminist Legal Theory," in N. Reynolds, C. Murphy and R. Moffat (eds.), LIBERALISM AND COMMUNITY (forthcoming)
- "Federalism: A Regional Approach to Global Environmental Problems," in S.K. Majumdar et al (eds) GLOBAL CLIMATE CHANGE: IMPLICATIONS, CHALLENGES & MITIGATION MEASURES (1992)
- "The Impact of Government Liability on Private Risk Avoidance," in R. Meiners and B. Yandle (eds.), THE ECONOMIC CONSEQUENCES OF LIABILITY RULES: IN DEFENSE OF COMMON LAW LIABILITY (1991)
- "The Impact of Law on Public and Private Responses to Seismic Risk," in G ÉNIE PARASISMIQUE ET ASPECTS VIBRATOIRES DANS LE GÉNIE CIVIL (1989).
- "Government Liability and Disaster Mitigation," in W. Hays (ed.), W ORKSHOP ON "EVALUATION OF EARTHQUAKE HAZARDS AND RISK IN THE PUGET SOUND AND PORTLAND AREAS" (1988)
- "The Public Trust Doctrine: Judicial Evasion of Constitutional and Prudential Limits on the Police Power," in T. Anderson (ed.) WESTERN RESOURCES IN TRANSITION: THE PUBLIC TRUST DOCTRINE AND PROPERTY RIGHTS (1987)
- "Allocating Water to Instream Uses: Private Alternatives," in A MERICA SOCIETY OF AGRICULTURAL ENGINEERS, WATER RESOURCES LAW (1986)
- "Government Tort Liability for Mount St. Helens Fury," in S. Keller (ed.), MOUNT ST. HELENS: FIVE YEARS LATER (1987)
- "Environmental Management of Natural Resources in the United States" (with George Coggins), in NATURAL RESOURCES MANAGEMENT IN A FEDERAL STATE, CANADIAN INSTITUTE OF RESOURCES LAW (1985)

"Public and Private Allocation of Urban Forest Resources," in G.A. Bradley (ed.), *LAND USE AND FOREST RESOURCES IN A CHANGING ENVIRONMENT* (1984)

"Policy Implications of Legal Liability for Government Involvement in Earthquake Engineering," in 7 *PROCEEDINGS OF THE EIGHTH WORLD CONFERENCE ON EARTHQUAKE ENGINEERING* 909 (1984)

"Naturaleza de la Teoria Legal," 2 *COMUNICACIONES* 203 (Primer Congreso Internacional de Filosofia del Derecho), Instituto de Cultura Juridica, Universidad Nacional de La Plata, La Plata, Argentina (1982)

"Instream Water Use: Public and Private Alternatives," in T. Anderson (ed.) *WATER RESOURCES: BUREAUCRACY, PROPERTY RIGHTS, AND THE ENVIRONMENT*, Ballinger Press (1982),

"Water and Public Control," *NEW DIRECTIONS IN WATER POLICY*, Water Resources Research Institute, Oregon State University (1980)

"Allocating Water to In-Stream Uses: A Legal Perspective," 59 *EOS - TRANSACTIONS AMERICAN GEOPHYSICAL UNION* (March, 1978)

"Studies of Legal Problems in Earthquake Prediction," in Committee on Socioeconomic Effects of Earthquake Prediction, National Academy of Sciences, *A PROGRAM OF STUDIES ON SOCIOECONOMIC EFFECTS OF EARTHQUAKE PREDICTIONS*, (1978)

Research Reports:

LCDC's New Rules for Farm and Forest Land: A Summary & Critique for Oregon Public Policy Institute (1993)

Water Rights Transfers: A Legal, Economic and Informational Analysis of Water in Oregon (with R.G. Kraynick, et al.) Water Resources Research Institute, Oregon State University (1983)

The Allocation of Water to Instream Flows: Montana Water Resources Management, Natural Resources Law Institute, Portland (1980)

The Allocation of Water to Instream Flows: Colorado Water Resources Management (with Marvin Berry), Natural Resources Law Institute, Portland (1980)

The Allocation of Water to Instream Flows: A Comparative Study of Policy Making and Technical Information in the States of Colorado, Idaho, Montana, and Washington (with several others), Natural Resources Law Institute, Portland (1980)

Federal Tort Liability for Natural Disaster Warning Systems (with Steven Rosen) Lewis and Clark Law School, Portland (1977)

The Lake Izabal Area of Guatemala: Communications, Social Change, and Agricultural Development (with William R. Lassey, et al., Center for Planning and Development, Montana State University (1969)

Commentaries:

"The Perfect Storm," *Brainstorm NW*, (April, 2007)

"Measure 37: The Billion-Dollar Gift Never Given," *The Oregonian* (March 26, 2007)

"A Different Context: Using Clients to Impugn Lawyers," *The National Law Journal* (March 19, 2007)

"Suspending the Law," *The Oregonian* (January 18, 2007)

"Implementing Measure 37," *The Oregonian* (April 19, 2006)

"Transferability is Key to Property Rights," *The Oregonian* (April 19, 2006)

"Compensation on Property Use isn't a Windfall," *The Oregonian* (October 23, 2005)

"Consent or Not," *The Washington Times* (May 19, 2003)

"Politics Already Part of Judicial Selection," *The Oregonian* (May 12, 2002)

"Concluding Remarks," American Judicature Society Symposium: Selecting Federal Judges; The Role of the Executive and Legislative Branches, 86 *Judicature* 34 (2002)

"Bush Administration Environmental Policy: 18 Months Later," 3 *Engage* 40 (2002)

"Court Ruling was Correct," *The National Law Journal* (August 6, 2001) A25)

"Interior Needs a Free Market Approach," *Los Angeles Times* (January 23, 2001) B9

"Justices Boost Federalism Again," *The National Law Journal* (January 22, 2001) A17

"Law Defines Role for Florida Legislature," *The Washington Times* (December 1, 2000)

"Courts Won't Have the Real Last Word on Election," *The Oregonian* (December 1, 2000)

"Legal Academics are Ducking the Clinton Issue," *The National Law Journal* (January 25, 1999) A26

"Lopez Pops Feds' Ballooning Powers," *The National Law Journal* A21

"Supreme Court Actions Misinterpreted," *The Oregonian* (May 5, 1995) C7

"Dolan v. City of Tigard: Another Step in the Restoration of the Takings Clause," 5 *NRLI News* 7 (1994)

"Without Just Compensation, It is Just a Taking," 16 *The National Law Journal* (May 30, 1994) A19

"The Right Direction," (comment on *Lucas v. South Carolina Coastal Commission*) 4 *NRLI News* 3 (1993)

"Salmon Issue Will Spawn Many Economic Effects," *PUGET SOUND BUSINESS JOURNAL* (December 4-10, 1992, p.7)

"Excessive Protection of Salmon Will Endanger Jobs and Property Rights in Pacific Northwest," *Washington Legal Foundation Legal Opinion Letter*, Volume 2, No. 28 (November 20, 1992)

"Truth and Values in Environmental Policy," 1 *NRLI News* 10 (#2) (1990)

"Can Farmers and Hunters Coexist: Fee Hunting and Other Alternatives," 6 *Ag. Law Updates* #1, p.4 (1988)

"The Public Trust Doctrine: Trampling on Property Rights While Harming the Environment," *PERC Viewpoints* No. 5 (1988)

"The Courts and National Forest Management," 2 *Tomorrow's Forests* 12 (#3) (1987)

"Disaster Mitigation and Government Liability," 9 *Natural Hazards Observer* 1 (May, 1985)

"The Role of Courts in the Implementation and Administration of Environmental Legislation," 3 *The Advocate* (No.2) 9 (1984)

"A Distant Perspective on American Law," 2 *The Advocate* (No. 2) 4 (1983)

"Statewide Land Use Planning: A Process in Search of a Purpose," *InSite* #57, page 4 (1979)

Book Reviews:

Like the Supreme Court, Posner Is Right for the Wrong Reasons, 2002 LAW, PROBABILITY AND RISK 67 (2002)

Justice Breyer's Case for Centralized Executive Government, 1995 THE PUBLIC INTEREST LAW REVIEW 167 (1995)

Civilization in the Balance: Comments on Senator Al Gore's EARTH IN THE BALANCE, 23 ENVIRONMENTAL LAW 233 (1993)

The Lords of Yesterday, Today, and Tomorrow, 4 RIVERS 160 (1993)

Review of *"Theoretical Perspectives on Sexual Difference"*, 38 THE AMERICAN JOURNAL OF JURISPRUDENCE 411 (1993)

Truth, Purpose and Public Policy: Science and Democracy in the Search for Safety, 21 ENVIRONMENTAL LAW 1091 (1991)

A Coherent Takings Theory At Last: Comments on Richard Epstein's "Takings: Private Property and the Power of Eminent Domain", 17 ENVIRONMENTAL LAW 153 (1986)

Review of *"Regulation of Flood Hazard Areas to Reduce Flood Losses," Volume 3*, 2 INTERNATIONAL JOURNAL OF MASS EMERGENCIES AND DISASTERS 439 (1984)

Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicles Air Pollution, 1940-1975, 9 ENVIRONMENTAL LAW 441 (1979)

Public Trusts: Gaining Access to the Courts, 8 ENVIRONMENTAL LAW 217 (1978)

The Last Stand, 5 ENVIRONMENTAL LAW 365 (1975)

Trees As a Minority, 5 ENVIRONMENTAL LAW 199 (1974)