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*Design: Margaret Parker*

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Annual Report 2010



## Exciting things happen here!

The 2009-10 academic year was a time for reflection for Lewis & Clark's environmental and natural resources law program. We are celebrating the 40th anniversary of the first environmental law class taught at Lewis & Clark, which, following on the heels of the 1969 founding of our law journal, *Environmental Law*, and the Northwest Environmental Defense Center, gave life to a thriving and diverse environmental law program.

A 40-year perspective now gives us an opportunity to reflect on how our program has developed and grown alongside contemporaneous developments in environmental law. We can also see how far environmental law has to go in order to cope with the major global challenges facing us today. In particular, climate change is—or should be—forcing all of us to plan ahead for major changes in our economy and way of life, as we try to adapt to the consequences of global temperature rise while also trying to reduce emissions of atmospheric carbon and other greenhouse gases.

Our “Change by Degrees” program has been helping students prepare for the climate law challenges ahead. We added a Climate Change course to the regular academic year curriculum, and climate change law and policy is discussed in a number of other courses such as Environmental Law, International Environmental Law, Energy Law, Northwest Energy Law, Law Science and

Environment, Public Lands, Public Trust and Wildlife Law. As you can see in this issue, students also work directly on climate change issues through our clinics. Pacific Environmental Advocacy Center staff attorneys and students have won major legal battles over a coal-fired power plant that emits millions of tons of carbon dioxide as well as large amounts of other greenhouse gases annually. International Environmental Law Project faculty and students participated substantively in the Copenhagen climate change convention and continue their work on other significant climate issues.

Recent distinguished visitor lectures have also provided unique insights into this challenge. Our 22nd annual NRLI Distinguished Environmental Visitor, Florida State's J.B. Ruhl, started off the 2009-10 academic year with “After Cap-and-Trade: The Climate-Forced Path of Environmental Law.” This month our Distinguished International Visitor, Dr. Christian Calliess, addressed “European Environmental Law: The Principle of Sustainability, Climate Protection and Energy Policy in the European Union,” and in October our 23rd NRLI Distinguished Visitor, Yale's Douglas Kysar, will speak on “What Climate Change Can Do About Tort Law.” We invite you to attend the upcoming lecture by webcast if not in person; details inside at page 3.

—Janice and Lin

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## On the Horizon in the 2010-11 Academic Year

*In addition to these highlighted events, the Law School has a full calendar of environmental, natural resources, and animal law events throughout the academic year. Many of our events are free and open to the public. To keep posted on what's happening or download podcasts of events, please visit our website at [go.lclark.edu/elaw](http://go.lclark.edu/elaw), or get on our email list by sending a subscription request to [nrli@lclark.edu](mailto:nrli@lclark.edu).*

### **NRLI DISTINGUISHED INTERNATIONAL VISITOR LECTURES**



Dr. Christian Calliess,  
Director of the Institute for  
Public Law, Freie Universität  
(Berlin, Germany)

***European Law: Values  
and Constitutional Principles  
of the European Union***

**Tuesday, September 14, 2010, noon**

***European Environmental Law:  
The Principle of Sustainability,  
Climate Protection and Energy Policy  
in the European Union***

**Thursday, September 16, 2010, 6:00 p.m.**

Lewis & Clark Law School

Contact: Lin Harmon at [lhwh@lclark.edu](mailto:lhwh@lclark.edu) or  
503-768-6882

<http://go.lclark.edu/elaw>

### **15TH ANNUAL FALL FORUM TAXATION AND THE ENVIRONMENT**

**Friday, October 8, 2010**

8:00 a.m.-5:00 p.m.

Lewis & Clark Law School

Contact: Shanelle Honda at  
[shonda@lclark.edu](mailto:shonda@lclark.edu) or 503-768-6639  
[http://www.lclark.edu/law/programs/  
business\\_law/fall\\_forum/schedule/](http://www.lclark.edu/law/programs/business_law/fall_forum/schedule/)

### **2010 DISTINGUISHED ENVIRONMENTAL LAW GRADUATES AWARDS AND WILLIAMSON AWARD CEREMONY**

***Distinguished Graduate honorees:  
Kate Brown '85, Phil Schiliro '81,  
Dennis Treacy '83***

***Williamson Award honoree:  
Benjamin Luckett '10***

**Thursday, October 14, 2010, 5:30 p.m.**

Lewis & Clark Law School

Contact: Linda D'Agostino-Long at  
[lindad@lclark.edu](mailto:lindad@lclark.edu) or 503-768-6784

<http://go.lclark.edu/elaw>

### **23RD ANNUAL NRLI DISTINGUISHED VISITOR LECTURE**



Douglas A. Kysar, Joseph M.  
Field '55 Professor of Law,  
Yale Law School

***What Climate Change  
Can Do About Tort Law***

**Thursday, October 14, 2010, 6:00 p.m.**

(followed by reception)

Lewis & Clark Law School

Contact: Linda D'Agostino-Long at  
[lindad@lclark.edu](mailto:lindad@lclark.edu) or 503-768-6784

<http://go.lclark.edu/elaw>

### **SPECIAL INTERNATIONAL ENVIRONMENTAL LAW LECTURE**



Dr. M.C. Mehta,  
internationally-renowned  
environmental lawyer

***Saving the Taj Mahal  
and Other Stories***

***from the Frontlines of Indian  
Environmental Litigation***

**October 18, 12:00-1:30 p.m.**

Stoel Rives Conference Center

Contact: Oregon Law Institute at  
[oli@lclark.edu](mailto:oli@lclark.edu) or 503-768-6580

<http://go.lclark.edu/elaw>



### **18TH ANNUAL ANIMAL LAW CONFERENCE**

***Animals in Crisis: Using the Laws  
We Have, Getting the Laws We Need***

**October 15-17, 2010**

Contact: Aurora Paulsen at  
[aurora.paulsen@gmail.com](mailto:aurora.paulsen@gmail.com) or Liberty  
Mulkani at [lmulkani@lclark.edu](mailto:lmulkani@lclark.edu)  
Lewis & Clark Law School  
<http://alawconference.org>



### **CONTINUING LEGAL EDUCATION FOR THE FOREST SERVICE AND OTHER FEDERAL AGENCIES**

***2010 Introduction to  
Policy and Legal Aspects of  
Endangered Species Act***  
**November 1-4, 2010**

Lewis & Clark College

Contact: Linda D'Agostino-Long at  
[lindad@lclark.edu](mailto:lindad@lclark.edu) or 503-768-6784

***Endangered Species Act for  
US Forest Service Line Officers,  
Biologists and Agency Specialists***  
**May 2-5, 2011**

Denver, Colorado

Contact: Linda D'Agostino-Long at  
[lindad@lclark.edu](mailto:lindad@lclark.edu) or 503-768-6784

### **NATURAL RESOURCES LAW TEACHERS INSTITUTE**

***Sponsored by the Rocky Mountain  
Mineral Law Foundation***  
**May 25-27, 2011**

Columbia River Gorge and

Lewis & Clark Law School

Contact: Lin Harmon at [lhwh@lclark.edu](mailto:lhwh@lclark.edu)  
or 503-768-6882

### **2011 ENVIRONMENTAL LAW, ANIMAL LAW, AND INDIAN LAW SUMMER SCHOOLS**

**May 31-August 8, 2011**

Lewis & Clark Law School

Contact: NRLI at [nrli@lclark.edu](mailto:nrli@lclark.edu)  
or 503-768-6784



# Major Events in 2009-10

## 2009 ENVIRONMENTAL AND NATURAL RESOURCES LAW SEMINAR FOR FEDERAL JUDGES

***A joint program of the Federal Judicial Center and Lewis & Clark Law School***

In September 2009, the Lewis & Clark faculty presented its annual seminar for more than 40 federal judges on a broad range of environmental law issues: justiciability, civil enforcement, endangered species law, pollution control statutes and natural resources law.

## 22ND ANNUAL NATURAL RESOURCES LAW INSTITUTE DISTINGUISHED VISITOR LECTURE



***After Cap-and-Trade: The Climate-Forced Path of Environmental Law***

Distinguished Visitor J.B. Ruhl, Matthews & Hawkins Professor of

Property at Florida State University College of Law, presented this ground-breaking lecture to a packed house in October 2009. Quotable quote: "The American pika is toast."

Download or view the lecture at  
<http://lawlib.lclark.edu/podcast/?p=1946>



## 2009 DISTINGUISHED ENVIRONMENTAL LAW GRADUATE AWARDS PRESENTATIONS

***Paul Horwitz '82, Deputy Secretary, U.N. Ozone Secretariat***

***Nicole Cordan '95, Policy and Legal Director, Save Our Wild Salmon***

***Kathleen Trever '93, Deputy Attorney General, State of Idaho***

The 2009 Distinguished Graduates have worked hard to craft solutions to difficult environmental problems. See pages 4-5 for more details.

Download or view the awards presentations at  
<http://lawlib.lclark.edu/podcast/?p=1946>

## 2009 ANIMAL LAW CONFERENCE AT LEWIS & CLARK

***Animal Law: The Links***

Once again, a sold-out crowd from around the world convened at Lewis & Clark Law School in October for the 17th Annual Animal Law Conference at Lewis & Clark to explore animal law and its link to other areas of the law and professional disciplines, philosophies, and social movements. The event, held October 16-18, 2009, was presented by the Center for Animal Law Studies at Lewis & Clark in collaboration with the Animal Legal Defense Fund and the Lewis & Clark Law School Student Animal Legal Defense Fund.

Download or view the conference panels at  
<http://lawlib.lclark.edu/podcast/?p=2458>

## SYMPOSIUM: THE SCIENCE, ETHICS, AND LAW OF ANIMAL TESTING IN THE 21ST CENTURY

This symposium in November explored the scientific, ethical, legal and regulatory challenges and opportunities generated by the National Academy of Science's National Research Council Report on Toxicity Testing in the 21st Century.

Download or view the conference panels at  
<http://lawlib.lclark.edu/podcast/?p=1470>

## "COP 15": LEWIS & CLARK FACULTY DISCUSS THE COPENHAGEN MEETING ON CLIMATE CHANGE

Lewis & Clark faculty and staff who attended the Copenhagen Climate Change Conference in 2009 brought their impressions of the conference to a roundtable in March, offering ideas on where global climate change policy is headed.

Download or view the roundtable at  
<http://lawlib.lclark.edu/podcast/?p=2984>

## 2010 NATIONAL ENVIRONMENTAL LAW FORUM

***The Clean Air Act at a Crossroads: Turning 40, Confronting Climate Change***

In this two-day conference in April, speakers and participants took a new look at a 40-year-old statute to consider its track record in cleaning up the air and determine whether it is an appropriate law to address the unforeseen challenge of climate change.

Download or view the conference panels and wrap-up session at  
<http://lawlib.lclark.edu/podcast/?p=3647>

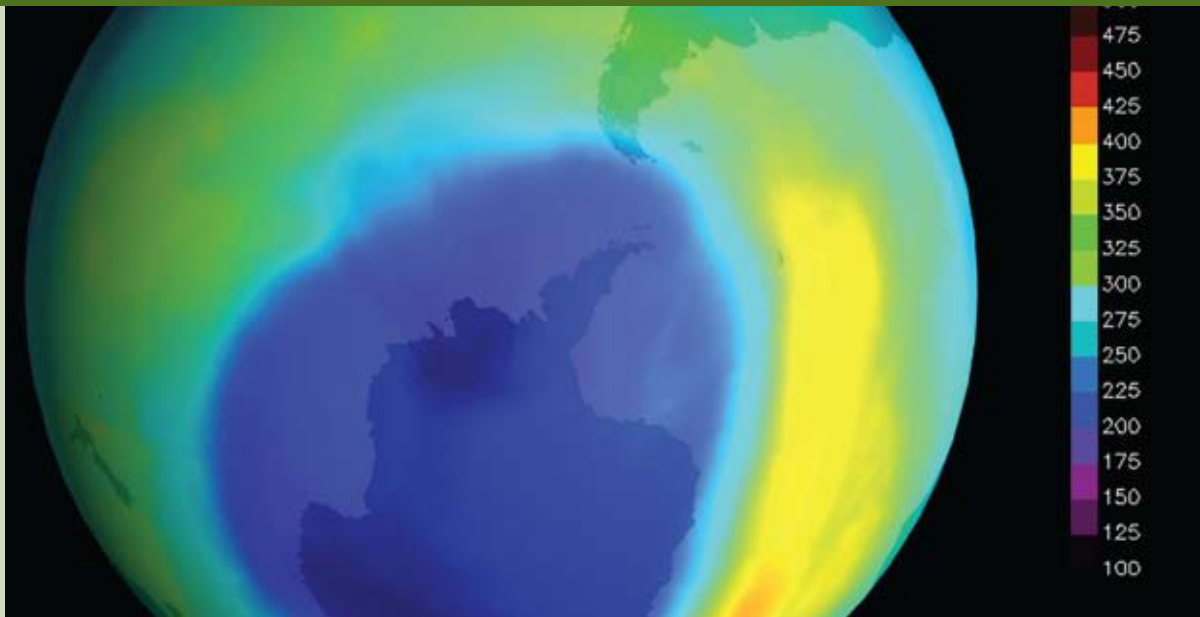


*For more program events in 2009-10, see our Recent Podcasts listing on pages 18-19.*

Lewis & Clark  
Law School

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

*Each year the environmental and natural resources faculty choose two or three from among over 1,500 deserving environmental law alumni for the Distinguished Environmental Graduate Award. The Award, which has been bestowed since 1995, is intended to honor our graduates' substantial contributions to environmental law and policy. The 2009 recipients shared the common characteristic of managing, over many years, complex consensus processes involving multiple stakeholders in some of the major environmental challenges of our time: managing the hole in Earth's ozone layer; cleaning up nuclear waste; and conserving endangered species in a complex river system.*



## 2009 Distinguished Grads Show Patience, Persistence in Solving Big Problems

### PAUL HORWITZ '82

Paul Horwitz has worked on ozone issues since 1989 when he became the first Secretary of the newly formed Ozone Secretariat. After one year in that position, he returned to the US Environmental Protection Agency (EPA) where he worked on acid rain issues before moving back to the ozone portfolio as EPA's chief Montreal Protocol negotiator, a position which he maintained for 13 years.



Paul also served as Chairman and Vice-Chairman of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol, and as President of the Conference of the Parties to the Vienna Convention. Paul rejoined the Ozone Secretariat as Deputy Executive Secretary in January of 2005, serving in the United Nations Environment Programme's global headquarters in Nairobi, Kenya. He is currently based in Washington, DC.

Paul received the United Nations Environment Programme's 1997 Ozone Award and EPA's 2005 Stratospheric Ozone Protection Award For Leadership and Innovation in Montreal Protocol Negotiations. In a press release accompanying its award, EPA stated: "Paul Horwitz has represented

the U.S. in international negotiations under the Montreal Protocol, heading over 40 of the 100+ delegations he has participated in over the past dozen years. Through leadership and personal dedication, he has strengthened controls on methyl bromide, clarified implementation and compliance procedures, and has emphasized cost-effective and rational protection strategies for the ozone layer. Paul has held vital leadership positions in the Protocol and Multilateral Fund, has crafted creative solutions to build domestic and international consensus to controversial issues, and has been masterful in striking a balance between environmental benefit and countries' capacities and needs. As a leader of the U.S. EPA's international negotiating team and as a developer of domestic policy, Paul has brought incredible energy, vision, innovation, and success to stratospheric ozone protection. His actions have helped make the Montreal Protocol a landmark international agreement for protecting the environment and public health."

Horwitz's travel itinerary has included more than 40 countries. In addition to his J.D. from Lewis & Clark, he received a master's degree in public policy at the John F. Kennedy School of Government at Harvard University.

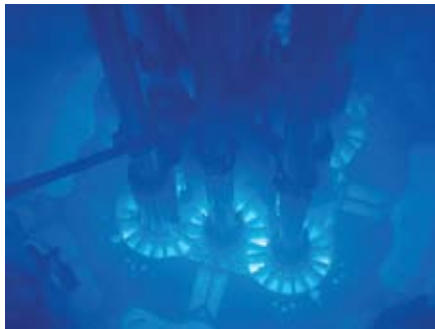
### KATHLEEN TREVER '93



Kathleen was a Harvard-trained geologist before coming to Lewis & Clark to become an environmental lawyer.

Upon graduation in 1993, Kathleen

Trever went to work as a Deputy Attorney General representing the Idaho Department of Environmental Quality, working on Superfund and NEPA litigation focused on cleanup of contamination from mines and US Department of Energy nuclear activities. Before long she found herself in the position of director of oversight for the Idaho National Laboratory nuclear waste cleanup process, a highly-contentious, politically-charged dispute over how much waste the Department of Energy was



required to remove from the Idaho National Laboratory, an 890-square-mile federal nuclear research facility. For 14 years, Trever worked patiently to break a deadlock between the federal Department of Energy and the Idaho state government regarding responsibility for the nuclear waste which was buried above the Snake River Plain Aquifer, a drinking water source for much of southern Idaho.

Professor Janet Neuman said, “Kathleen is considered instrumental by people who worked with her, by the press, and by observers, in turning a very polarized process into much more of a cooperative negotiation based on science and public participation. She built all kinds of constructive relationships with federal, state, local, and tribal agencies, elected officials, contractors, activists, and the media to help move this process along.”

Kathleen gave testimony before Congress several times on Idaho's behalf, advised four different Idaho governors, and worked closely with a large number of partners over many years until the issue was resolved by agreement in 2008. An avid birder, she currently serves as lead Deputy Attorney General for the Idaho Department of Fish and Game.

### NICOLE CORDAN '95

Nicole Cordan made an impact on environmental law even before she attended law school. Before coming to Lewis & Clark, she was a Washington, D.C. policy analyst for the Center for Clean Air Policy, where she drafted language for the 1990 Clean Air Act Amendments and testified before Congress to encourage passage of the amendments. She also lobbied on climate change legislation, clean energy policies, and wetlands protection. Following her graduation from Lewis & Clark, Nicole was appointed the 1995 Natural Resources Law Institute Fellow at the law school, where she was instrumental in the creation of the Pacific Environmental Advocacy Center and became its first staff attorney. She then served as the Acting Regional Director of the National Wildlife Federation's Western Natural Resources Office.



In 2000 she joined Save Our Wild Salmon, a nationwide coalition of conservation organizations, commercial and sportsfishing associations, businesses, river groups, and taxpayer advocates with the mission of working collectively to restore self-sustaining, abundant, and harvestable populations of wild salmon and steelhead to rivers, streams and oceans of the Pacific Salmon states. In her role as Policy and Legal Director for Save Our Wild Salmon, she has been a tireless national and regional advocate for, among other issues, the protection and restoration of salmon and steelhead in the Columbia River Basin. In the process of her work in the courts and Congress over the last decade, she coordinated the efforts of many organizations, government entities and private interests, bringing together the legal, policy, legislative and public relations components of salmon recovery while, as Associate Dean Janice Weis noted, “keeping good humor and her wits and head about her.”



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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Faculty Scholarship 2009-10

### Professor Michael C. Blumm

**CHAPTERS:** “Reserved Water Rights” in *Waters and Water Rights*, Lexis/Nexis (2009)

**ARTICLES:** “Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Judicial Reaffirmation,” 49 Nat. Resources J. 653 (Fall/Winter 2009) (co-authored with Jane Steadman '09)

“The Public Trust Doctrine: A Twenty-First Century Concept,” 16 Hastings W.-N.W. J. Envtl. L. & Pol’y 105 (2010) (*note*: this article made the top ten lists of most downloaded articles in the Social Science Research Network for both Property and Environmental Law)

“Debunking the ‘Divine Conception’ Myth: Environmental Law Before NEPA” (review of *Before Earth Day: The Origins of American Environmental Law, 1945-1970*, by Karl Boyd Brooks), 37 Ecology L.Q. 269 (2010)

### Assistant Dean Pamela D. Frasch *Executive Director of the Center for Animal Law Studies*

**BOOKS:** *Animal Law: Cases and Materials*, Carolina Academic Press (4th ed.) (2009) (co-authored with Sonia S. Waisman and Bruce A. Wagman)

*Animal Law in a Nutshell*, Thomson West (forthcoming 2010) (co-authored with Katherine Hessler, Sarah Kutil and Sonia Waisman)

**CHAPTERS:** “Criminal Law” (co-authored with Dana M. Campbell) in *Litigating Animal Law Disputes* (J. Schaffner, ed., ABA Publishing 2009)

“The Unequal Treatment of Animals by Species and Practice in the United States: A Moral and Legal Dilemma” (co-authored with Hollie Lund '11) in M. Lachance, dir., *L’animal dans la spirale des besoins de l’humain/The Animal, Within the Sphere of*

*Humans’ Needs* (Thomson Reuters Éditions Yvon Blais, 2010). This work was also published in Portuguese in the Brazilian Animal Rights Review, ano 4, número 5 Revista Brasileira de Direito Animal 11 (Jan.-Dec. 2009)

### Professor William Funk *Robert E. Jones Professor of Advocacy and Ethics*

**BOOKS:** *Administrative Procedure and Practice*, Thomson West (4<sup>th</sup> ed. 2009) (co-authored with Sidney Shapiro and Russell Weaver)

*Legal Protection of the Environment*, Thomson West (3rd ed. 2009) (co-authored with Craig Johnston and Victor Flatt)

**ARTICLES:** “Truth About Torts VI: Rethinking Regulatory Preemption and Its Impact on Public Health,” Center for Progressive Reform (2009) (co-authored with William Buzbee, Thomas McGarity, Nina Mendelson, Sidney Shapiro, David Vladeck, and Matthew Shutz)

“‘Fifty FDAs’: An Argument for Federal Preemption of State Tort Law that Is Less than Meets the Eye,” Center for Progressive Reform (2009) (co-authored with William Buzbee, Thomas McGarity, Sidney Shapiro, James Goodwin and Matthew Shutz)

“Judicial Deference and Regulatory Preemption by Federal Agencies,” 84 Tulane L.J. 1233 (2010)

“Constitutional Implications of Regional CO<sub>2</sub> Cap-and-Trade Programs,” 27 UCLA J. Env. Pol’y 353 (2009)

### Clinical Professor Katherine Hessler *Director of the Animal Law Clinic*

**BOOKS:** *Animal Law in a Nutshell*, Thomson West (forthcoming 2010) (co-authored with Pamela Frasch, Sarah Kutil and Sonia Waisman)

**CHAPTERS:** “Philosophical Foundations and Animals in Testing: Concerns and Consequences,” in I. Shimazu, ed., *Crime, Restoration and Responsibility*, Research Project Report No. 185, Chiba University Graduate School of Humanities and Social sciences, 36-44 (2010) (in Japanese translation, from the proceedings of the Japanese Association of Legal Philosophy)

### Professor James L. Huffman *Erskine Wood Sr. Professor of Law*

**ARTICLES:** “Comprehensive River Basin Management: The Limits of Collaborative, Stakeholder-Based, Water Governance,” 49 Nat. Resources J. 117 (2009)

“A Mad Scramble for Infrastructure Dollars” in *Reacting to the Spending Spree: Policy Changes We Can Afford* (Hoover Institution Property Rights and Prosperity Task Force, June 2009)

### Professor Craig Johnston

**BOOKS:** *Legal Protection of the Environment*, Thomson West (3d ed. 2009) (co-authored with William Funk and Victor Flatt)

### Professor Susan Mandiberg

**ARTICLES:** “Locating the Environmental Harm in Environmental Crimes,” 2009 Utah L. Rev. 1177 (2009)

### Professor Janet C. Neuman

**ARTICLES:** “Keeping Indian Claims Commission Decisions in Their Place: Assessing the Preclusive Effect of ICC Decisions in Litigation Over Off-Reservation Treaty Fishing Rights,” 31 U. Haw. L. Rev. 475 (2009) (co-authored with Michelle Smith '08)

### Assistant Professor Melissa Powers

**BOOKS:** CLIMATE CHANGE AND THE LAW (Lexis-Nexis 2009 updates) (with co-authors Chris Wold and David Hunter)



**Front row, from left:** Bob Miller '91, professor; Pamela Frasch, assistant dean and executive director (CALS); Melissa Powers '01, assistant professor; Susan Mandiberg, professor; Allison LaPlante '02, clinical professor (PEAC); Tom Buchele, managing attorney and clinical professor (PEAC); Laura Handzel, assistant director (CALS). **Second row, from left:** Janice Weis, associate dean and program director; Chris Wold '90, associate professor and clinical director (IELP); Erica Thorson '05, clinical professor (IELP); Dan Rohlf, professor and clinical director (PEAC); Dan Mensher '07, clinical professor (PEAC); Craig Johnston '85, professor; Jan Neuman, professor. **Third row, from left:** Lin Harmon '91, associate director; Bill Funk, professor; Kathy Hessler, clinical professor and director (Animal Law Clinic). **Fourth row, from left:** Linda D'Agostino, program assistant; Mike Blumm, professor; Aubrey Baldwin '05, clinical professor (PEAC). **Not pictured:** Professors Henry Drummonds and Jim Huffman and PEAC executive director Karen Smith Geon.

**ARTICLES:** "King Corn: Will the Renewable Fuel Standard Eventually End Corn Ethanol's Reign?," 11 Vt. J. Envtl. L. 667 (2010)

"The Cost of Coal: Climate Change and the End of Coal as a Source of 'Cheap' Electricity," 12 U. Pa. J. Bus. L. 407 (2010)

"Integrating the Clean Air Act with Cap-and-Trade," 37 Rutgers L. Rec. 150 (2010)

**Professor Daniel J. Rohlf**  
*PEAC Clinical Director*

**ARTICLES:** "Avoiding the 'Bare Record': Safeguarding Meaningful Judicial Review of Federal Agency Actions," 35 Ohio N. U. L. Rev. 575 (2009)

"Conserving Endangered Species in an Era of Global Warming" in *ENDANGERED SPECIES ACT: LAW, POLICY, AND PERSPECTIVES* (Don Baur and W. Robert Irvin, eds.), American Bar Association (2d ed.) (2009)

"Geography and Recovery Under the Endangered Species Act," 24 CONSERVATION BIOLOGY 395 (2010) (co-authored with Carlos Carroll, Michael Phillips, Michael Nelson and John Vucetich)

**Clinical Professor Erica J. Thorson**  
*IELP Staff Attorney*

**CHAPTERS:** "The World Heritage Convention & Climate Change: The Case for Climate-Change Mitigation Strategy Beyond the Kyoto Protocol" in *ADJUDICATING CLIMATE CHANGE: STATE, NATIONAL, AND INTERNATIONAL APPROACHES* (W. C. Burns & H. M. Osofsky, eds.), Cambridge University Press (2009)

**ARTICLES:** "Sharing Himalayan Glacial Meltwater: The Role of Territorial Sovereignty," 19 DUKE J. COMP. & INT'L L. 487 (2009)

"International Environmental Law," 44 INT'L LAW 503 (Spring 2010)

"Back to Basics: An Analysis of the Object and Purpose of CITES and a Blueprint for Implementation," \_\_ Miami J. of Int'l Wildlife L. & Pol'y \_\_ (forthcoming 2010)

**Associate Professor Chris Wold**  
*IELP Director*

**BOOKS:** *CLIMATE CHANGE AND THE LAW* (Lexis-Nexis 2009 updates) (with co-authors Melissa Powers and David Hunter)

**ARTICLES:** "Taking Stock: Trade's Environmental Scorecard after Twenty Years of 'Trade and Environment,'" 45 Wake Forest L. Rev. 319 (2010)

**Lewis & Clark**  
**Law School**



# Natural Resources Law Institute and Environmental and Natural Resources Law Program



## Gulf Oil News Analysts Call on Lewis & Clark Law Professors

In trying to make sense of the legalities arising from this spring's Deepwater Horizon oil rig disaster in the Gulf of Mexico, media reporters turned to the expertise of Lewis & Clark law professors Dan Rohlf and Bill Funk. Professor Rohlf is the clinical director of the Pacific Environmental Advocacy Center, Lewis & Clark Law School's nationally recognized domestic environmental legal clinic. Originally trained as a geologist, Rohlf's expertise lies in endangered species law and policy, wildlife law, and ecosystem management. Professor Funk, the Robert E. Jones Professor of Advocacy and Ethics at Lewis & Clark, has previously served as an assistant general counsel at the U.S. Department of Energy and as a staff attorney in the Office of Legal Counsel of the U.S. Department of Justice. Funk has written and taught extensively on the subjects of administrative and environmental law.

Rohlf authored an opinion piece on the Center for Progressive Reform blog entitled "What if MMS Had Followed the

Law When Considering the Deepwater Horizon Permit?," citing evidence that the Minerals Management Service "mostly ignored some of the country's most important environmental laws when it gave the green light to Deepwater Horizon and other offshore drilling." He noted reports that MMS officials "pressured agency biologists to reverse findings that drilling might harm marine mammals and endangered species," failed to consult with the National Marine Fisheries Agency under the Endangered Species Act on threatened and endangered species such as sea turtles and sperm whales before authorizing drilling, and ignored the National Environmental Protection Act's requirement to consider the environmental impacts before declaring a "Categorical Exclusion" for all offshore wells. Rohlf pointed out that MMS, which usually operates outside public view, "last made national headlines in 2008, when reports surfaced that agency employees were plied with sex and drugs by the oil companies that federal

personnel were supposed to regulate. ... [U]nfortunately we are now aware of the steep environmental consequences that can result when regulators are quite literally in bed with the very industries they are supposed to oversee." Rohlf concluded that the environmental disaster unfolding in the Gulf "underscore[s] the direct links between protecting the natural world and its imperiled species and looking out for humans' best interests." The full text of the op-ed is available online through <http://www.progressivereform.org/CPRBlog.cfm?fkScholar=40>

Following public outcry from the rapidly expanding oil plume, President Obama declared a "moratorium" on new offshore wells. *The New York Times* contacted Rohlf for his opinion on this development. "The moratorium does not even cover the dangerous drilling that caused the problem in the first place," Rohlf responded. The *Times* went on, "He added he was not certain that the Interior Department was capable of carrying out the needed reforms."

***The New York Times*, "Despite Moratorium, Drilling Projects Move Ahead," May 23, 2010 <http://www.nytimes.com/2010/05/24/us/24moratorium.html?pagewanted=all>**

In a news story about continuing offshore development of existing projects grandfathered in under the moratorium, the Inter Press Service quoted President Obama: "It seems as if permits were too often issued based on little more than assurances of safety from the oil companies," [Obama] said in a May 14 address. "That cannot and will not happen anymore." In the following paragraph IPS quoted Rohlf: "Federal regulators have been misapplying or straight out violating federal law for quite some time in authorising offshore oil and gas drilling."

**Hannah Rubenstein, "More Deepwater Disasters on the Horizon?," May 29, 2010, <http://www.ipsnews.net/news.asp?idnews=51630>**

*The Rolling Stone* published an expose in early June about the spill and the Obama



administration's slowness to take charge of the cleanup. The article noted that the National Oil and Hazardous Substances Pollution Contingency Plan requires the government to "direct all federal, state or private actions" for cleanup "where a discharge or threat of discharge poses a substantial threat to the public health or welfare of the United States." The article quotes Funk as saying, "The government is in a situation where it's required to be in charge."

**Tim Dickinson, "The Spill, The Scandal and the President : The inside story of how Obama failed to crack down on the corruption of the Bush years—and let the world's most dangerous oil company get away with murder," *Rolling Stone*, <http://www.rollingstone.com/politics/news/17390/111965>**

*The New York Times* then reported that the U.S. Fish and Wildlife Service underestimated the risk that deepwater drilling in the Gulf of Mexico posed to wildlife. The agency had gone along with the Minerals Management Service's assessment that drilling posed little risk to wildlife, despite evidence that there was a 27% chance of even moderate spills reaching critical habitat. "The Endangered Species Act requires caution, but federal wildlife agencies allowed offshore oil drilling to play Russian roulette with endangered species in the gulf," Rohlf said. "Would people get on a plane if they knew it had a one in four chance of a major mechanical problem? Federal wildlife agencies made conscious choices—under the guise of science—to allow offshore oil drilling with an identical risk of serious harm to endangered species."

**Leslie Kaufman, "Agency Agreed Wildlife Risk From Oil Was 'Low,'" *The New York Times* (July 5, 2010), <http://www.nytimes.com/2010/07/06/us/06wildlife.html>**

A more detailed analysis of the legal issues involved in the BP oil spill can be heard in a May 31 interview with Rohlf on KBOO Community Radio. The podcast of that interview is available at <http://kboo.fm/node/21760>.

## Another Record Year for Moot Court

### THIRD NATIONAL CHAMPIONSHIP IN A ROW FOR ENVIRONMENTAL MOOT COURT TEAM

For the third year in a row, and the seventh time in 17 years, Lewis & Clark Law School's team won the Pace National Environmental Law Moot Court Competition. Law students Ben Luckett, Lizzy Zultoski, and John Krallman triumphed over 83 other teams to claim the Pace National Environmental Moot Court Championship in February.

This year's fictional problem, which focused on issues surrounding illegal e-waste trade, presented three parties: an environmental group, an industry group, and a government agency. Plaintiffs, Friends of Responsible Trade and its members, sued the Green Recycling Group and the Newtown Parent Teachers Association, alleging the two organizations violated the Resource Conservation and Recovery Act (RCRA) by sending used electronic devices from a school recycling drive offshore for salvage and recycling without complying with RCRA requirements. A third party, the Environmental Protection Agency, intervened in the case. The competition is designed in such a way that the teams prepare arguments for all three sides.

After advancing to the quarterfinal round with 26 other teams, this year's Lewis & Clark team defeated several other teams to reach the finals. With a record number of teams participating this year, Lewis & Clark triumphed over more schools than any other championship team in the competition's history. As a measure of the near-impossibility of this achievement, only one other law school has won twice.

Perennial coach Craig Johnston said moot court competition helps law students prepare for the demands of ongoing learning and innovative thinking that their chosen profession requires. "The main value of the environmental moot court program is that it shows the students what it takes to be an excellent advocate," Johnston said. "There is nothing quite like finding out that even after you have written a brief and done 20 or more practice rounds, you still need to both keep learning and keep finding new ways to think about the issues. Our goal is to prepare the students for all the various questions and reactions judges may have in response to their arguments."

Team member Lizzy Zultoski is now a two-time national champion at this competition. She is only the third Pace advocate to qualify for this honor in the competition's 22-year history. She joins alumnae Nancy Perry and Jenifer Johnston in that elite group.



From left, coach Professor Craig Johnston, and team members John Tallman, Lizzy Zultoski and Ben Luckett

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## Pacific Environmental Advocacy Center (PEAC)

*PEAC is Lewis & Clark's nationally-recognized domestic environmental litigation clinic. PEAC's experienced environmental lawyers are also law school faculty who collaborate with students to protect natural resources through pro bono representation, litigation, and education. This year, PEAC students and professors worked on over 30 cases in four major practice areas—water, air/energy, lands, and endangered species. The following summaries describe the most active cases.*

### Water

#### **WATER QUALITY STANDARDS**

**(TEMPERATURE):** Salmon, steelhead, and bull trout require clean, cold water at all stages of their life cycles. Scientific studies have shown that these salmonids are particularly vulnerable to harm caused by exposure to warm temperatures at their spawning, egg incubation, and emergence stages. Higher than optimal temperatures place salmonids at risk of breeding impairment, physical injury, and even death. PEAC, on behalf of its clients, has challenged actions of the Environmental Protection Agency (EPA) in approving Oregon water quality temperature standards for salmon-bearing waterways that are too hot for salmonids, and numerous exemptions from water temperature standards that Oregon granted to timber, agriculture, and grazing non-point sources. The lawsuit also challenges federal biological opinions which concluded that the standards will not result in jeopardy to

salmon/bull trout or adverse modification of designated critical habitat. PEAC submitted an opening brief supporting its motion for summary judgment. Briefing is currently stayed pending resolution of a federal motion for voluntary remand. Briefing on all or some of the claims is likely to continue this fall.

#### **WATER QUALITY STANDARDS**

**(TOXICS):** In April 2006, PEAC filed suit against EPA on behalf of its clients, alleging EPA failed to perform its duty to act on Oregon's proposed toxic pollutant water quality standards. PEAC negotiated a settlement requiring EPA to take action on the standards, and entered a consent decree in May 2008. The agency agreed to review and take final action on the proposed toxics standards by January 2009. PEAC has since negotiated several extensions of the deadline with EPA while waiting for resource agencies National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) to complete consultation under the Endangered Species

Act regarding the effects of these aquatic life criteria on threatened and endangered species. This August, a second suit was filed against NMFS and FWS alleging unreasonable delay in completing their biological opinions. PEAC is in settlement negotiations with the agencies and expects to enter an order soon that will provide a deadline for completing consultation. With the biological opinions in hand, EPA will then be able to expedite its final action approving and/or disapproving the aquatic life criteria pursuant to PEAC's first consent decree.

Meanwhile, EPA took action required by the consent decree on Oregon's revised human health criteria for toxic pollutants. The most significant and controversial aspect of Oregon's human health criteria is the "fish consumption rate" Oregon assumed in setting the level of toxic pollutants allowed to be in Oregon's waters, and thus in the fish tissue that people eat. PEAC's clients charged Oregon's assumed consumption rate was inadequate and resulted in underprotective water quality standards. In June, EPA partially approved and partially disapproved Oregon's human health criteria. PEAC is currently developing new legal claims against EPA pertaining to these criteria.

**LANDFILL:** Grabhorn, Inc. operates the Lakeside Landfill, located on the Tualatin River a few miles upstream from the Tualatin National Wildlife Refuge. This unlined landfill has accepted waste for more than 50 years, and now is discharging landfill leachate to the Tualatin River and emitting landfill gas into the surrounding environment. Although DEQ has begun the process to close the landfill, the closure plan has, thus far, allegedly failed to address many long-term contamination problems.





In order to ensure that the landfill will be cleaned up so as to provide long-term security for the local environment, PEAC sued Grabhorn for violations of both the Clean Water Act (CWA) and Resource Conservation and Recovery Act. This summer, the court ruled in PEAC's favor on key issues in PEAC's motion for summary judgment on the CWA claims, but did not grant the motion for summary judgment. PEAC is currently in settlement negotiations with Grabhorn.

**INDUSTRIAL STORMWATER:** Industrial stormwater is a very significant source of water pollution in Oregon, particularly in urban areas. In 2009, on behalf of clients Northwest Environmental Defense Center (NEDC) and Columbia Riverkeeper (CRK), PEAC settled a suit against Oregon Department of Environmental Quality (DEQ) over its two industrial stormwater general permits. As part of the settlement, DEQ agreed to establish a committee to help direct the agency in rewriting the general permits. Through this committee process, PEAC is working to ensure that Oregon becomes a leader in addressing industrial stormwater.

## Air and Energy

**PGE BOARDMAN:** PGE Boardman is a 615-megawatt coal-fired power plant in Boardman, Oregon without modern pollution controls. The plant is Oregon's largest stationary source of nitrogen oxide and sulfur dioxide pollution, and its second largest mercury emitter. It generates around 5 million tons of carbon dioxide and hundreds of tons of fine particulate matter and carbon monoxide annually, regularly exceeding opacity emission limitations intended to control the amount of soot emitted from smokestacks. These emissions cause and/or contribute to climate change, acid rain and fog deposition in the Columbia Gorge and impaired visibility at ten or more wilderness areas in Oregon and Washington. In January 2008, PEAC issued notice of intent to sue on behalf of its clients Sierra Club, Columbia Riverkeeper,



Friends of the Columbia Gorge, Hells Canyon Preservation Council, and Northwest Environmental Defense Center, claiming failure to comply with new source review provisions, opacity limits and sulfur dioxide new source performance standards, and various procedural requirements. Following extensive settlement discussions, PEAC filed suit in September 2008 and successfully defeated PGE's motion to dismiss on various jurisdictional grounds. PEAC is now in the process of discovery.

**BRADWOOD LNG:** The Federal Energy Regulatory Commission (FERC) issued an order in September 2008 approving a liquefied natural gas import terminal on the Columbia River in Bradwood. PEAC's clients, as well as the states of Washington and Oregon and NMFS, petitioned FERC for rehearing of the Order in October 2008 on numerous grounds including inadequate analysis under the National Environmental Policy Act and insufficient findings that the project is in the "public interest" under the Natural Gas Act. PEAC argued that the project is unnecessary, in part, because most of the natural gas imported will be shipped to California rather than serving the Pacific Northwest; that the project will cause serious harm to the Columbia River ecosystem's air quality, water quality, and fish and wildlife habitats; and that it poses considerable safety and security risks.

FERC issued an Order Denying Rehearing in January 2009. The following month,

PEAC filed a petition for review before the Ninth Circuit. The States of Oregon and Washington and NMFS also petitioned for review, and the cases were consolidated. FERC submitted the administrative record in September 2009, PEAC submitted its opening brief in January 2010 and FERC responded on May 4, 2010. On that same day, FERC permit holder Bradwood Landing filed for bankruptcy in Texas. PEAC filed a response arguing that bankruptcy action should not stay the case. The Ninth Circuit agreed with PEAC, but has given Bradwood until early October to determine whether it intends to participate in the Ninth Circuit proceedings.

## Endangered Species

**FEMA:** In an important step toward protecting Oregon's critically imperiled salmon and steelhead, several environmental and conservation groups, represented by PEAC and co-counsel, recently settled a federal lawsuit against Federal Environmental Management Agency (FEMA) over the effect of the agency's program subsidizing flood insurance, which enables and even promotes development within the species' vital habitat.

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program



## International Environmental Law Project (IELP)

*During the 2009-2010 academic year, IELP was very busy working on issues ranging from how the climate change regime might affect land tenure of indigenous peoples to how definitions of “hunting trophy” might affect conservation of African elephants. Here are some highlights of the work.*

### Climate Change

Professors Chris Wold and Erica Thorson of the International Environmental Law Project, Professor Melissa Powers, and five Lewis & Clark law students traveled to Copenhagen, Denmark for the 15th meeting of the Conference of the Parties of the United Nations Framework Convention on Climate Change.

**REDD WORK:** IELP is an observer organization of the Ecosystem Climate Alliance (ECA), a coalition of NGOs working on issues stemming from the development of an agreement to reduce emissions

from deforestation and forest degradation (REDD). IELP was asked to join ECA because of its special expertise in the many legal issues associated with drafting, negotiating, and implementing multilateral environmental agreements.

IELP is a relative newcomer to the climate change negotiations, but it has nonetheless already taken on important work. IELP students worked extensively on unraveling the complicated legal questions related to land tenure that arise from the REDD negotiations. Land tenure is an important factor in the REDD negotiations for a number of reasons. First, clarified land tenure is a critical factor in the success or failure of forest conservation projects. Second, without transparent and accessible land tenure regimes that incorporate customary land tenure, forest dependent communities' interests may be marginalized in project design, implementation, and benefit-sharing.

Moreover, the specter of a REDD carbon-trading scheme raises a number of new issues related to a newly created property interest in sequestered carbon. IELP student clerks Ellie Dawson, Ivy Newman, Bobbie Traverso/Estes, and Michael Liu worked tirelessly on REDD issues.

In addition to its land tenure work, IELP has worked with other NGOs on compiling and thinking about the implications of various definitions of “forest” and different frameworks for identifying the acceptable parameters of forest management. What exactly constitutes a forest for REDD purposes is a major issue; most public interest lawyers, campaigners, and activists want any REDD agreement to focus on intact, natural forests to eliminate any incentive to deforest and subsequently receive carbon credits or other compensation for establishing plantations.

### **A SECTOR-BASED APPROACH:**

A second element of IELP's climate change



work involves sectoral approaches to reducing greenhouse gas emissions. Sectoral approaches that mandate innovative solutions to greenhouse gas emissions in specific economic sectors or industries, such as the transportation sector or cement industry, have the potential to transform business as usual and eliminate competitiveness concerns if such agreements are broadly applied. IELP student clerk Megan Lemire drafted a white paper exploring the various options for pursuing a sector-based approach to reducing greenhouse gas emissions.

#### **LAWYERING AT THE MEETING:**

In addition to working on a number of substantive projects related to the Copenhagen Climate Change negotiations, IELP was enmeshed at the meeting in the negotiations, providing advice to developing countries and NGOs and generally consulting as international environmental law experts. IELP students and professors analyzed draft text of the working documents, proposed language changes and worked with other lawyers, including the Climate Action Network's legal working group, to examine the binding nature of the various working documents. Professor Chris Wold, a recognized expert in multilateral environmental negotiations, was asked to join a group of lawyers consulting with developing country attorneys to help resolve some of the more complex legal issues relating to the working documents.

## **Trade in Endangered Species**

As always, IELP is engaged in ongoing work relating to implementation and enforcement of the Convention on International Trade in Endangered Species (CITES). Professors Thorson and Wold traveled to Doha, Qatar in March 2010 to the 15th meeting of the Conference of the Parties (COP15) to CITES.

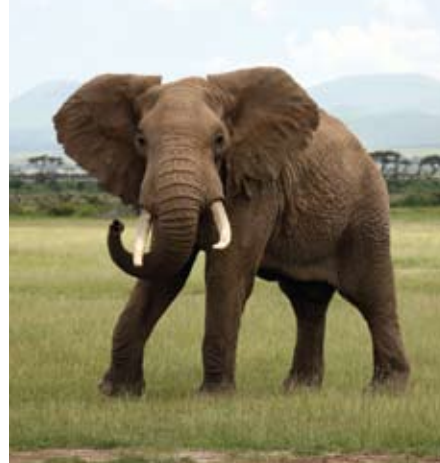
**MARINE SPECIES:** Perhaps one of the most contentious issues at COP15 was a proposal to list the Bluefin Tuna (*Thunnus thynnus*) on Appendix I, which would prohibit commercial trade in the

endangered species. Although the proposal did not pass with the requisite two-thirds majority, it brought to the fore the ongoing discussion of listing of marine species on the CITES Appendices, as did proposals to list a number of shark species. IELP has worked on this issue for a number of years, providing legal advice to governments and non-governmental organizations (NGOs) on implementation of the "introduction from the sea"—trade in animals caught on the high seas. At COP15, IELP continued this work through ongoing participation in the "introduction from the sea" working group and other consultations with government delegations and NGOs.

The increased number of proposals of marine species for listing in the CITES Appendices also raised issues regarding interpretation of the CITES listing criteria. IELP Professors and student clerks Lay-Ping Tan and Rebecca Hoyt generated a legal analysis and white paper on the application of the listing criteria to marine species, including an examination of the drafting history of the listing criteria to help both governments and NGOs determine the meaning of key provisions. This work was also important at the meeting of the Inter-American Tropical Tuna Commission (IATTC), where a potential CITES listing of the bluefin tuna was discussed. IELP's analysis helped organizations such as Greenpeace and Humane Society International explain the consequences of a listing and counter the spread of misinformation.

#### **ELEPHANTS AND TROPHY HUNTING:**

Like most CITES meetings, elephants dominated a large part of the two-week negotiations and like most meetings, IELP



got pulled into the fray. At COP15, IELP was asked to consult on a number of elephant issues that involve legal interpretation and drafting and to help draft interventions for governments of the African Elephant Coalition. Additionally, Professor Thorson participated on a working group that drafted a definition of "hunting trophy"—an important effort because despite the general prohibition on trade in elephant specimens, "hunting trophies" of some elephant populations are eligible for non-commercial trade. From a conservation perspective, it is imperative that the definition of "hunting trophy" be narrow and clearly identify the specimen as deriving from a legally sport-hunted animal.

**"BACK TO BASICS":** Professor Thorson, along with student clerks Robyn Shelby, Lay-Ping Tan, Lauren Posten, and Rebecca Hoyt, drafted a comprehensive white paper analyzing the object and purpose of CITES for the purpose of advocating that CITES be interpreted and implemented in a manner consistent with drafters' intent. The paper proposed a blueprint for interpreting and implementing some of CITES' most controversial and complex provisions and was distributed to all 175 government Parties to CITES and many NGOs.

*IELP, continued on page 17*



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## Center for Animal Law Studies (CALS) at Lewis & Clark

*in Collaboration with the Animal Legal Defense Fund*



*The Center for Animal Law Studies is an animal law think tank and the umbrella organization of the nation's premier animal law program. CALS works to ensure the interests of animals are considered in the legal realm and to provide the best education to the next generation of animal law attorneys.*

### Animal Law Symposia

CALS faculty have been working in conjunction with the Johns Hopkins Bloomberg School of Public Health, the Environmental Law Institute, and the Animal Legal Defense Fund to plan and host a series of symposia focusing on a recent National Academy of Sciences' report calling for significant reduction

of mammalian toxicity testing. The first symposium was held at the University of Ottawa in June 2009. Lewis & Clark hosted a symposium focusing on the regulatory aspects of the animal testing question in September. Podcasts of panels from the September symposium, "The Science, Ethics, and Law of Animal Testing in the 21st Century: Are We on the Verge of a Paradigm Shift?" are available at <http://lawlib.lclark.edu/podcast/?p=1470>



### 2009 Animal Law Conference

"Animal Law: The Links" explored the interstices between animal law, human rights and environmental and natural resources issues, including "Litigation and Advocacy for Wild Horses and Burros," "Climate Change," and "Killing with Keystrokes: CITES, African Elephants & Internet Trade." "Hot Topics in Animal Law" discussed, among other issues, the first-of-its-kind legal action brought under Section 9 of the Endangered Species Act against Ringling Brothers Circus for mistreatment of elephants. A number of sessions are available for download at <http://lawlib.lclark.edu/podcast/?p=2458>.

CALS and the Student Animal Legal Defense Fund will host the 18<sup>th</sup> annual Animal Law Conference October 15-17, 2010. "Animals in Crisis: Using the Laws We Have, Getting the Laws We Need" will feature keynote speakers Dr. Sheri Speede of In Defense of Animals-Africa and Katrina Sharman of Voiceless, the Animal Protection Institute (Australia). Almost 40 speakers from around the United States will participate in 20 unique sessions geared towards the interests of animal law attorneys, academics and law students.

For more information or to register for the conference visit [alawconference.org](http://alawconference.org).

### Animal Law Clinic

This academic year, the Animal Law Clinic filed a petition for rulemaking with the USDA on behalf of its client, the Farm Sanctuary, to expand "downer" protection beyond cattle to include sheep, goats, pigs, and other livestock animals. The petition seeks to protect animals who are too sick



or injured to move from being slaughtered for human consumption. This will prevent some of the well-documented (the petition included over 200 pages of exhibits) animal abuse which currently occurs in slaughter facilities and will also protect the human food supply by eliminating potentially dangerous and transmissible diseases.

The clinic is also working on petitions related to the lack of enforcement of organic standards which require that animals have significant access to the outdoors, and rulemaking requiring an exemption for animal sanctuaries from restrictions on owning or possessing certain animals designated for food production.

Students in the Animal Law Clinic are working on a white paper regarding animals in research. The paper will be available to assist a task force working to implement the National Academy of Sciences National Research Council's vision in its Toxicity Testing in the 21st Century report which calls for the reduction and elimination of animal testing.

Students are also working on a white paper relating to the consequences of CAFOs (Confined Animal Feeding Operations) with respect to the environment, local zoning control, land use, consumer safety, animal welfare, tax consequences and the impact on property values, and the limits imposed by Oregon statutes to seek redress for harms affecting neighbors and communities created by the CAFOs.

Additionally, the Animal Law Clinic has been working with the Oregon Humane Society to update its 2006 handbook, Oregon Animal Cruelty Laws, which it makes available as a resource to law enforcement and humane enforcement officers across the state. The Clinic has also assessed the procedural elements of dangerous dog hearings and made suggestions to respond to due process concerns, and is also developing the framework for a pilot mediation program for dangerous dogs in Multnomah County.



### **Lewis & Clark Students Shine in National Animal Law Competitions**

Seven Lewis & Clark law students participated in the Seventh Annual National Animal Law Competition at Harvard Law School in February. The Animal Law Competition is designed to test law students' legal skills through exercises in appellate moot courts, closing arguments, legal writing, and lobbying. A total of 61 law students representing 22 law schools from around the country competed.

Lewis & Clark students competed in the appellate moot court, legislative drafting, and closing argument competitions. Bryan Tegin, a 2009 finalist, and Mark Billingsley earned a second-place finish in the Appellate Moot Court Competition. Erin Walkowiak earned second place in the Closing Argument competition.

Pamela Frasch, CALS executive director, said the hands-on experience law students gain at the National Animal Law Competitions is invaluable as graduates head into the professional legal setting. "At the final round, the teams go head-to-head before a panel of federal court judges," Frasch pointed out. "I can't think of a better experience for students in law school that will prepare them for the practice of law, and when I talk to alumni who have competed in moot court, they uniformly point to that experience as the best and most valuable experience they had in law school."

### **Summer Intensive Animal Law Program**

Each summer CALS offers a variety of two-week intensives in animal law for law students, lawyers and other interested professionals. This year, the 2010 Summer Intensive Animal Law Program offered five exciting classes. For the first time, Steven Wise's "Animal Rights" was taught as a five-week, three-credit course. The remaining courses were in the traditional two-week intensive format. Two of them were repeats of popular courses: "International Wildlife Law" taught by Erica Thorson '05, Lewis & Clark Clinical Professor and Staff Attorney for the International Environmental Law Project, and "Animal Law: Litigation, Lobbying and Legislation" taught by Nancy Perry '95 and Jonathan Lovvorn LL.M. '01 of the Humane Society of the United States. In addition, students could choose from two new two-week intensives: "Comparative Animal Law" taught by Peter Sankoff of the University of Auckland, New Zealand, and "Emerging Law and Policy for Companion Animals" taught by Mark Cushing of Tonkon Torp LLP.

A listing of 2011 courses will be available in late fall. For more information visit [law.lclark.edu](http://law.lclark.edu).

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Environmental Law

*Environmental Law*, which celebrated its 40th anniversary this year, was the first student law review in the United States to focus on environmental issues. It remains a premier source of authority for courts and legal scholars nationwide.

### Volume 39, Issue 4

#### SYMPOSIUM:

##### **GREENING THE GRID: BUILDING A LEGAL FRAMEWORK FOR CARBON NEUTRALITY**

#### INTRODUCTION:

Melissa Powers & Duncan Delano

#### SYMPOSIUM ARTICLES:

*“Steel in the Ground”: Greening the Grid  
With the iUtility*  
Joseph P. Tomain

*Restructuring a Green Grid: Legal  
Challenges to Accommodate New  
Renewable Energy Infrastructure*  
Steven Ferrey

*The Trojan Horse of Electric Power  
Transmission Line Siting Authority*  
Jim Rossi

*Streamlining NEPA to Combat Global  
Climate Change: Heresy or Necessity?*  
Irma S. Russell

*Rough Seas Ahead: Confronting Challenges  
to Jump-Start Wave Energy*  
Rachael E. Salcido

*The Rising Tide of Climate Change:  
What America’s Flood Cities Can Teach Us  
About Energy Policy and Why We Should  
Be Worried*  
Joshua P. Fershee

*Greening the Grid and Climate Justice*  
Alice Kaswan

**COMMENT:** *Wave New World: Promoting  
Ocean Wave Energy Development  
Through Federal-State Coordination and  
Streamlined Licensing*  
Mark Sherman

**BOOK REVIEW:** *In the Public Interest—  
A Review*  
Robert H. Klonoff

### Volume 40, Issue 1

#### FORTIETH ANNIVERSARY ISSUE

**TRIBUTE:** *Words from the  
First Editor in Chief*

Ann Morgenstern Reynolds

**FOREWORD:** *Ashes and the Phoenix*

Ronald B. Lansing

**ARTICLES:** *Capping Carbon*  
David M. Driesen

*Climate Exceptionalism*  
John Copeland Nagle

*Summers v. Earth Island Institute Rejects  
Probabilistic Standing, but a “Realistic  
Threat” of Harm is a Better Standing Test*  
Bradford Mank

**REPORT:** *Exempt Well Issues in the West*  
Nathan Bracken, Western States Water  
Council

**NOTES:** *Flipping Daubert: Putting Climate  
Change Defendants in the Hot Seat*  
Ryan Hackney

*Rumors of Conley’s Demise Have Been  
Greatly Exaggerated: The Impact of Bell  
Atlantic Corporation v. Twombly on Pleading  
Standards in Environmental Litigation*  
Brook Detterman

**BOOK REVIEW:** *Review of Large-Scale  
Ecosystem Restoration: Five Case Studies  
from the United States*  
Joel A. Mintz

### Volume 40, Issue 2

**ESSAY:** *A Fish Tale: A Small Fish, the ESA,  
and our Shared Future*  
Dale D. Goble

**ARTICLES:** *Climate Change Adaptation  
and the Structural Transformation of  
Environmental Law*  
J.B. Ruhl

*Ahistorical Indians and Reservation  
Resources*  
Ezra Rosser

*Cities as Emergent Systems: Race as a Rule  
in Organized Complexity*

Charles Lord and Keaton Norquist

*BLM’s Retained Rights: How Requiring  
Environmental Protection Fulfills Oil and  
Gas Lease Obligations*  
Bruce M. Pendery

**AMICUS BRIEF:** *Brief for Natural Resources  
Defense Council as Amici Curiae Supporting  
Respondent, Monsanto Co. v. Geertson Seed  
Farms, No. 09-475 (U.S. Apr. 5, 2010)*  
Craig Johnston

**COMMENT:** *Getting to Here: Bioregional  
Federalism*  
Wes Nicholson

### Volume 40, Issue 3

**ARTICLES:** *Separation of Powers and Federal  
Land Management: Enforcing the Direction  
of the President under the Antiquities Act*  
Kelly Y. Fanizzo

*Have Washington Courts Lost Essential  
Nexus to the Precautionary Principle?*  
*Citizens’ Alliance For Property  
Rights v. Sims*

Brian T. Hodges and Daniel A. Himebaugh

*Dirty Dishes, Dirty Laundry, and Windy  
Mills: A Framework for Regulation of  
Clean Energy Devices*  
LaVonda N. Reed-Huff

#### 2009 NINTH CIRCUIT ENVIRONMENTAL REVIEW

#### INTRODUCTION

#### CASE SUMMARIES

**CHAPTERS:** *Suction Dredge Mining: The  
United States Forest Service Hands Miners  
the Golden Ticket*  
Adrienne DelCotto

*Delineating Deference to Agency Science:  
Doctrine or Political Ideology?*  
Laura Anzie Nelson





## Animal Law

### Volume 15, Issue 1

**INTRODUCTION:** *Natural Behavior*  
Jeffrey Moussaieff Masson

**ARTICLES:** *Speaking for the Modern Prometheus: The Significance of Animal Suffering to the Abolition Movement*  
Elizabeth L. DeCoux

*Animals as Vulnerable Subjects: Beyond Interest-Convergence, Hierarchy, and Property*  
Ani B. Satz

*Oats, Water, Hay, and Everything Else: The Regulation of Anabolic Steroids in Thoroughbred Horse Racing*  
Bradley S. Friedman

*Ringling Brothers on Trial: Circus Elephants and the Endangered Species Act*  
Mark Eichelman

**COMMENT:** *Son of Sam and Dog of Sam: Regulating Depictions of Animal Cruelty through the Use of Criminal Anti-Profit Statutes*  
Emma Ricaurte

### Volume 15, Issue 2

**INTRODUCTION:** *Incorporating Animal Law into Private Practice*  
Holly Anne Gibbons

**ARTICLES:** *The Nature and Effects of Constitutional State Objectives: Assessing the German Basic Law's Animal Protection Clause*  
Claudia E. Haupt

*The Regulation of Kosher Slaughter in the United States: How to Supplement Religious Law So As To Ensure the Humane Treatment of Animals*  
Melissa Lewis

**ESSAY:** *Teaching Posthumanist Ethics in Law School: The Race, Culture, and Gender Dimensions of Student Resistance*  
Maneesha Deckha

**COMMENTS:** *Habitat-Based Conservation Legislation: A New Direction for Sea Turtle Conservation*  
Tara Zuardo

*Saving Lives or Spreading Fear: The Terroristic Nature of Eco-Extremism*  
By Kevin R. Grubbs

### 2009 LEGISLATIVE REVIEW

Robin C. McGinnis,  
Legislative Review Editor  
Jennifer O'Brien & Randall Szabo,  
Authors

*IELP, continued from page 13*

## Customs Training in Morocco

In October of 2009, Professor Thorson traveled to Ifrane, Morocco to participate in a customs officer training workshop. Professor Thorson presented a legal analysis of Morocco's wildlife and customs legislation, outlining the custom officers' authority to monitor borders for illegal wildlife trade and to confiscate specimens illegally entering or leaving Morocco. The workshop was hosted by World Wildlife Fund and the Species Survival Network in partnership with Morocco's Environmental Ministry for the specific purpose of addressing the illegal trade of Barbary macaques. 2008-2009 IELP student clerks, Genaro Lopez and Meg Patterson, contributed to IELP's analysis of Morocco's legislation.

## The World Heritage Convention

IELP continues its work on the World Heritage Convention and climate change, pursuing options for small island States within the Convention's framework. As many know, small island States are already suffering the consequences of rising sea levels caused by climate change. Many of the lowest lying of these States, such as Tuvalu, the Maldives, and Kiribati, are likely to be submerged by rising sea levels. The consequences may include the loss of the entire State's territory and already rising sea levels are affecting traditional ways of life. IELP is working with a coalition of NGOs and these States to think creatively about how the World Heritage Convention might identify these States as of outstanding universal value, given their role as "laboratories" to study the effects of climate change.

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program



Every week, Lewis & Clark Law students can choose from a wide variety of extracurricular events and programs, many organized by a diverse variety of environmental and animal law student groups, to enrich their educational experience. Many (though not all) events are preserved in podcast format. This list provides a sampling of the events and conferences held on campus so far this academic year. Find these podcasts and more at [go.lclark.edu/elaw](http://go.lclark.edu/elaw) (Recent Podcasts).

## Recent Podcasts

### Animal Law

#### 2009 Animal Law Conference

##### ***Animal Law: The Links***

##### ***Invasive Species Debate: The Case of the Brushtail Possum***

Debate on the commercial, legal and ecological approaches to invasive species management by Chrys Hutchings, owner of Eco-Luxury Fur, Professor Dan Rohlf, Director of Pacific Environmental Advocacy Center, and Kathy Hessler, Clinical Professor & Director of the Animal Law Clinic

*Presented by Animal Law*

### Climate Change

#### ***"Cop 15": Lewis & Clark Faculty on the Copenhagen Panel on Climate Change***

March 3, 2010

Professors Chris Wold, Melissa Powers, Erica Thorson

*Presented by Northwest Environmental Defense Center*

#### ***Climate Change and Wildlife Habitat***

##### ***2009 Animal Law Conference***

##### ***Animal Law: The Links***

Panelists Professor Melissa Powers of Lewis & Clark and Dave Becker, Staff Attorney for Oregon Natural Desert Association summarize the range of possible implications of anthropogenically-induced climate change and mitigation efforts on animal species and their habitats.

### 22nd Annual

#### ***NRLI Distinguished Visitor Lecture***

##### ***After Cap-and-Trade: The Climate-Forced Path of Environmental Law***

Distinguished Visitor Florida State Law Professor J.B. Ruhl presents his research on the future of environmental law in a climate-imperilled world.

*Presented by the Natural Resources Law Institute*

### Environmental Justice

#### ***Pesticides and Farm Workers Panel***

October 22, 2009

Panelists Laurie Hoefer, attorney with the Legal Aid Farmworker program; Valentin Sanchez, outreach coordinator for the Oregon Law Center Farmworker program; Dona Hippert, president of the Oregon Toxics Alliance; and Logan Perkins, Lewis & Clark 1L student discuss the types of pesticides applied by farmers, the effects these pesticides have on the farmworkers and the environment, and the training (or lack of) that the farmworkers receive about the pesticides that they apply to crops.

*Presented by the Latino Law Society, Environmental Justice Advocates, and the National Lawyers Guild*

### Legal Theory

#### ***Debate: Common Law Remedies to Environmental Problems***

April 14, 2010

Professor Andrew Morriss of the University of Illinois College of Law debates Professor Thomas Buchele of the Pacific Environmental Advocacy Center

*Presented by Federalist Society*

#### ***Land Use and Framers' Intent Debate***

January 28, 2010

Professor Steven Eagle of George Mason Law debates Professor Paul Diller of Willamette Law concerning historical arguments about what the framers of our constitution thought about property rights as well as modern concerns about smart growth and economic takings.

*Presented by Federalist Society*

### Sustainability Law and Policy

#### ***Creating an Environmental and Humane Small Business***

April 26, 2010

Susan Sokol Blosser of Sokol Blosser Winery discusses her winery's salmon-safe and LEED certifications.

*Presented by Center for Animal Law Studies*



### **LEED Certification and Starting a Sustainability Practice**

**February 1, 2010**

2007 alums Jacqui Bishop (of Roberts Kaplan) and Monique Hawthorne (of Davis Wright Tremaine) discuss their experiences becoming LEED Accredited Professionals. Jacqui also talks about starting the sustainability practice group at her firm.

*Presented by Career Services*

### **Environmental Impacts of Factory Farming**

**September 23, 2009**

Alumnus George Kimbrell, Center for Food Safety, discusses factory farms, also known as Concentrated Animal Feeding Operations (CAFO), the environment, and what is being done to work towards sustainable practices.

*Presented by Northwest Environmental Defense Center*

### **Trade and Environment**

#### **Global Justice and the World Trade Organization**

**November 9, 2009**

Ten years after the Seattle 1999 WTO meeting at more than 40,000 anti-globalization protestors successfully halted negotiations, Barbara Dudley (former president and executive director of the National Lawyers Guild, former executive director of Greenpeace USA, "Politics of World Trade" instructor at Portland State University) and Arthur Stamoulis (executive director of the Oregon Fair Trade Coalition) speak about what happened in Seattle and ten years of developments in both the global justice movement and inside the WTO.

*Presented by the National Lawyers Guild, Environmental Justice Advocates, International Law Society, and the Environmental Law Caucus.*



### **Water Law**

#### **Groundwater Extraction and the Bottled Water Industry: Lessons from Maine for Oregon**

**October 20, 2009**

Organizer and grassroots lobbyist Emily Posner discusses the experience of Maine communities struggling to maintain control over their water resources as multinational corporations seek to withdraw ever increasing amounts of water for the bottled water industry.

*Presented by Northwest Environmental Defense Center (NEDC) and Environmental Law Caucus*

### **Wildlife Law and Policy**

#### **Working in Wildlife Conservation Law**

**April 1, 2010**

Gina LaRocco, Defenders of Wildlife  
*Presented by Student Animal Legal Defense Fund and Northwest Environmental Defense Center*

#### **Oregon's Water, Parks and Wildlife Initiative**

**March 4, 2010**

Bobby Sebastian, Regional Organizer from Oregonians for Water, Parks and Wildlife to discuss the initiative to renew statewide conservation funding

*Presented by Student Animal Legal Defense Fund and Northwest Environmental Defense Center*

### **Climate Change and Wildlife Habitat 2009 Animal Law Conference**

#### **Animal Law: The Links**

Panelists Professor Melissa Powers of Lewis & Clark and Dave Becker, Staff Attorney for Oregon Natural Desert Association summarize the range of possible implications of anthropogenically-induced climate change and mitigation efforts on animal species and their habitats.

### **International Illegal Wildlife Trade**

**September 14, 2009**

Michael Zwirn, Director of U.S. Operations for Wildlife Alliance, (1) discusses the severity and scale of the illegal wildlife trade and the species at risk; (2) provides a brief overview of the relevant US laws and agencies addressing the issue; and (3) highlights the international treaty and other components meant to protect endangered species from trafficking and over-exploitation.

*Presented by Student Animal Legal Defense Fund and the International Law Society*

### **Awards**

#### **2009 Distinguished Environmental Law Graduate Awards and Williamson Award**

Paul Horwitz, Nicole Cordan and Kathleen Trever receive Distinguished Graduate awards; recent graduate Kristen Monsell receives the Environmental Alumni Association's Williamson Award  
*Presented by the Natural Resources Law Institute*





## NRLI 2010 Report, Natural Resources Law Institute

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## Making a Difference...

Lewis & Clark Law School's Environmental and Natural Resources Law Program, frequently ranked #1 in the nation by *U.S. News & World Report* and recipient of the 2001 ABA Award for Distinguished Achievement in Environmental Law, strives to be a local, regional and international resource for the advancement of environmental and natural resources law research. Current programs and activities include:

**Certificate Program in Environmental and Natural Resources Law**, offering more than 40 foundation and specialized classes in the field as well as two environmental moot court programs

**LL.M. Program in Environmental and Natural Resources Law**, offering advanced studies in the field for lawyers from around the world

**A Joint J.D./LL.M. Program in Environmental and Natural Resources Law** enabling students to obtain both degrees at an accelerated pace

**Natural Resources Law Institute**, supporting an annual research fellow, distinguished faculty visitor, visiting scholars from around the globe, and faculty research

**Environmental Law**, the first law journal in the country devoted to environmental law issues, now in its 41st year

**Animal Law**, the country's first law journal devoted entirely to discussion of legal issues relating to animals

**Pacific Environmental Advocacy Center**, providing environmental litigation services to local, regional and national clients

**International Environmental Law Project**, providing international environmental legal services to international governments and nonprofit clients

**The Center for Animal Law Studies of Lewis & Clark in collaboration with the Animal Legal Defense Fund**, promoting legal education for animal advocacy

**Dynamic student organizations** including Coalition Advocating Transportation Sensibility, Environmental Justice Advocates, Environmental Law Caucus, Northwest Environmental Defense Center,



Public Interest Law Project, Student Advocates for Business and Environmental Responsibility, and Student Animal Legal Defense Fund

**Conferences and Continuing Legal Education** on a variety of environmental topics for students, practitioners, judges, and federal agencies

Visit us at our website:  
[law.lclark.edu/dept/elaw](http://law.lclark.edu/dept/elaw)

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