

# NRLC **Baselines**

Summer/Fall 2010 (Issue 6)

Newsletter of the NATURAL RESOURCES LAW CENTER

**Save the Date!**

## **SHALE PLAYS in the Intermountain West: Legal and Policy Issues**

**Friday, November 12, 2010, 8:30 a.m.–4:30 p.m.  
Grand Hyatt - Denver, Colorado**

This one-day symposium will address the technology, economics, environmental impacts, and regulatory issues associated with shale development in the Rocky Mountain region and will facilitate productive dialogue among a wide range of stakeholders and interested parties to guide policy decisions.

*Draft program and event information available at*

<http://www.colorado.edu/law/centers/nrlc/events/upcoming.html>

Questions: 303-492-1286; nrlc@colorado.edu

### **Follow-up from February 5<sup>th</sup> Oil Shale symposium . . .**

Event reported in [Los Angeles Times](#) (Feb. 10, 2010)

Event comments (from post-conference survey handouts):

- “I was apprehensive about the conference being too one-sided toward conservation interests. However, my view after having attended was that it was more balanced than I had expected. I thought the exchange of ideas from all sides of the issues was beneficial, and there were very few instances of non-factual tirades.”
- “I’m sure you’ve gotten nothing but favorable reviews. This was one of the most interesting and informative seminars that I’ve been to in many, many years.”
- “It was just a great conference – a good range of issues and viewpoints, carried out very smoothly.”
- “I liked that it presented multiple perspectives of a complicated issue. I also liked how the commentators and attendees sought solutions, not just differing opinions.”

## **NRLC’s On-Line Library**

**Finally (and available to all !)** — searchable archives containing hundreds of NRLC’s past reports, conference materials, book abstracts, and related materials (dating going back to 1981).

**[Click here for on-library](#)**

[ <http://www.colorado.edu/law/centers/nrlc/library/index.html> ]

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**WHO WE ARE:** The NRLC was founded in 1982 as a non-partisan entity to promote intellectual discourse and identify practical and effective solutions for issues through legal research, outreach, and education. The Center provides real and immediate policy information for natural resources decision-making, as well as addresses the long-term and incremental nature of more fundamental policy reform.

### **STAFF**

**Mark Squillace**, *Professor of Law and  
Director of the NRLC*

**Heidi Horten**, *Program Manager*

**Douglas Kenney**, *Sr. Research Associate*

**Kathryn Mutz**, *Sr. Research Associate*

**Judson Brehmer**, *Red Lodge Clearinghouse  
Project Manager*

### **CONTACT US**

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**Please support the NRLC**



The NRLC is a self-sustaining, non-profit program within the CU-Law school. Our work is made possible from grant funding and contributions.

**Contributions to the NRLC are tax-deductible**

To support the NRLC, click:  
**[CU Foundation link](#)**

. . . or contact **Marilyn Moses**  
Assistant Director of Development  
303-492-1744 or [marilyn.moses@cufund.org](mailto:marilyn.moses@cufund.org)



## Director's Corner

**Mark Squillace**, Professor of Law and Director of NRLC

It has been a busy spring and summer. A new grant from the Walton Family Foundation has funded our work on the Colorado River Governance Initiative, and **Doug Kenney** and I are very excited for the opportunity to explore the myriad governance issues that climate change and the relentless growth in the Colorado River Basin pose for future political leaders. As part of this new project, the NRLC along with the Colorado Water Conservation Board, hosted a workshop with Mario Lopez, Engineering & Technical Standards Manager for Mexico's National Water Commission, regarding international Colorado River issues. Doug and I are also finishing a project for NOAA on agricultural to urban water transfers, and plan to have a worthy publication by the end of the year.

**Katherine Mutz's** work on best management practices for oil and gas development now has the financial support of the Houston Advanced Research Center. The continuing support and interest in this project has helped ensure the development and improvement of a valuable database for oil and gas companies, government agencies, and non-governmental organizations. Check it out at <http://www.oilandgasbmeps.org/>

Our Red Lodge Clearinghouse website continues to grow and flourish under **Judson Brehmer's** management. The website is in the midst of total revamping, and while we have begun to blog and twitter, these tools should become more robust and visible to the public once the changeover is completed in early September.

I hope that many of you had the chance to attend our blockbuster summer conference that celebrated the 40<sup>th</sup> anniversary of the Public Land Law Review Commission's monumental report – *One Third of the Nation's Land*. We had a great line-up of speakers and commentators and, as always, **Heidi Horten** did a fabulous job getting us organized and ready for this big event. I also want to acknowledge Advisory Board Member **Ann Morgan** for suggesting this wonderful idea for this year's summer conference. Next summer we will likely return to a water theme. If you have ideas, please let me know.

A contingent of 16 students helped with our myriad research projects this summer. I confess to being absent as I spent the better part teaching international environmental law at Oxford University to students from all over the world. It was an experience I will cherish for the rest of my life.

We look forward to a productive year of events and research.



## Clyde Martz Endowment

To promote the future NRLC research, Clyde donated the initial funds to establish this Endowment. To learn about the ways that you can make a donation in Clyde's honor, contact **John Pepperdine**, Senior Director of

Development, 303-492-1215; [John.Pepperdine@cufund.org](mailto:John.Pepperdine@cufund.org) or directly online at: [www.cufund.org/ClydeMartz](http://www.cufund.org/ClydeMartz)


## NRLC Research Activities



**Doug Kenney**, WWPP Director  
<http://www.waterpolicy.info>

### COLORADO RIVER Projects

Work on the Colorado River remains a central focus of the NRLC's *WWPP*, with most activities now closely integrated under the framework of our new Colorado River Governance Initiative. With primary funding from the Walton Family Foundation, the project is examining "institutional options" (i.e., reforms in law, policy, and management) for addressing water supply and environmental challenges on the river. Since project inception this past December, activities have included:

- In February, the WWPP hosted **Mario López Pérez**, Engineering and Technical Standards Manager in the National Water Commission of México, who is responsible for bi-national water issues with the USA, Guatemala and Belize. Joined by a panel comprised of **Jennifer Gimbel** (Director, Colorado Water Conservation Board), **Jennifer Pitt** (Senior Resource Analyst, Environmental Defense Fund), and Law School Dean **David Getches**, a group of roughly 40 invited participants discussed US-Mexico relations on the Colorado River and the benefits of ongoing negotiations and cooperation. 
- **Doug Kenney** published two papers exploring the relationship of the Law of the River, growing water demands, and drought and climate change
  - (1) "The Colorado River: What Prospect for 'A River No More'?"— a chapter in *River Basin Trajectories: Societies, Environments and Development* (F. Molle and P. Wester, eds.); and
  - (2) with colleagues: "Rethinking Vulnerability on the Colorado River" in the *Journal of Contemporary Water Research & Education* (v.144, pp.5-10, March 2010).
- Doug and WWPP research assistant **John Berggren** are developing a white paper summarizing "threats and stressors" on the Colorado River and have conducted a survey of Colorado River Water Users Assn. (CRWUA) members on issues and potential solutions.

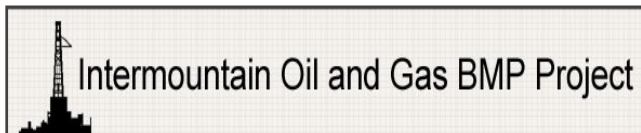
### WATER-ENERGY-CLIMATE CHANGE Project

This project examines the facets of the water-energy nexus in the American West, especially as shaped by growing climate change concerns. An edited book project is underway, as are ongoing network-building activities with the CU-NOAA Western Water Assessment and partnership with the

Carpe Diem project of California-based Exloco. In early March, with Exloco, Doug helped organize and host a meeting in San Francisco of 75 regional experts in this field. The water-energy nexus was also the topic of an invite-only workshop that Doug attended in Racine, Wisconsin in November hosted by the Union of Concerned Scientists. A month earlier, Doug had attended a meeting in Tucson examining issues surrounding concentrated solar development in the Southwest. In all of these activities, the two central policy messages are the benefits of coordinated planning/decision-making in the water and energy sectors, and how conservation in either sector offers the dual benefit of promoting conservation in the other.

### COST OF WATER Project

Doug Kenney has completed a comparative study examining the cost of acquiring new water supplies on the Front Range from new projects, water transfers, and conservation. [Download the report.](#)

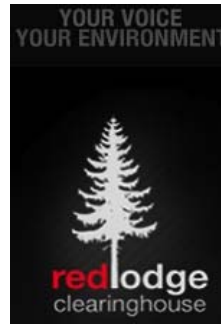


Kathryn Mutz, Project Manager

<http://www.oilandgasbmps.org/>

**BMP** project staff grew in January with the addition of **Sara Watterson** as the Data and Website Manager. Prior to joining the NRLC as a contractor, Sara had worked on oil and gas issues in our five-state region for Earthjustice. This part-time position is funded through December 2011 from our grant from the Research Partnership to Secure Energy for America (a 2.5-year \$292,000 grant). Kathryn, Sara, and both graduate and undergraduate research assistants and interns continue to expand the content of both the database and website. Over this past summer and into the fall, the project focus will be to promote the use of the website/database through webinars and other trainings, to expand database and website content, and to help users with custom searches.

Center staff will sponsor a second BMP workshop later this year. It will probably take place in Boulder or Denver. The topic has not yet been determined.



Judson Brehmer, Project Manager

[www.rlch.org](http://www.rlch.org)

By the beginning of October, 2010, we will be launching the all-new Red Lodge Clearinghouse (RLCH) website, which will continue to be housed at [www.rlch.org](http://www.rlch.org). The product of a year's worth of planning and design, the website will have sleek new look, state-of-the-art tools for citizen participation, and a vastly superior user-friendly interface.

For nearly a decade, RLCH has served the needs of individuals and organizations engaged in collaborative natural resources management, and the website has significantly elevated the role of collaboration in these decision-making processes. Recognizing the powerful issues currently confronting our natural resources, the growing polarity of popular opinion with respect to those resources, and the difficulty of bringing diametrically opposed interests to the table, RLCH seeks to provide the tools needed for all individuals to effectively participate in the management of the assets of our republic. Thus, while still embracing *collaboration* as a focus of the project, we are now broadening the mission of RLCH to: **“Advancing citizen engagement in natural resources policy.”**

In addition to all of the great existing materials, **a major feature of the new site is an electronic comment generator that allows users to file public comments on proposed rules and regulations and to send them electronically to the respective agency or decision-making body without ever leaving the website.** By tracking critical western resource issues through public hearing and comment processes, linking to news and opinions, providing concise summaries of the relevant laws, and making submitting public comments easier than ever before, RLCH can be a one-stop shop for interested citizens to learn, discuss, and participate in environmental policy decisions affecting western communities.

When the new website is launched, an email will go out to the NRLC mailing list. Please share it with your colleagues and others who may want to have their voices heard, and please send your feedback to RLCH Project Manager, Judson Brehmer.

### Views from the June 2-4, 2010 Martz summer conference:

**The Past, Present, and Future of Our Public Lands: Celebrating the 40th Anniversary of the Public Lands Law Review Commission's Report: *One Third of the Nation's Lands.*** This event can now be viewed: [2010 Summer VIDEO.](#)



David Getches, Mark Squillace, Harris Sherman



Guy Martin      Ann Morgan      Alan Gilbert      Charles Wilkinson



***SAVE THE DATE*** for the next NRLC annual  
Martz Summer Conference:  
**June 8-10, 2011** in Boulder, Colorado

## FOCUS on NRLC Board of Advisors

**Chair:** **Michael Gheleta**, Office of the Regional Solicitor  
U.S. Dept of the Interior (Lakewood, CO)

**Marilyn Averill**, Center for Science and Technology Policy Research;  
PhD candidate-Environmental Studies Program, University of Colorado  
(Boulder, CO)

**David Bailey**, Carver Schwarz McNap & Bailey (Denver, CO)

**Britt Banks**, Exec Vice President (Retired), Newmont Mining Corp.  
(Denver, CO)

**Kate Burke**, Insight Law, LLC (Durango, CO)

**Deb Donahue**, University of Wyoming College of Law (Laramie, WY)

**Greg Hobbs**, Justice, Colorado Supreme Court (Denver, CO)

**Guy Martin**, Perkins Coie (Washington, DC)

**Ann Morgan**, The Wilderness Society (Denver, CO)

**Peter Nichols**, Trout, Raley, Montañó, Witwer & Freeman (Denver, CO)

**Clay Parr**, Parr Waddoups Brown Gee & Loveless (Salt Lake City, UT)

**David Phillips**, Executive Director, Rocky Mountain Mineral Law  
Foundation (Westminster, CO)

**Karin Sheldon**, Executive Director, Western Resource Advocates  
(Boulder, CO)

**Ruth Wright**, former Colorado State Legislator (Boulder, CO)

**Margo Zallen**, Senior Attorney, U.S. Dept of the Interior (Lakewood, CO)

### *Emeritus:*

**James Corbridge** (Grove, OK)

**David Harrison** (Boulder, CO)

**John Sayre** (Bend, OR)

**Marvin Wolf** (Denver, CO)

### *Law School Faculty Advisors:*

**David Getches**, Dean, University of Colorado Law School

**William Boyd**

**Nester Davidson**

**Joe Feller**, Professor Adjunct

**Lakshman Guruswamy**

**Sarah Krakoff**

**Bruce Kramer**, Adjunct Faculty

**Charles Wilkinson**



**KATE BURKE** earned her J.D. from the University of Colorado in 2004, Order of the Coif, and served as the Editor-in-Chief of the *University of Colorado Law Review*. From 2004 to 2005, she served as law clerk to Justice Gregory Hobbs of the Colorado Supreme Court. Before law school, she graduated from Oberlin College with a B.A. in Biology and Environmental Studies; earned an M.A. in Education from the University of Colorado; and taught in the Boulder Valley Public Schools for 10 years. Ms. Burke practiced law with Maynes, Bradford, Shipps & Sheftel, (of Durango, CO) for five years, assisting a variety of clients, including the Southern Ute Indian Tribe, electric cooperatives and water conservancy districts. She left the firm to establish her own practice — **Insight Law**, LLC. She is licensed to practice law in the State of Colorado and the Southern Ute Indian Tribal Court. She is a member of the American Bar Association, the Colorado Bar Association (President, Southwestern Chapter, 2009-10), the Colorado Women's Bar Association (President, Southwestern Chapter, 2005-07), and the Animal Legal Defense Fund.

**DEBRA L. (DEB) DONAHUE** is a professor of law at the



University of Wyoming College of Law where she teaches courses on public lands, environmental policy, Indian law, and Native American natural resources law. Before joining the faculty, she served as staff counsel in the National Wildlife Federation's Anchorage office and clerked for Judge Wade Brorby on the U.S. Court of Appeals for the Tenth Judicial Circuit. She is a 1989 graduate of the University of Colorado Law School and was editor in chief of the law review. She has an M.S. degree in Wildlife Biology and worked for federal agencies, a Nevada mine, and conservation groups before earning her law degree. Her scholarship focuses on public lands (particularly grazing) policy, biodiversity conservation, and climate change. Her book, *The Western Range Revisited: Removing Livestock from Public Lands to Conserve Native Biodiversity* (1999), prompted the Wyoming Wildlife Federation to name her its Natural Resources Conservationist of the Year in 2000. Deb served as a member of the National Research Council Committee on Riparian Zone Functioning & Strategies for Management, as a director of Western Resource Advocates, and as advisor to Western Watersheds Project. She enjoys hunting, field botany, and boating.

— continued on next page —

## NEW MEMBERS to NRLC BOARD OF ADVISORS



**MARILYN AVERILL** is a doctoral student in Environmental Studies at the University of Colorado at Boulder, where she is affiliated with the Center for Science and Technology Policy Research. Her research interests include U.S. and international environmental governance,

the politics of science, and the ethical implications of environmental issues, particularly in the context of global climate change. Her recent work focuses on the role of the courts in shaping public policy in response to complex and controversial environmental problems, and in the role that climate litigation plays in educating the public and in stimulating debate about climate change and climate policy. Before returning to school Marilyn was an attorney for the U.S. Department of the Interior, where her primary clients were the Fish and Wildlife Service and the National Park Service. She holds a B.A. from Wellesley College, an M.A. and J.D. from the University of Colorado, and an M.P.A. from Harvard's Kennedy School of Government.



**PETER NICHOLS** is a partner at Trout, Raley, Montaño, Witwer & Freeman, focusing on water, environmental, conservation, and related law. Nichols is an authority on conservation easements involving water rights, serves as special water counsel to land trusts, and co-authored the “Water Rights Handbook for Colorado Conservation Professionals” (Bradford 2005). He also co-authored “Water and Growth in Colorado,” published by the NRLC in 2001 as a result of his research. That research led to the creation of the Interbasin Compact Commission and basin roundtables, an endeavor to develop a consensus approach to meet Colorado’s M&I, environmental and ag water needs.

Peter serves as counsel to the Lower Arkansas Valley Water Conservancy District and the Upper Black Squirrel Creek Designated Ground Water Management District – entities at the vortex of water and Front Range growth issues –and the Super Ditch Company, which is implementing water leasing alternatives to historical ag-to-municipal buy-and-dry. He has long-represented water users in litigation involving water transfers under the Clean Water Act. And he serves as special assistant attorney general to both Colorado and New Mexico, representing western States in the same litigation.

Peter is a member of the bars of Colorado, the U.S. Supreme Court, the First, Second, Tenth and Eleventh Circuit Courts of Appeal, and the U.S. District Court for Colorado. He earned a JD from CU and holds an MPA from CU and a BA from The Colorado College. He also serves on the Board of the Colorado Water Trust, which he helped create. He is a former (and still occasional) international mountaineering guide, avid climber, and skier.

### BOARD MEMBER NEWS . . .

- NRLC Advisory Board Chair, **Mike Gheleta**, accepted a position with the Office of the Regional Solicitor of the U.S. Dept of the Interior in Lakewood, Colorado.
- Former NRLC Director and recent NRLC Advisory Board member, **James Martin**, was appointed Regional Administrator for the US Environmental Protection Agency – Region 8.



Summer Conference moment

Former NRLC Director, **Gary Bryner**, passed away on March 10, 2010 after losing a battle to cancer. He was Professor of Political Science at Brigham Young University. Gary had a long and fruitful association with the Natural Resources Law Center. He served as the El Paso Energy Corporation Fellow for a semester in 1997, and later returned to serve as NRLC Director from 1999-2001. He continued his association with the Center as an unpaid Research Associate until he died. Those of us who knew and worked with Gary held him in highest regard and miss him.



As a tribute to Gary, his friends and colleagues were able to create **The Gary C. Bryner Distinguished Service Award** and to share this honor with Gary and his family a few weeks before he passed away. The award is “*To honor Gary’s contributions to open dialogue, critical assessment, and fair-minded debate in resolving of natural resources policy issues — and individuals, like Gary, who exemplify the virtues of thoughtfulness, kindness and patience in undertaking this work*”.

The award will be granted annually by the NRLC to a third-year CU-Law student whose contributions to the field of natural resources best reflect the ideals displayed by Gary Bryner in the course of his work. The first recipient of the award was 2010 graduating law student, **Jonathan White**.

### Other News & Information



CU-Law student, **Ari Berland**, sponsored summer internship for a CU-Law student involved in the NRLC’s summer research. Thanks, Ari!!

### Colorado Gubernatorial Natural Resources Debate

The NRLC is a sponsor of — and is developing questions for — this event to be held at Macky Auditorium on the University of Colorado campus. {The date for this debate is still pending at this time of printing.}

By Meghan Scully, ELS President

## Recent NRLC Staff Activities

### Mark Squillace:

**Summer stint:** at Oxford University, England: taught *International Environmental Law*.

#### Presentations:

Colorado Public TV (KBDI-12): Panel discussion on *Colorado's River Access Laws: about HB 1188, the Colorado rafting bill*. Wed, April 7<sup>th</sup>.

#### Publications:

Editorial in *Aspen Times Weekly*: "Colorado Waterways Aren't Private Property." February 21, 2010

### Doug Kenney:

#### Presentations:

Invited presentation to Chinese river management officials in Beijing, China on lessons of the Colorado River experience, October 2009

Colorado River Water Users Association, Annual meeting, Las Vegas, Dec. 16, 2009.

Presentation on the Colorado River Governance Initiative, CLE Colorado Water Law conference, May 20, 2010, Denver.

#### Publications: (all available at [NRLC online library](#))

Kenney, D., A. Ray, B. Harding, R. Pulwarty, and B. Udall. "Rethinking Vulnerability on the Colorado River." *Journal of Contemporary Water Research & Education* (v.144, pp: 5-10, March 2010).

Kenney, D., 2009. "The Colorado River: What Prospect for 'A River No More'?" in *River Basin Trajectories: Societies, Environments and Development*. F. Molle and P. Wester (eds). CAB International: Wallingford, England, pp. 123-146.

### Kathryn Mutz

#### Publications:

Mutz, K. and R.C. Haut, "Best Practices Database Reduces Impact of Drilling, Production". *E&P* (April 12, 2010): [click here for article](#).

### Judson Brehmer

#### Conferences:

Public Interest Environmental Law Conference, February 24-28, 2010, Eugene, Oregon.

The 2010-2011 ELS Officers will be kicking off the year with a reusable coffee mug sale. The goal of the sale is to promote reusable mugs as an alternative to the single use paper cups sold in the CU-Law Café while also raising money to contribute to the ELS summer scholarship fund for unpaid and under-paid internships.

In addition, we will be holding our annual Trivia Night fundraiser later in the Fall semester and hope to plan an additional Spring semester fundraising event as well.

Throughout the year, ELS will host several panels that bring in practitioners from the field to speak with students about both career opportunities and summer internship offerings. Because so many ELS students have interests that overlap with American Indian Law and Public Interest Law, we will be teaming up with the Native American Law Students Association (NALSA) and the Public Interest Students Association (PISA) to bring in speakers whose work involves such dual interests.

***If you are interested in participating in a panel discussion on environmental and natural resources law and policy career opportunities, would like to make a presentation, or have any volunteer or internship opportunities open to law students, please contact me at [meghan.scully@colorado.edu](mailto:meghan.scully@colorado.edu).***




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**PUBLIC COMMENT PROJECT**

The Public Comment Project was designed to provide law students with opportunities to immerse themselves in Colorado's thriving natural resources law community.

The Public Comment Project helps build better lawyers who have a rich understanding of public processes and a long-term commitment to using their skills to promote good government policy.

	<p><b>University of Colorado Boulder Campus Carbon Neutrality Plan</b></p> <p>ELS members are utilizing the public comment process to engage with campus authorities to help improve the University of Colorado's Carbon Neutrality Plan.</p> <p><i>What are you doing with your campus carbon policies?</i></p>
<p><b>The Moffat Collection System Project</b></p> <p>This project would divert unappropriated water from the headwaters of the Colorado River. ELS members have testified at public hearings against it and are writing comments on the Draft EIS recently released by the Army Corps.</p>	
	<p><b>Colorado House Bill 1188</b></p> <p>HB 1188 gives commercial river outfitters access to navigable rivers and immunity for civil trespass while floating over private property, but excludes private boaters and fishermen. ELS members are lobbying at the Colorado State Capital and testifying in committee hearings to amend the bill.</p>