



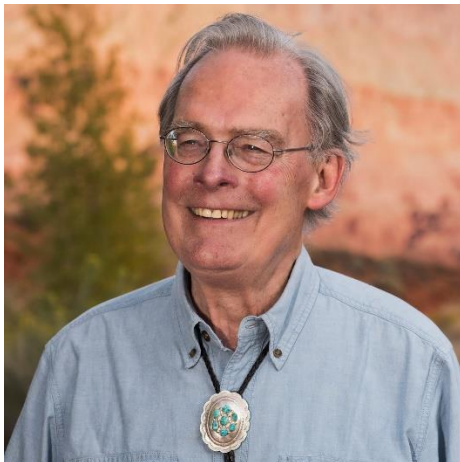
Colorado **Law**
UNIVERSITY OF COLORADO BOULDER

GETCHES-WILKINSON CENTER

FOR NATURAL RESOURCES, ENERGY, AND THE ENVIRONMENT

Newsletter | Summer 2023

IN MEMORIAM: Charles Wilkinson - A Trailblazer for Justice, the Earth, and American Indian Law



The University of Colorado Law School and the Getches-Wilkinson Center mourn the profound loss of Charles Wilkinson, the Moses Lasky Professor of Law Emeritus and Distinguished Professor at our esteemed institution. Wilkinson passed away surrounded by family on Tuesday, June 6, 2023. After graduating from Stanford Law School and practicing with prestigious firms in Phoenix and San Francisco, Wilkinson embarked on a remarkable career that encompassed teaching, writing, and advocating for the rights of Indigenous Peoples and the environment. In 1971, he joined the newly formed Native American

Rights Fund in Boulder, Colorado as a staff attorney, helping to shape the organization's pathbreaking advocacy for Tribes. Together with the late Dean David Getches, Professor Richard Collins, and NARF Executive Director John Echohawk, Wilkinson helped to secure landmark victories in tribal treaty rights litigation and establish a relationship between Colorado Law and NARF that endures to this day.

Wilkinson was a passionate and inventive teacher and mentor, educating and inspiring thousands of students and scores of colleagues at law schools throughout the country. As his colleagues and students would attest, Wilkinson left an indelible mark, not just on legal education and scholarship, but on those attributes that are the very essence of the American West.

"Charles's enormous legacy touches every aspect of public lands, natural resources, and American Indian law," reflected Professor Sarah Krakoff. "He blended fierce advocacy with deep scholarship. He wrote in ways that were accessible to the general public while also influencing policy makers at the highest levels of government. And he was a ceaselessly generous, optimistic, kind, and huge-hearted friend and mentor to generations of students and colleagues. To put it in a way Charles himself might have—Dammit we will miss him, but how very lucky we were to know him."

Charles Wilkinson continues on page 3...

SUMMER 2023 ISSUE CONTENTS

CHARLES
WILKINSON
1, 3

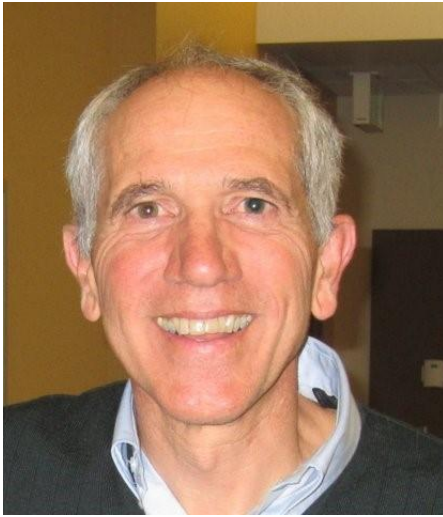
MESSAGE FROM THE
EXECUTIVE DIRECTOR
2

NEW FACES OF GWC
6

PROGRAM UPDATES
6-8

STUDENT
UPDATES
9-10

A Message from the Interim Co-Director and Chair of the Faculty Board



Many thanks to Doug Kenney for spearheading what might well have been our most successful summer conference ever. Doug managed to secure an all-star cast of speakers and commentators and they did not disappoint. We had 260 attending in person as well as 150 on line. I also want to thank our Assistant Director, Annie Carlozzi, for handling the logistical aspects of the conference with grace and good humor. Although she is new to the Center she did a terrific job.

Additional thanks go out to our Advisory Council chair, Zach Miller, and Advisory Council member, Karin Sheldon for their outstanding service on the Executive Director Search Committee. The Committee's hard work paid off with the appointment of our new Executive Director, Chris Winter. You can read more about Chris elsewhere in this newsletter but I am very excited to have him join us and I look forward to a long and productive relationship with him.

I also want to welcome Don Brown as the new Advisory Council chair. Don takes over from Zach Miller who did a tremendous job pushing the law school to engage with the Advisory Council in a more meaningful way. I know that Don Brown will

continue to pursue that goal and work to improve the stature of the GWC and the law school in educating a new generation of leaders in the field of natural resources law and policy.

The GWC also welcomes Andrew Teegarden as our new water fellow. Andrew joins water fellow Frannie Monasterio, whose tenure began last fall. Our water fellows spend two years at the GWC working on a range of water resource issues, often in collaboration with other organizations from around the Western United States. You can learn more about Andrew and Frannie elsewhere in this newsletter.

Finally, I would be remiss if I did not acknowledge the passing of our beloved colleague, Charles Wilkinson. Throughout his long and distinguished career, Charles poured his heart and soul into teaching and writing about natural resources and Native American issues, and the name of the Center rightly reflects the many outstanding contributions that he and his colleague and friend, David Getches, played in making Colorado Law a magnet for students and faculty interested in natural resources law.

Mark Squillace
Getches-Wilkinson Center Interim Co-Director and Chair of the Faculty Board of GWC



IN MEMORIAM: Charles Wilkinson

(Continued from page 1)

Most of Wilkinson's teaching career was spent at the Oregon and Colorado law schools, where his influence and impact were deeply felt. In 1997, the regents of the University of Colorado recognized Wilkinson as a Distinguished Professor, one of only twenty-five at the University. His gift for teaching and deep commitment to research were repeatedly acknowledged through numerous teaching and research awards throughout his illustrious career.

Wilkinson was famous for hiring law students as research assistants and sending them out in the world to learn about legal problems. These opportunities were often life-changing, with dozens of his students going on to practice Indian Law and Public Land Law over the decades.

As a prolific writer, Wilkinson authored fourteen books, which stand as seminal works that shaped the fields of Indian Law and Federal Public Land Law. These include highly regarded casebooks and general audience books, including *Crossing the Next Meridian*, that tackled pressing issues related to land, water, the West, Indigenous rights, and the complex histories that shape our nation. His writings, marked by their clarity and profound insights, resonated with scholars, practitioners, and the general public, making him an influential voice in legal and environmental discourse. He was an early thought leader in the field of environmental justice, seeing early on that the rights of Native Americans had to be considered at the heart of public lands and conservation policy.

"Charles was a beloved person in Indian country," said Professor Kristen Carpenter who directs the American Indian Law Program. "From the Navajo and Hopi people in the southwest deserts and canyons to the Yurok, Nisqually, and Siletz people along the rivers and coasts of the northwest, Charles spent much of his life working with tribes and they came to trust him. Charles Wilkinson's deep, respectful engagement with Indigenous Peoples is a model that the AILP will always share with our students."

Beyond the classroom, the written word, his work with tribes, and support for students, Wilkinson devoted himself to numerous special assignments for the U.S. Departments of Interior, Agriculture, and Justice. His expertise was sought after, and he played instrumental roles in critical negotiations and policy development. From facilitating agreements between the Timbisha Shoshone Tribe and the National Park Service to serving as a special advisor for the creation of Grand Staircase-Escalante National Monument and Bears Ears National Monument, Wilkinson's successes extended far beyond the confines of academia.

Charles Wilkinson's exceptional achievements were recognized through a multitude of prestigious awards and honors. These accolades include the National Wildlife Federation's National Conservation Award, which acknowledged his unwavering commitment to the preservation of our natural heritage. The Earle A. Chiles Award from the Oregon High Desert Museum celebrated his career-long dedication to the High Desert region, while the Twanat Award from the Warm Springs Museum recognized his tireless work in support of Indian people.

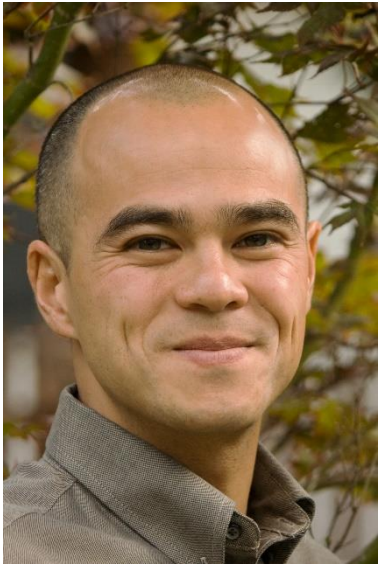
Wilkinson's visionary leadership and dedication to the Colorado Plateau were honored with the John Wesley Powell Award from the Grand Canyon Trust. Additionally, the Federal Bar Association bestowed upon him the Lawrence R. Baca Award for Lifetime Achievement in Indian Law, recognizing his profound contributions to the field. In 2021, the Colorado Center for the Book and Colorado Humanities honored Charles Wilkinson with the Colorado Book Awards Lifetime Achievement Award for his contributions to the Colorado and national literary, history, and legal communities.

"Charles Wilkinson's passing brings into sharp focus his extraordinary legacy—a legacy that embodies the very best of what our law school stands for. He was a brilliant advocate, and his life's work will continue to guide and inspire us," remarked Dean Lolita Buckner Inniss. "His memory will remain a source of comfort and strength for so many as they carry forward his remarkable dedication and honor the profound difference he made."

Charles Wilkinson's legacy will indeed continue to inspire generations to come, as those who knew him directly and those who were touched through his work strive to emulate his vision, passion, and commitment to creating a more just and sustainable world.

To Charles Wilkinson's family and loved ones, the University of Colorado Law School and Getches-Wilkinson Center offers our deepest condolences during this difficult time.

Welcome Getches-Wilkinson Center Executive Director Chris Winter



Chris Winter assumes the pivotal role of Executive Director at the GWC with a remarkable track record in environmental advocacy, education, and policy development. With 25 years of experience in the field of natural resources and environmental law, Winter has established himself as an attorney and advocate of extraordinary effectiveness, dedicating much of his career to public land management, environmental justice, and representing indigenous communities.

In 2001, Winter co-founded a non-profit law center based in Portland, Oregon, which represented public interest clients in federal and state courts across the Pacific Northwest. Over 17 years, he earned a reputation for winning challenging cases on behalf of grassroots organizations facing daunting odds and formidable opposition. Notably, Winter represented Alaska Native organizations in the U.S. Arctic, successfully protecting their subsistence activities from the impacts of offshore oil and gas exploration. He also served as lead counsel in *Rosemere Neighborhood Ass'n v. U.S. E.P.A.*, a landmark case that shed light on the EPA's inadequate investigation of citizen complaints under Title VI of the Civil Rights Act. His litigation record includes numerous victories on a wide range of issues in federal and state courts.

Most recently, Winter led a national advocacy organization working at the intersection of outdoor recreation and public land management. He spearheaded efforts to restore Bears Ears National Monument, promote human-powered outdoor recreation, and conserve public lands. Winter's extensive experience, particularly in engaging with diverse stakeholders and representing marginalized communities, uniquely positions him to lead the GWC.

"I am honored to join the GWC and contribute to its legacy of excellence," said Chris Winter. "For years the center has been a respected institution in environmental law scholarship and action. I am excited to build on that foundation in collaboration with Colorado Law's extraordinary students as well as the state's passionate and effective legal community."

Water Law Fellows Frannie Monasterio and Andrew Teegarden



The Getches-Wilkinson Center has begun its second round of Water Fellows Program that will train the next generation of natural resource leaders. Following a national search, we have hired a pair of Fellows who will be immersed in the real-world challenges of water law and policy. In collaboration with our partners, they will address critical issues affecting western watersheds, conduct reform-oriented research on pressing issues in the field, and interact with public and private sector leaders to inform policy making. The Water Fellows will be actively engaged in water law reform in the public interest and will hone their leadership, communication, advocacy, and research skills. The overarching objective is to create a matchless educational and mentoring experience that will prepare the Fellows to become leaders in the field.

Welcome to the New Getches-Green Natural Resources and Environmental Law Clinic Director Sarah Matsumoto



Sarah Matsumoto joins Colorado Law as an Associate Clinical Professor and Director of the Getches-Green Natural Resources & Environmental Law Clinic. Sarah comes to Colorado from Oregon, where, in 2021, she launched and directed the Community and Environmental Justice Clinic at Willamette University College of Law. From 2018-2021, Sarah served as a Clinical Fellow at the University of Denver Sturm College of Law.

As a clinical professor, Sarah instructs and supervises teams of students who advocate on behalf of individuals and communities seeking to protect themselves from environmental harms. She also works with clients seeking to better engage and collaborate with local, state, and federal agencies to solve pressing environmental problems. Sarah began her legal career as a public interest attorney in Oregon, where she worked with clients seeking to enforce the Clean Water Act and Resource Conservation and Recovery Act, and remains involved in environmental issues in the Pacific Northwest.

Sarah writes about environmental justice, and recently published articles in the *Pace Environmental Law Review* and *Alaska Law Review* examining environmental justice in the context of extreme heat events. She has spoken about environmental law and environmental justice at Arizona State University, the University of Michigan, Texas

Southern University, and symposia hosted by law journals at Pace, Howard, and U. Detroit-Mercy.

Founded in 1978, the Getches-Green Natural Resources and Environmental Law Clinic is one of the country's first environmental law clinics. Students in the Clinic engage in litigation and related advocacy efforts, most commonly on behalf of national or local environmental groups. Clinic students draft pleadings and briefs, counsel their clients, develop case theories and legal strategies, participate in settlement negotiations, and occasionally, present oral arguments in federal court.



GWC Summer Conference A Huge Success



On June 8-9, the Getches-Wilkinson Center hosted “*Crisis on the Colorado River: From Short-Term Solutions to Long-Term Sustainability.*” The conference, organized in partnership with the Water & Tribes Initiative, attracted a full-house of approximately 260 attendees’ intent on exploring both the current water scarcity challenges facing the basin and the long-term goal of sustainable management. Combined with the 150+ online (Zoom) registrants, the conference was likely the best attended in our 43-year history of June water conferences. Much of that success can be attributed to the lineup of top-tier speakers, including Bureau of Reclamation Commissioner Camille Touton, U.S. Senator John Hickenlooper (via Zoom), leading water officials from each of the basin states, former Arizona Governor (and Interior Secretary) Bruce Babbitt, and leaders of 13 (of 30) Colorado River tribes.

For many attendees, the highlight of the event was the “tribal panel” featuring leaders from Ak-Chin Indian Community, Chemehuevi Indian Tribe, Colorado River Indian Tribes (CRIT), Gila River Indian Community, Hopi Tribe, Jicarilla Apache Nation, Kaibab Band of Paiutes, Navajo Nation, San Carlos Apache Tribe, Shivwits Band of Paiutes, Southern Ute Indian Tribe, Ute Mountain Tribe, and the Ute Indian Tribe. Despite having rights (quantified and unquantified) to at least a fourth of the river’s flow, these tribes have historically been left on-the-sidelines in Colorado River discussions and decision-making, an era that thankfully appears to be ending as new negotiations begin to develop post-2026 management rules in the basin. Meaningful tribal engagement is likely to bring several benefits to these discussions, which too frequently in the past has cast the resource as merely a complex plumbing system, and not a river with unparalleled cultural, spiritual, and environmental values.

Given the size and scope of this event, it was perhaps the most expensive in our history, making the contributions of our sponsors even more critical than usual. Major GWC sponsors included the Walton Family Foundation, the Conscience Bay Company, and the U.S. Bureau of Reclamation. Overall, over 2 dozen organizations provided support to the GWC, and/or our partners in the Water & Tribes initiative, for this event. The time donated by speakers and attendees was equally essential and heartening; the Colorado River is clearly on the minds of many talented people.

Continuing Challenges in the Wake of the Supreme Court’s Arizona v. Navajo Decision

By Frannie Monasterio

On Thursday, June 22, 2023, the Supreme Court of the United States issued its Arizona v. Navajo Nation [decision](#). The Court determined the United States has a trust relationship with the Navajo Nation, but the United States does not need to take affirmative steps to secure water for the Nation. To reach this conclusion, the Court analyzed the 1868 Treaty between the United States and the Navajo Nation. Since nothing in the Treaty suggested or required the United States to take any specific or affirmative actions relating to water, the United States does not have a duty to act affirmatively to secure the Nation’s water rights. Water Fellow Frannie Monasterio summarizes the majority and dissent opinions and briefly reviews the challenges the Navajo Nation face in securing their water rights in the Colorado River.

Earlier this year, Frannie collaborated with four other attorneys (Elizabeth G. Bentley, Elisabeth Parker, Clifford B. Parkinson, and Heather Tanana) on an [amicus brief](#) to the Supreme Court filed on behalf of DigDeep and the Utah Tribal Relief Foundation.

Waging Battle Against Colorado's Antiquated Public Access Laws

By Andrew Teegarden

This June the Colorado Supreme Court held that plaintiff Roger Hill—who is represented by the University of Colorado Law School's own natural resource law professor, Mark Squillace—does not have standing to bring forward his claim of public access to the Arkansas River.

The dispute arose when Hill was fishing on the Arkansas River, where he was threatened with arrest and assault by landowners Mark Warsewa and Linda Joseph. Hill decided to sue the landowners, arguing that the river segment was navigable at statehood and therefore is owned by the state and, by proxy, the public at large.

"Neither I nor Mr. Hill claims the right to wade onto private property; we are simply claiming that the state owns the bed of all navigable rivers in the State in trust for the people," Squillace said. Since navigability must be proven by evidence of the river's use at time of Colorado's declaration of statehood, Squillace pointed out that this portion of river was used for log transport and commerce, making it navigable and ultimately owned by the state.

However, the court declined to comment on the issue of legal public access and simply stated, "...those subjects are ultimately irrelevant." The court held that for Hill to have a cognizable claim, he must prove he has a legally protected interest in the river. But Hill cannot prove the state owns the bed unless he has standing, putting him in a seemingly paradoxical situation.

Despite these setbacks, Hill's attorneys are pressing forward with a motion for the court to reconsider their judgment. Their motion argues that actions taken by the court are out of line with Colorado law; would require Hill to put himself in harm's way to adjudicate these claims; and reduces remedies for private property owners whose property interests are servient to fee title holders. While the motion for reconsideration is only one piece of the larger puzzle in gaining public access rights, it helps highlight how Colorado can hopefully make lasting change—even if it ultimately fails.

Unlike other states in the West that allow public access, Colorado is a major outlier. In 2022, the New Mexico Supreme Court held that the state constitution declares that water belongs to the public, and that anyone may access rivers even where the bed of the river is privately owned. Both Arizona and California allow access on navigable waters through private property, leaving Colorado to resolve these disputes on a case-by-case basis.

Colorado has a similar constitutional provision to New Mexico, which proclaims that, "the water of every natural stream in the State of Colorado is declared to be the property of the public and dedicated to the use of the people." Right now, members of the public in Colorado have no right of access on navigable or non-navigable rivers, despite strong constitutional protections.

It is detrimental to determine the scope of the public trust in a "piecemeal fashion" without any precedent or legislation on how courts should adjudicate cases on public access, because errors in judgment are certain to occur. "The state is going to have to face the music and realize that they need to change the law in this area," said Squillace.

The state's position is currently unknown as Attorney General Phil Wiser has not commented on the case. Although, it is clear from the briefings that the state does not want to deal with the potential impacts this ruling would have on public access rights for other navigable streams and tributaries within Colorado.

For the time being, Hill and others will unfortunately be forced to resort to self-help by fishing on rivers they believe to be navigable and risk arrest or possibly assault for allegedly trespassing. "It's unfortunate that we have to resort to this, the whole point of bringing the case as a declaratory judgment was to avoid putting our client in harm's way," said Squillace.

Numerous individuals have voiced their willingness to support Hill by engaging in what some have called 'civil disobedience'. Characterizing the alleged trespass as civil disobedience is simply incorrect because the bed of the Arkansas River does belong to the state, meaning Roger Hill is free to spend his days reeling in the next big catch.

Hill's attorneys are actively working with groups across the state to test their rights; the fight for public access cannot cease until Colorado guarantees this right for all. Squillace ultimately stated, "this is not the end of our campaign to guarantee public access to navigable waterways in Colorado."

Field Seminar Returns to the Colorado Plateau

By Gregor MacGregor ('19)



The Colorado Plateau has served as an important area of study for the Advanced Natural Resources Seminar since Professor Charles Wilkinson began the course in 1988. The Plateau boasts striking beauty at the heart of the Colorado River canyon country, centrality to four western states, and homelands for numerous Native American Tribes and Nations. Decades of students seeking to understand the intersection of Indian law, public lands, environmental law, and natural resources policy have completed their journey amidst sagebrush, flowing water, and good company.

After a COVID-induced hiatus, eleven law students and two Masters of the Environment students trekked across the Plateau for nine days

last Spring Break. The seminar began in Colorado with a ride on the Durango-Silverton Railroad, visited five National Parks and Monuments, visited four reservations, and wrapped with a seminar-alumni lunch in Glenwood Springs.

This year's agenda was driven by strong student interest in Indian law and policy. Southern Ute Indian Tribe's Water Attorney Lisa Yellow-Eagle ('08) provided a tour and explanation of irrigation projects on the reservation; Park managers discussed Mesa Verde's efforts to engage neighboring and culturally-affiliated tribes; tribal members of the Grand Canyon Trust spoke with students regarding the Park's management; Navajo guides from Indigenous-owned Ancient Wayves led students through a stormy, snowy day in Bears Ears National Monument; and Navajo DJ Neon Nativetz shared his personal and professional story with students over dinner in Bluff, Utah.

Kelby Welsh ('23) reflected on the trip that, "Meeting with tribal leaders, adventurers, and experts outside of the classroom and asking them directly about their landscapes and the changes they witnessed greatly enriched my CU Law experience. I would highly recommend it to any student wanting to expand their knowledge of Native American tribes and the forces and policies that shape our environment."

The experience took on a retrospective poignance with Professor Wilkinson's recent passing. Students began the course with his "Fire on the Plateau", and later read from it on muddy cliffs and around campfires. The alumni we met remarked on the profound impact the Seminar had on their education and careers. Experts praised his positive influence on Western issues and enjoyed the opportunity to meet decades of students in the field. What makes the seminar special can perhaps be found in Professor Wilkinson's own exhortations:

"Poems are great, cartoons are great! And, of course, you need excerpts from books and court decisions. But it's a mix because that's what the law of the American West is. *It is the land and those peoples and those events.* You can't just teach natural resources law, Indian law, in a classroom - you have to get out on the ground!"

Adam Fisher (Colorado Law '24) Named 2023-2024 Wyss Scholar



University of Colorado Law School student **Adam Fisher** ('24) is this year's Wyss Scholar. Fisher, a JD candidate, is Colorado Law's sixth Wyss Scholar. He is committed to spending his career negotiating new public land designations, advising decision-makers, working with tribes, and advocating for public land conservation. The Wyss Scholarship, given to one Colorado Law student each year, supports graduate-level education for promising leaders in Western land conservation. Recipients receive generous financial assistance to cover the full cost of one year of law school, as well as funds for internship opportunities, research assistance, and postgraduate support.

Ella Merrill (Colorado Law '25) Named 2023 David Harrison Innovations in Water and Energy Law & Policy Fellow



University of Colorado Law School student **Ella Merrill** ('25) is this year's Harrison Fellow. The Innovations in Water and Energy Law & Policy Fellowship, initiated in 2010 by partners of the law firm of Moses, Wittemyer, Harrison and Woodruff, P.C. in honor David L. Harrison (Law '71), is awarded each year to a Colorado Law student on the basis of academic performance, commitment to public service, and interest in the study of water and energy law and policy. To the extent practicable, each Harrison Fellow will focus on a specific project where the partner organization is advancing innovative solutions for sustainable management of water or related energy resources outside the United States.

This summer, as a Harrison Fellow, Ella has partnered with the United Nations Sustainable Development Solutions Network and the Legal Resources Centre in Cape Town, South Africa, to assist with and write about a series of cases that address the right to clean and accessible drinking water, guaranteed by the South African Constitution. One series of cases addresses decades of mismanagement of the country's water and sanitation services system, and the numerous human rights fallouts that have resulted. Another series of cases focuses on the way water conservation efforts have led to the displacement of indigenous subsistence fishermen, including several fatal shootings by game rangers.

Sierra Meggitt (Colorado Law '25) Named 2023 Sandgrund Environmental Law and Charles N. Woodruff Fellow



University of Colorado Law School student **Sierra Meggitt** ('25) is this year's Charles N. Woodruff and Sandgrund Environmental Law Fellow. The Charles N. Woodruff fellowship was established in memory of Charles Woodruff, a highly successful water resources lawyer, to promote excellence in the practice of natural resources law. The Sandgrund Environmental Law Fellowship is awarded to a student working with an environmental advocacy organization on matters that relate to environmental and natural resources law and policy.

As a Colorado Law student, Sierra has worked on water rights applications in the San Luis Valley for the Acequia Assistance Project and been an active member of the Environmental Law Society. This summer, as the Charles N. Woodruff Fellow, she is working with Western Resource Advocates and the Getches-Wilkinson Center's water fellows on issues surrounding oil shale water rights in Colorado. Additionally, with assistance from the Sandgrund Environmental Law Fellowship, Sierra is working with American Rivers, conducting research at the intersection of the Antiquities Act, river protection, and tribal co-management. This fall, Sierra will continue to expand her understanding of tribal law as a student attorney in the American Indian Law Clinic. Sierra plans to pursue a career in water.

2023 Colorado Law Student Award Winners

Congratulations to our 2023 Gary C. Bryner recipient Matthew von Werder

The Gary C. Bryner Award honors Gary's contributions to open dialog, critical assessment, and fair-minded debate in resolving natural resource policy issues. The award recognizes students who exemplify the virtues of thoughtfulness, kindness, and patience in their work.

Congratulations to our 2023 Natural Resources Law Outstanding Student Brendan Barbara

The Natural Resources Law Outstanding Student Award recognizes the exceptional work of our students who pursued Colorado Law's natural resource, energy, and environmental curriculum.



Getches-Wilkinson Center

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