
Colorado Journal of International Environmental Law and Policy

Volume 23, Number 1

Winter 2012

© 2012 by

The Colorado Journal of International Environmental Law, Inc.

The Colorado Journal of International
Environmental Law and Policy logo © 1989
Madison James Publishing Corp., Denver, Colorado

ISSN: 1050-0391

Subscriptions

	<u>Personal</u>	<u>Institutional</u>
Single Issue	\$15.00	\$25.00
Entire Volume	\$30.00	\$45.00

Payable in US currency or equivalent only. Check should accompany order.
Please add \$5 per single issue for postage and \$15 per volume for overseas postage.

All correspondence regarding subscriptions should be addressed to:

Managing Editor
Colorado Journal of International Environmental Law and Policy
University of Colorado Law School
Campus Box 401
Boulder, CO 80309-0401 - USA

Manuscripts

The *Journal* invites submission of manuscripts to be considered for publication. Manuscripts may be mailed to the address below or e-mailed directly to cjielp@colorado.edu. Unsolicited manuscripts can be returned if accompanied by postage and handling fees of \$3.00 for 3rd class or \$5.00 for 1st class mail. Manuscripts should be sent to:

Lead Articles Editor
Colorado Journal of International Environmental Law and Policy
University of Colorado Law School
Campus Box 401
Boulder, CO 80309-0401 - USA

E-mail: cjielp@colorado.edu

Internet Site: <http://www.colorado.edu/law/cjielp/>

Statement of Purpose and Editorial Policy

The *Colorado Journal of International Environmental Law and Policy* is an interdisciplinary journal dedicated to the examination of environmental issues with international implications. It provides a forum for: (1) in-depth analysis of the legal or public policy implications of problems related to the global environment; (2) articulation and examination of proposals and new ideas for the management and resolution of international environmental concerns; and (3) description of current developments and opinions related to international environmental law and policy.

The *Journal* has a diverse international audience including policy makers, scholars, and organizations concerned with environmental issues. Specific audiences include scholars and students at law schools, schools of international affairs, schools of public policy, programs of study involving the natural and social sciences, and officials in governmental and nongovernmental organizations.

The *Journal* is interested in articles submitted by authors that fall within this stated purpose. Authors uncertain whether their article is suitable for *Journal* publication are encouraged to contact the Editor-in-Chief to discuss the subject matter of their article.

Articles or other materials from authors may be accepted for publication prior to undergoing any editorial modifications. Such materials may also be conditionally accepted with the understanding that the author undertake major modifications prior to publication. Where appropriate, papers may be reviewed by experts within the relevant field to aid the *Journal's* publication decisions and editing processes. Article Editors will work with authors to refine the written product throughout the publication process, with the overall objective being to enhance the effectiveness of written communication.

Published twice annually by the
Colorado Journal of International Environmental Law, Inc.
University of Colorado Law School
320 Wolf Law Building, Campus Box 401, Boulder, CO 80309-0401,
an incorporated association of students sponsored by
UNIVERSITY OF COLORADO LAW SCHOOL STUDENT FUNDS

Cite as: 23 COLO. J. INT'L ENVTL. L. & POL'Y ____ (2012).

Colorado Journal of International Environmental Law and Policy

Volume 23, Number 1

Winter 2012

Board of Editors

Editor-in-Chief

LINDSAY B. MASTERS

Managing Editor

NAREE CHAN

Development Editor

JASON OBOLD

Production Editors

ROBERT DONALD

CAROLINE BAKER

PRASANTHI PARITALA

Articles Editors

TACY HASS

JENA AKIN

JESSICA LOWREY

Notes and Comments Editors

JACQUELYN A. JAMPOLSKY

MATTHEW BURNS

JAMESY OWEN

Associate Editors

ANGELA BANDUCCI

JAIMIE CAVANAUGH

ANNE MARIAH TAPP

Staff Writers

JEREMY BAKER

LISA BAKER

BRITTA BECKSTEAD

JUSTIN BONEBRAKE

LUKE BONUCCI

LAUREN BUTLER

MORGAN FIGUERS

JEN FRIEDBERG

TED HEWITT

MICAH JONES

NORA KATZ

ABBY KIRKBRIDE

STEVEN LOUIS-PRESCOTT

BRIAN MONTROSE

MYSTERY MURPHY

MEGAN NELSON

ASHLEY PALOMAKI

KATHERINE PARKER

KRISTEN RICE

ANTHONY SANTOS

ROBBIE SCOTT

ERIC SKANKEY

RYAN THARP

LAUREN WALKER

GINA WEINBERGER

Advisory Board

JAMES N. CORBRIDGE
Professor Emeritus, *University of Colorado Law School*

MICHAEL GLANTZ
Senior Scientist, *Environmental & Societal Impacts Group, National Center for Atmospheric Research*

ANITA HALVORSSEN
Director, *Global Legal Solutions*

HOWARD KENISON
Partner, *Lindquist & Vennum, P.L.L.P.*

WILLIAM L. THOMAS
Counsel, *Clifford Chance US L.L.P.*

Ex-Officio Advisory Board

MELISSA M. BONESS
Attorney at Law

JEREMY BOTKINS
Attorney at Law

DAVID BOWER
Attorney at Law

ALAINA STEDILLE
Attorney at Law

RICHARD MURRAY
Attorney at Law

CHRISTOPHER F. KNUD-HANSEN,
Attorney and Scientist,
SolarBee Pump Systems, Inc.

JANET LEE
Attorney at Law

RYAN MCGEE
Attorney, *Davis Graham & Stubbs L.L.P.*

JOHN P. MORGAN
Attorney, *Perkins Coie L.L.P.*

EZEKIEL PETERS
Attorney at Law

CHRISTOPHER W. FRY
Attorney at Law

BRANDON KARPEN
Staff Attorney,
U.S. District Court, District of Idaho

Faculty Advisor

WILLIAM BOYD
Associate Professor of Law
University of Colorado Law School

The University of Colorado Law School

Law School Faculty, 2011-2012

Deans

- PHILIP J. WEISER, *Dean, Charles Inglis Thompson Professor of Law, and Faculty Director and Founder of the Silicon Flatirons Center for Law.* B.A., Swarthmore College; J.D., New York University.
- KRISTEN A. CARPENTER, *Associate Dean for Faculty Development and Associate Professor of Law.* B.A., Dartmouth College; J.D., Harvard University.
- HELEN L. NORTON, *Associate Dean for Academic Affairs and Associate Professor of Law.* B.A., Stanford University; J.D., University of California, Berkeley.
- AHMED A. WHITE, *Associate Dean for Research and Professor of Law.* B.A., Southern University and A&M College; J.D., Yale University.
- WHITING LEARY, *Senior Assistant Dean for Students.* B.A., Williams College; J.D., University of Colorado.
- KRISTINE M. JACKSON, *Assistant Dean for Admissions and Financial Aid.* B.S., University of North Carolina; J.D., George Mason University.
- MIKE SPIVEY, *Assistant Dean for Outreach and Engagement.* B.A., Vanderbilt University; M.B.A., University of Alabama.
- TODD ROGERS, *Assistant Dean for Career Development.* B.S., Trinity University; J.D., University of Texas.

Emeritus Faculty

- NORMAN F. AARONSON, *Clinical Professor Emeritus, Legal Aid and Defender Program.* A.B., Brandeis University; J.D., Boston University.
- CLIFFORD J. CALHOUN, *Professor Emeritus.* A.B., LL.B., Harvard University.
- HOMER H. CLARK, JR., *Professor Emeritus.* A.B., LL.D., Amherst College; LL.B., LL.M., Harvard University.
- JAMES N. CORBRIDGE, JR., *Professor Emeritus.* A.B., Brown University; LL.B., Yale University.
- TED J. FIFLIS, *Professor Emeritus.* B.S., Northwestern University; LL.B., Harvard University.
- H. PATRICK FURMAN, *Clinical Professor Emeritus, Legal Aid and Defender Program, and Director of Clinical Programs.* B.A., J.D., University of Colorado.
- DAVID S. HILL, *Professor Emeritus.* B.S., J.D., University of Nebraska.
- J. DENNIS HYNES, *Professor Emeritus.* B.A., LL.B., University of Colorado.
- HOWARD C. KLEMME, *Professor Emeritus.* B.A., LL.B., University of Colorado; LL.M., Yale University.
- WILLIAM T. PIZZI, *Professor Emeritus.* A.B., Holy Cross College; J.D. Harvard University; M.A. University of Massachusetts.
- WILLIAM E. RENTFRO, *Professor Emeritus.* B.A., University of Colorado; Th.M., LL.B., University of Denver.
- PETER N. SIMON, *Professor Emeritus.* B.S., M.D., University of Wisconsin; J.D., University of California, Berkeley.
- NORTON L. STEUBEN, *Professor Emeritus.* A.B., J.D., University of Michigan.
- ARTHUR H. TRAVERS, JR., *Professor Emeritus.* B.A., Grinnell College; LL.B., Harvard University.

Tenured and Tenure-Track Faculty

- WILLIAM BOYD, *Associate Professor of Law and Director of the Governor's Climate and Forests Task Force Project*. B.A., University of North Carolina, Chapel Hill; J.D., Stanford University; Ph.D., University of California, Berkeley.
- HAROLD H. BRUFF, *Nicholas Rosenbaum Professor of Law*. B.A., Williams College; J.D., Harvard University.
- ALEXIA BRUNET MARKS, *Associate Professor of Law*. B.A., Colgate University; M.S., Purdue University; Ph.D., Purdue University; J.D., Northwestern University.
- EMILY M. CALHOUN, *Professor of Law*. B.A., M.A., Texas Tech University; J.D., University of Texas.
- PAUL F. CAMPOS, *Professor of Law*. A.B., M.A., J.D., University of Michigan.
- DEBORAH J. CANTRELL, *Associate Professor of Law and Director of Clinical Programs*. B.A., Smith College; M.A., University of California, Los Angeles; J.D., University of Southern California.
- MING CHEN, *Associate Professor of Law*. B.A., Harvard University; J.D., New York University; Ph.D., University of California, Berkeley.
- RICHARD B. COLLINS, *Professor of Law*. B.A., Yale College; LL.B., Harvard University.
- JUSTIN DESAUTELS-STEIN, *Associate Professor of Law*. B.A., University of North Carolina, Asheville; J.D., University of North Carolina, Chapel Hill; LL.M., Harvard University.
- MIRANDA P. FLEISCHER, *Associate Professor of Law*. B.A., Duke University; J.D., University of Chicago; LL.M. New York University.
- VICTOR FLEISCHER, *Associate Professor of Law*. B.A., J.D., University of Chicago.
- WAYNE M. GAZUR, *Professor of Law*. B.S., University of Wyoming; J.D., University of Colorado; LL.M., University of Denver.
- ERIK GERDING, *Associate Professor of Law*. A.B., Duke University; J.D., Harvard University.
- MARISA AYA GRUBER, *Professor of Law*. B.A., University of California at Berkeley; J.D., Harvard University.
- LAKSHMAN D. GURUSWAMY, *Nicholas Doman Professor of International Environmental Law and Director of the Center for Energy and Environmental Security*. LL.B., Sri Lanka; Ph.D., University of Durham, U.K.
- MELISSA HART, *Associate Professor of Law and Director of the Byron R. White Center for the Study of American Constitutional Law*. B.A., Harvard-Radcliffe College; J.D., Harvard University.
- PETER HUANG, *Professor of Law and DeMuth Chair*. A.B., Princeton University; S.M., Harvard University; J.D., Stanford University; Ph.D., Harvard University.
- SARAH A. KRAKOFF, *Professor of Law and Wolf Nichol Fellow*. B.A., Yale University; LL.B., University of California, Berkeley.
- MARK J. LOEWENSTEIN, *Monfort Professor of Commercial Law*. A.B., J.D., University of Illinois.
- DAYNA BOWEN MATTHEW, *Professor of Law*. A.B., Harvard-Radcliffe College; J.D., University of Virginia.
- SCOTT A. MOSS, *Associate Professor of Law*. B.A., M.A., Stanford University; J.D., Harvard University.
- CHRISTOPHER B. MUELLER, *Henry S. Lindsley Professor of Procedure and Advocacy*. A.B., Haverford College; J.D., University of California, Berkeley.
- ROBERT F. NAGEL, *Ira C. Rothgerber Professor of Constitutional Law*. B.A., Swarthmore College; J.D., Yale University.

PAUL OHM, *Associate Professor of Law, Faculty Director of the Silicon Flatirons Information Technology and Intellectual Property Initiative, and Faculty Director of LL.M Program in Technology and Intellectual Property Law*. B.S./B.A., Yale University; J.D., University of California, Los Angeles.

SCOTT R. PEPPE, *Associate Professor of Law*. B.A., Cornell University; J.D., Harvard University.

CAROLYN B. RAMSEY, *Professor of Law*. B.A., University of California, Irvine; A.M., J.D., Stanford University.

PIERRE J. SCHLAG, *Byron White Professor of Constitutional Law*. B.A., Yale University; J.D., University of California, Los Angeles.

AMY J. SCHMITZ, *Professor of Law*. B.A., Drake University; J.D., University of Minnesota.

ANDREW SCHWARTZ, *Associate Professor of Law*. Sc.B., Brown University; J.D., Columbia University.

ANNA SPAIN, *Associate Professor of Law*. B.A., Denison University; J.D., Harvard University.

MARK SQUILLACE, *Professor of Law and Director of the Natural Resources Law Center*. B.S., Michigan State University; J.D., University of Utah.

HARRY SURDEN, *Associate Professor of Law*. B.A., Cornell University; J.D., Stanford University.

MARIANNE WESSON, *Professor of Law and Schaden Chair in Experiential Learning*. A.B., Vassar College; J.D., University of Texas.

CHARLES F. WILKINSON, *University's Distinguished Professor and Moses Lasky Professor of Law*. B.A., Denison University; LL.B., Stanford University.

Clinical Faculty

NORMAN F. AARONSON, *Clinical Professor Emeritus, Legal Aid and Defender Program*. A.B., Brandeis University; J.D., Boston University.

J. BRAD BERNTHAL, *Clinical Professor of Law, Faculty Director of the Silicon Flatirons Entrepreneurship Initiative, and Director of LL.M Program in Entrepreneurial Law*. B.A., University of Kansas; J.D., University of Colorado.

DEBORAH J. CANTRELL, *Associate Professor of Law and Director of Clinical Programs*. B.A., Smith College; M.A., University of California, Los Angeles; J.D., University of Southern California.

VIOLETA CHAPIN, *Associate Clinical Professor of Law*. B.A., Columbia College; J.D., New York University.

MARGARET ANN ENGLAND, *Clinical Professor, Legal Aid and Defender Program*. B.A., University of Michigan; J.D., University of Denver.

COLENE ROBINSON, *Clinical Professor, Juvenile and Family Law*. B.A., Valparaiso University; J.D., Loyola University School of Law, Chicago.

MICHAEL SOULES, *Clinical Associate Professor*. B.A., University of Michigan; M.S., University of California, Berkeley; J.D., Yale University.

JILL E. TOMPKINS, *Clinical Professor of Law and Director of American Indian Law Clinic*. B.A., The King's College; J.D., University of Maine.

Legal Writing and Appellate Advocacy Faculty

AL CANNER, *Legal Writing Professor*. B.A., Brandeis University; J.D., University of Colorado.

AMY BAUER, *Legal Writing Professor*. B.A., Duke University; J.D., William & Mary School of Law.

DEREK H. KIERNAN-JOHNSON, *Legal Writing Professor*. A.B., Princeton University; J.D., University of Michigan.

NATALIE MACK, *Legal Writing Professor*. B.S., University of South Carolina; J.D., University of Colorado.

GABRIELLE M. STAFFORD, *Legal Writing Professor*. B.A., University of Pennsylvania; J.D., Boston University.

TODD M. STAFFORD, *Legal Writing Professor*. B.A., Southern Methodist University; J.D., Duke University.

Law Library Faculty

ALICIA BRILLON, *Reference Librarian*. B.A., M.L.I.S., University of Washington; J.D., Seattle University.

GEORGIA K. BRISCOE, *Associate Director and Head of Technical Services*. B.S., Washington State University; M.A., University of San Diego; M.L.S., University of Michigan.

YUMIN JIANG, *Technical Services Librarian*. M.S., University of Illinois, Urbana-Champaign; M.A., University of Wisconsin.

ROBERT LINZ, *Head of Public Services and Associate Director of Law Library*. B.A., Wake Forest University; J.D., University of Florida; M.L.I.S., Florida State University.

SUSAN NEVELOW MART, *Associate Professor and Director of the Law Library*. B.A., University of California, Santa Cruz; J.D., Boalt Hall; M.L.I.S., San Jose State University.

ALAN PANNELL, *Reference Librarian*. B.A., University of Oklahoma; J.D., Western New England College; M.A. University of Arizona.

KAREN SELDEN, *Catalog Librarian*. B.S., Pennsylvania State University; M.L.S., Simmons College.

JANE E. THOMPSON, *Head of Faculty Services*. B.A., University of Missouri; M.A., J.D., University of Denver.

Research Fellows and Associates

DARRELL JACKSON, *Research Fellow, Byron White Center for Study of American Constitutional Law, Boulder, Colorado*. B.A., College of William and Mary; J.D., George Mason University; Ph.D., University of Colorado.

DOUGLAS S. KENNEY, *Research Associate, Natural Resources Law Center*. B.A., University of Colorado; M.S., University of Michigan School of Natural Resources and Environment; Ph.D., Cornell University.

KATHRYN M. MUTZ, *Research Associate, Natural Resources Law Center*. B.A., University of Chicago; M.S., Utah State University; J.D., University of Colorado.

JULIE TEEL, *Senior Research Associate, Center for Energy & Environmental Security*. B.S., University of California, Berkeley; J.D., New York University.

Colorado Journal of International Environmental Law and Policy

Volume 23, Number 1

Winter 2012

Table of Contents

Articles

THE LIMITS OF INTERNATIONAL ENVIRONMENTAL LAW: MILITARY
NECESSITY V. CONSERVATION

ALEXANDER GILLESPIE 1

MOBILIZING THE PUBLIC TRUST DOCTRINE IN SUPPORT OF
PUBLICLY OWNED FORESTS AS CARBON DIOXIDE SINKS IN INDIA
AND THE UNITED STATES

PAUL A. BARRESI 39

CLIMATE CHANGE, SEA LEVEL RISE, AND ARTIFICIAL ISLANDS:
SAVING THE MALDIVES' STATEHOOD AND MARITIME CLAIMS
THROUGH THE 'CONSTITUTION OF THE OCEANS'

MICHAEL GAGAIN 77

THE NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL
COOPERATION: HAS IT FULFILLED ITS PROMISES AND POTENTIAL?
AN EMPIRICAL STUDY OF POLICY

LINDA J. ALLEN 121

Notes & Comments

HOME SWEET HOME: HOW THE 'PURPOSE OF THE RESERVATION'
AFFECTS MORE THAN JUST THE QUANTITY OF INDIAN WATER
RIGHTS

JESSICA LOWREY 201

ACTIVISM IS THE NEW BLACK! DEMONSTRATING THE BENEFITS OF
INTERNATIONAL CELEBRITY ACTIVISM THROUGH JAMES
CAMERON'S CAMPAIGN AGAINST THE BELO MONTE DAM

JACQUELYN AMOUR JAMPOLSKY 227

FREE MARKET ENVIRONMENTALISM: DESALINATION AS A
SOLUTION TO LIMITED WATER RESOURCES IN NORTHERN CHILE'S
MINING INDUSTRY

LINDSAY B. MASTERS 257

