

GWC

Getches-Wilkinson Center
for Natural Resources, Energy, and the Environment

A Discussion on the Proposed Bears Ears National Monument with Professor Charles Wilkinson

Since its inception in July 2015, **Professor Charles Wilkinson** has worked within the Bears Ears Inter-Tribal Coalition in an effort to conserve the Bears Ears landscape in Southern Utah. Charles was one of the main architects behind the Coalition's October 2015 Proposal to President Obama for the creation of Bears Ears National Monument. Charles has a long history working on the Colorado Plateau, specifically as a member of the Grand Canyon Trust Board of Trustees, authoring the book "Fire on the Plateau," and drafting the Presidential Proclamation forming the Grand Staircase-Escalante National Monument. Charles sat down with **Professor Sarah Krakoff**, a fellow member of the Grand Canyon Trust Board of Trustees, to talk about the history embedded in the Bears Ears landscape and the formation of the Inter-Tribal Coalition's historic proposal.

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A Message from the Executive Director

Alice Madden ('89)



Dear Friends,

This past July I was honored to be named the Executive Director of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (GWC) at Colorado Law, taking the reins from my predecessor **Britt Banks** ('88). I want to publically thank Britt for all that he has done for the GWC community and I hope to carry on his good works. I am deeply appreciative that former **Dean Phil Weiser**, the GWC Board, and the Advisory Council placed their faith in me to run this center named after two of my mentors, **David Getches** and **Charles Wilkinson**.

These two iconic figures were professional partners, the closest of friends, and collaborators since the early 1970s, and both have been tremendous contributors not only to their fields of law and policy, but also to Colorado Law. So it is both a privilege and quite humbling to be tasked with implementing the GWC mission:

Serving the people of the American West, the nation, and the world through creative, interdisciplinary research, bold, inclusive teaching, and innovative problem solving in order to further true sustainability for our lands, waters, and environment.

My arrival coincided with that of **Dean James Anaya**, an expert on international human rights, including the development of natural resources on indigenous lands and its impacts on local communities. Of the many things that interested me in this position, I was especially pleased to see that the focus of Dean Anaya's career intersects so well with the GWC's scope of work.

As I enter my third month, I am continually astounded by what I can best describe as GWC's "embarrassment of riches." Our Faculty Board, external Advisory Council, Senior Fellows, staff, and students are simply stellar. As you read through this publication, you will get a glimpse of the breadth and depth of their work. I do want to acknowledge one key player in particular. The GWC Program Manager **Shaun LaBarre** does an amazing job producing events and running day-to-day operations, which is always more complicated in times of transition. Thank you Shaun!

The input I am receiving from the GWC Faculty Board and the Advisory Council is helping shape my emerging vision for the future of the GWC. For years, Colorado Law has led the nation in research and programs examining the complex challenges facing the American West, its people, wildlife, lands, and waters. The GWC is now at the helm of that work which is continually evolving in the face of challenges such as increasing populations, energy development, and the global impacts of climate change.

As the GWC expands its role as a problem solver, I want to ensure that scholars, practitioners, industry, government agencies, and environmental organizations view the GWC as a trusted and relevant resource. I will work hard to raise our profile as we continue to convene thought leaders and practitioners to address the most pressing issues facing public lands, tribal resource management, climate change, and energy development in Colorado, across the nation, and abroad.

Bridging the gap between academic research and practical application requires drawing on diverse perspectives. When faced with complicated challenges, I like to take an all hands on deck approach. I plan on broadening the types of stakeholders (both private sector and academia) with whom we regularly engage. I look forward to building multi-disciplinary collaborations across departments at CU as well as with colleagues at the School of Mines, Colorado State University and the University of Denver.

Engaging with our inspiring students is yet another highlight of the position. In that vein, I want to note an underlying goal that has become increasingly important to me: seeding the interest of underrepresented groups in the study of natural resources, energy and the environment. Our demographics are shifting and we need to do everything we can to attract excellent students with diverse backgrounds into these fields. That is how we will build a truly sustainable legacy.

The Wolf Law building is an exciting place to be and I invite you to get engaged with the work of the GWC. We just completed the very well-received Schultz Lecture featuring energy economist Paul Joskow who spoke about Reducing Greenhouse Gas Emissions from the Electrical Power Sector. We have several interesting events on the horizon so be sure to look over the calendar of events on page 27.

I look forward to working with all of you and I invite you to contact me. I would love to hear how you think the GWC can be a force worthy of its name!

A Message from the Chair of the Advisory Council

Peter Nichols ('01)

On behalf of the Advisory Council, I'd like welcome our new Executive Director, Alice Madden, who began work in July. I've been privileged to attend a couple of meetings with her, and have been impressed with her ideas and energy. I sincerely believe her mantra for the Center -- "trusted, relevant resource" -- is spot on, and right in line with the foundational vision of the Advisory Committee.

Also on behalf of the Advisory Council, I'd like to thank fellow member Anne Getches for hosting a welcome reception at her house for Dean Jim Anaya and Executive Director Alice Madden. Many Council and Board members attended the delightful outdoor event on August 9th. Anne's patio provided a wonderful opportunity to get to know our new Dean and new Executive Director, as well as enjoy some of Anne's famous hospitality.

In closing, the Advisory Council reiterates its commitment to assist the Dean, GWC's Executive Director, the Board, and Colorado Law's natural resources program to foster its national academic stature and the GWC's relevance to practitioners and policy makers. The Council is prepared to work with the new leadership to accomplish those goals. Furthermore, the Council is dedicated to developing increased opportunities for meaningful student engagement.



Energy and Environmental Innovation

Governors Climate & Forests Task Force

By William Boyd, Professor of Law

Patricia Espinosa, Executive Secretary of the UNFCCC, and Governors from around the world headline at the annual meeting of The Governors Climate & Forests Task Force (GCF)

The Governors Climate and Forests Task Force (GCF) held its annual meeting in Guadalajara Mexico Aug 28-Sept 1, 2016. The meeting was led by Governor Aristóteles Sandoval of Jalisco and co-convened with the second Climate Summit of the Americas. More than 600 people attended the meeting including Governors, Mayors, and other high-level officials from around the world. Patricia Espinosa Cantellano, the new Executive Secretary of the United Nations Framework Convention on Climate Change, participated in the meeting as a special guest and stressed the importance of subnational action and leadership as a key component of any successful effort to achieve the ambitious targets of the Paris Climate Agreement. The GCF also added six new members at the meeting, bringing its total membership to 35 states and provinces from nine different countries. The Guadalajara meeting also provided the venue for launching important new partnerships, including a new climate finance MOU between GCF members from Brazil, Peru, and Mexico and the Latin American Development Bank (CAF), a new climate cooperation framework for the Amazon regions in Peru, and a \$2 million purchase by the Marriott Corporation of emissions reductions from the Sustainable Amazonas Foundation (FAS).



Founded in 2009, GCF is a unique subnational collaboration between 35 states and provinces from Brazil, Colombia, Indonesia, Ivory Coast, Mexico, Nigeria, Peru, Spain, and the United States. The GCF seeks to advance jurisdictional programs for low emissions development and reduced emissions from deforestation and land use (REDD+) and link these activities with emerging greenhouse gas (GHG) compliance regimes and other pay-for-performance opportunities. More than 25% of the world's tropical forests are in GCF states and provinces, including more than 75% of Brazil's and Peru's and more than 60% of Indonesia's. The GCF includes states and provinces that are leading the way in building comprehensive, jurisdiction-wide approaches to low emissions development and REDD+ as well as the only jurisdiction in the world (California) that is considering provisions that would recognize offsets from REDD+ as part of its GHG compliance system. The GCF is funded by the Norwegian Agency for Development Cooperation (Norad), the Moore Foundation, and the Climate and Land Use Alliance. The GCF secretariat is a project of the Getches-Wilkinson Center under the direction of **Professor William Boyd**.



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Climate Change, Natural Resources, and Environmental Law Work-in-Progress Symposium August 11-13

By Sarah Krakoff, Professor of Law

For the seventh year, **William Boyd** and **Sarah Krakoff** teamed up with their colleagues Jed Purdy (Duke Law) and Jim Salzman (U.C.-Santa Barbara/U.C.L.A.) to host a two-day workshop for environmental, natural resources, energy, and climate change scholars from around the country. This year's participants included Ann Carlson (UCLA), Buzz Thompson (Stanford), Shalanda Baker (U. of Hawaii), Margot Pollans (Pace), Nathan Richardson (U. of South Carolina), **Sharon Jacobs**, Miriam Seifter (Wisconsin), **Mark Squillace**, Dave Roche (Environmental Law Institute), Dave Spence (U. of Texas), Alex Wang (UCLA), and Sharmila Murthy (Suffolk U.). As is the tradition, the workshop ended with a spectacular hike on Saturday, this year to Devil's Thumb Lake and the High Lonesome Trail in the Indian Peaks Wilderness.

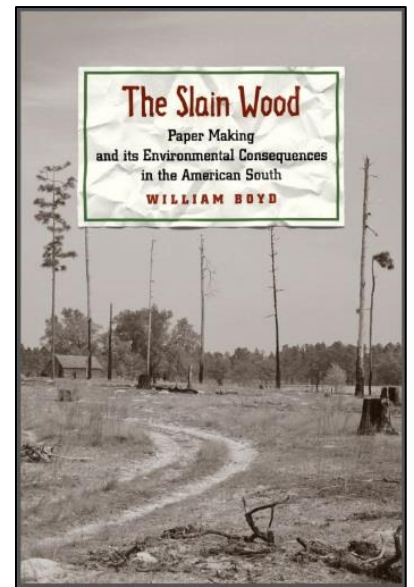


Professor Boyd Wins 2016 Sidney M. Edelstein Prize

Professor William Boyd's recent book, [*The Slain Wood: Papermaking and its Environmental Consequences in the American South* \(Johns Hopkins University Press, 2015\)](#) received the 2016 Sidney M. Edelstein Prize from the Society for the History of Technology. The Edelstein Prize is awarded annually to an outstanding scholarly book in the history of technology published during the preceding three years.

In *The Slain Wood*, William Boyd chronicles the dramatic growth of the pulp and paper industry in the American South during the twentieth century and the social and environmental changes that accompanied it. Drawing on extensive interviews and historical research, he tells the fascinating story of one of the region's most important but understudied industries.

The Slain Wood reveals how a thoroughly industrialized forest was created out of a degraded landscape, uncovers the ways in which firms tapped into informal labor markets and existing inequalities of race and class to fashion a system for delivering wood to the mills, investigates the challenges of managing large papermaking complexes, and details the ways in which mill managers and unions discriminated against black workers. It also shows how the industry's massive pollution loads significantly disrupted local environments and communities, leading to a long struggle to regulate and control that pollution.



Addressing Oil and Gas Development at the Local Level

By Kathryn Mutz, Natural Resources LLC, Intermountain Oil and Gas BMP Project

The Intermountain Oil and Gas BMP project and CDR Associates have partnered to explore the use of Memorandum of Understanding (MOUs), also known as operator agreements, in Colorado oil and gas development. The goal of the project is to help Colorado and its communities find productive approaches to the ‘local versus state control’ conflict by contributing to the capacity and toolbox of stakeholders.

The MOU project consists of two major components – searchable databases of over 40 Colorado MOUs and their Best Management Practices (BMPs), and a stakeholder assessment regarding the use of MOUs to address oil and gas development within Colorado’s regulatory framework.

The Intermountain BMP Project website hosts a page that describes the MOU project and provides links to its component databases and the stakeholder assessment. www.oilandgasbmps.org/resources/MOU.php

The stakeholder assessment -- “Insights from the Field Toward an Understanding of Industry-Community MOUs” — is based on interviews with a dozen stakeholders involved with MOU negotiation and implementation. The report explores opportunities, challenges, and other insights regarding the use of oil and gas MOUs as a tool for addressing the interests of stakeholders while reducing conflict, political polarization and expensive, time-consuming legal battles with the state and industry over jurisdictional authority. The report focuses on how and under what circumstances Colorado communities and operators have been able to effectively address conflicts over issues of proximity, intensity, scale and other impacts of oil and gas development. Likewise, it explores circumstances in which such approaches have been less effective.

Funding for the stakeholder assessment came from the National Science Foundation funded AirWaterGas Sustainability Research Network (based in the CU Engineering Department) and from grants to the Getches-Wilkinson Center from the Rocky Mountain Mineral Law Foundation (RMMLF) and the University of Colorado-Boulder Office for Outreach and Engagement. RMMLF and the Colorado Energy Office provided funding for development of the MOU and BMP databases. The project team plans to update the databases as new MOUs are developed and hopes to continue to engage stakeholders in discussions of the MOU tool.



Native Communities and Environmental Justice

The Acequia Project

By Jesse Heibel, Getches Fellow

The Acequia Project is a joint partnership between the GWC, the Sangre de Cristo Acequia Association, and Colorado Open Lands, which provides free legal assistance to farmers and irrigators in the San Luis Valley of Colorado in cases involving water rights and governance. The acequia irrigation system was brought to what is now the American southwest by Spanish families who settled well before it became part of the United States. The community-based acequia system operates according to traditional cultural principles of equity, communal governance, and mutual support by ensuring that each family has enough water for domestic, gardening, and subsistence farming and ranching.

With the advent of Colorado's prior appropriation doctrine and the mandatory adjudication of rights in water courts starting in 1969, acequia communities were placed in a difficult situation. Some acequias obtained decrees for their pre-existing water rights, only to lose half of their rights to promoters and speculators, while others never made the trip to the newly established water court to adjudicate their rights, continuing to irrigate as their ancestors had for generations instead.

As a result of the prolonged drought affecting Colorado's river basins and the more closely administer water rights that followed, many acequias communities began to be threatened by a variety of forces. In some cases, their ancient water rights were being challenged because they lack formal judicial decrees, threatening the livelihood of the families who depended on the water for their very survival. In others, land sales have resulted in non-resident owners having rights to acequia water without any corresponding sense of obligation to the community and distribution among users. Since 2012, more than 80 volunteer students and 10 volunteer attorneys have helped these long-standing acequia communities adjudicate their water rights in court and utilize state legislation to establish governance structures that help protect traditional practices. Together, **Professor Sarah Krakoff, Peter Nichols ('01), and Sarah Parmar** of Colorado Open Lands oversee and coordinate the Project, and **Allan Beezeley ('76)**, provides *pro bono* title training and guidance. Invaluable financial support has been provided over the years by the **CU Outreach Council, the Colorado Law Engagement Fund, and Valerie Gates**.

2016 Update

This past year saw a number of notable successes for the Acequia Project. During the summer of 2016 student attorneys (some of whom are now recent graduates) **John Sherman, Blake Busse** and **Richard Peterson-Cremer** along with volunteer attorneys **Peter Nichols** and **Leah Martinsson** all played crucial roles in obtaining final decrees from the water court for two separate water rights cases. These decrees permanently secured water rights for the irrigators living on these ditches, keeping the vital resource within the community. With two more water rights cases pending in court and title research for another underway, volunteer attorneys **Peter Nichols, Cori Hatch** and **Kelcey Nichols** along with student attorneys **Gunnar Paulsen, Colin Mayberry, Rachel Dingman** and **Michelle White** look forward to more positive results in the months to come.

Additionally, during the spring and summer of 2016, the Acequia Project embarked on four new bylaws cases. **Professor Sarah Krakoff** and supervising attorney **Sarah Pizzo** along with a host of student attorneys will be working with over fifty irrigators to secure their traditional governance structures and water distribution schemes for years to come. **Sarah Pizzo** is also working on an incorporation case as well as researching the feasibility of obtaining acequia status for other irrigation ditches in the region.

Although the Acequia Project is centered on helping acequia communities obtain and secure water rights, it also provides Colorado Law students the opportunity to engage in meaningful natural resources legal work with underrepresented clients. The fact that the Project offers students experiences they couldn't find in the classroom was one of the factors that attracted law student **Gunnar Paulsen**. "I became involved because this was a fantastic way to get involved in an environmental justice project, learn about Colorado's most important natural resource, develop relationships with fellow students, and travel to the San Luis Valley to work within the community." For Paulsen, learning how to interact with clients and other attorneys, how to independently move forward a group project and how to engage with clients from a different cultural background are all aspects of the Project that help makes volunteering such a valuable experience for law students.

FLMPA Turns 40 – An Interview with Professor Mark Squillace

By Jesse Heibel, Getches Fellow

October 2016 marks the 40th anniversary of The Federal Land Policy and Management Act of 1976, more commonly known as FLPMA. When passed, FLPMA memorialized Congress' recognition of the value western public lands held and for the first time gave the Bureau of Land Management comprehensive guidelines on how to manage and control the public domain. After 40 years of implementation,

FLPMA Turns 40 Conference

Coming Friday, October 21st

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

More information, event agenda and registration available at:
www.colorado.edu/law/research/gwc/events

interpretation and litigation, FLPMA remains the preeminent federal statute governing the use and management of BLM's public lands. As such, on October 21, 2016, Colorado Law and the GWC are hosting a conference dedicated to FLPMA. In anticipation of the FLPMA Conference, we sat down with **Professor Mark Squillace** to talk about FLPMA's evolution over the past several decades and where the future of public lands management is headed under the statute.

Q: Why have conference dedicated to FLPMA?

A: We have seen much focus this year on the National Park Service centennial, which is certainly an important and celebratory event, but our BLM public domain lands are also celebrating an important milestone this year. On October 21, 2016, FLPMA turns 40, and over the past four decades FLPMA has helped to transform the BLM from an agency focused on mineral development and livestock grazing to one that has begun to more fully embrace its multiple use mandate. FLPMA's 40th anniversary gives us a chance to celebrate this transformation, but perhaps even more importantly it offers an opportunity to look forward and debate how we want our public lands to be managed going forward. One of the important issues that the BLM is currently confronting, for

Q: How have politics impacted the BLM's success in managing our public lands?

A: This is surely a debatable point, and it may be controversial, but I believe that the decision to organize the BLM around state offices in the major public lands states of the west was a mistake. Because BLM state directors typically serve a single state they are far more susceptible to local political pressures from the governor and other local officials. This problem has become especially apparent as our view of land management has evolved to appreciate the importance of protecting large landscapes that often cross state boundaries. In this respect, the organization of the Forest Service into regions that include all or parts of several states, with forest boundaries crossing state lines offers a useful contrast.

Q: How has the BLM's land use planning process evolved since FLPMA has passed in 1976?

A: Planning has been a difficult issue for both the BLM and the U.S. Forest Service – the two major multiple use agencies. If I could point to a single problem with public land use planning today it is that it takes far too long – often seven or eight years or even longer. The challenge ahead is to find a way to streamline the process and engage the public in a more meaningful way. The original idea for public land use planning was to make fairly detailed resource management choices at the planning unit level, so that project-level decisions could be handled more efficiently. What the agencies learned, however, after a number of legal setbacks, is that a land use plan that covers one million acres or more cannot possibly be specific enough to assess the impacts of a particular project, and so the expected efficiencies have simply not been realized. On the other hand, as climate change takes hold and agencies begin to embrace adaptive management, the BLM cannot afford to spend years developing a plan. I strongly believe that the BLM needs to rethink its planning process to ensure that plans are nimble. Decisions at the planning level should be limited to deciding what types of uses are going to be allowed and not allowed and to setting specific management objectives for these areas. They would also have to establish reliable metrics and monitor whether the objectives are being met, but unit level planning should stop there. I imagine more of a layered planning approach that begins with relatively simple, big picture plans that raise issues that are important to the public and that will effectively engage them. More complex decisions involving how to carry out particular activities can be saved for a later level. I give the BLM credit for testing out some new ideas, like master leasing plans and rapid ecological assessments. These are positive steps that suggest a serious effort to improve the planning process. I look forward to further BLM efforts at modernizing the planning process.

Why have FLPMA's wilderness provisions proved so controversial?

Wilderness is a difficult issue for the BLM. The “rock and ice” landscapes that characterize many national forest wilderness areas are far less controversial because they involve far fewer conflicts with other uses. By contrast, many of the wilderness study areas identified by the BLM are at lower elevations that are very much in demand by mineral developers and motorized recreation uses. We have seen these conflicts play out throughout the west but especially in southern Utah where a strong environmental movement to designate more wilderness has met significant resistance from local political leaders. That process will most likely continue to play out over many years but it is hard not to think that the decision to designate the Grand Staircase-Escalante National Monument in 1996, and the proposal to designate a Bears Ears National Monument are being pushed as an alternative to wilderness and as a means to avoid the wilderness debate.

Water

Western Water Policy Program

By Doug Kenney, Western Water Policy Program Director

The highlight of the summer was the GWC's annual water conference entitled "Coping with Water Scarcity in River Basins Worldwide: Lessons Learned from Shared Experiences" (June 9-10). Combined with three days of specialized workshops that preceded the conference, the week drew roughly 200 people to the Law School for a discussion of water scarcity issues from around the world. In addition to several US-focused case studies, presentations also covered activities in Australia, Brazil, Canada, Ecuador, Ethiopia, Honduras, India, Kenya, Mexico, Pakistan, Peru, South Africa, Spain, and Tanzania, among others.

The event was perhaps most notable for its involvement of Indigenous peoples from across the region and world. Participants were primarily drawn from tribes in the Colorado River Basin (Navajo, Northern Ute, Hopi, Fort Mojave, Jicarilla Apache), Columbia River Basin (Okanagan Nation Alliance, Yakama, Columbia River Intertribal Fish Commission, Confederated Tribes of the Colville Reservation, Upper Columbia United Tribes), and Australia's Murray-Darling Basin (Northern Basin Aboriginal Nations, Nari Nari, Gomeroi, Murrawarri, Murray-Lower Darling Rivers Indigenous Nations). Many conference materials are online at the GWC Past Events page: www.colorado.edu/law/research/getches-wilkinson-center/gwc-events/gwc-past-events. Several publications and follow-up events are currently under production.



Professor Jason Robison with the Indigenous Water Justice Panel

Conducting an event on this scale was only possible given the hard work of our collaborators (particularly Dustin Garrick, Lucia De Stefano, Jason Robison, and Sue Jackson), and the broad network of sponsors that supported the event. Sponsors included the Canadian Research Council, Complutense University of Madrid (Spain), Forum of Federations (Canada), International Joint Commission (USA and Canada), Living Rivers, McMaster Water Network (Canada), Murray-Darling Basin Authority (Australia), Tropical Rivers and Coastal Knowledge (TRaCK) research hub (Australia), U.S. Bureau of Reclamation, University of Wyoming College of Law, and the University of Wyoming High Plains American Indian Research

Initiative. We will again be seeking collaborators and sponsors to conduct next year's event—scheduled for June 8-9, 2017 (mark your calendars!)—which will focus on the latest developments in Colorado River management.

Colorado River issues remain a focus of much of the GWC's water work, including that of the Colorado River Research Group—a coalition of 10 prominent Colorado River scholars chaired by the GWC's Doug Kenney. Dovetailing with the summer conference, the latest CRRG publication (in June) focused on the need to better

consider tribal water rights and needs in discussions about the future of the river. A paper focused on climate change impacts in the basin is among the next items on CRRG's agenda. For those of you that share our passion for the Colorado, we encourage you to visit www.coloradoriverresearchgroup.org, follow us on Twitter @TheCRRG, or ask to be added to our mailing list. Additional papers focused on climate change and tribal water issues are in development.

Save the Date!

2017 Martz Summer Conference

Fighting Back on the Colorado River: Carving out Progress on Multiple Fronts

Coming June 8th and 9th, 2017

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

Since the turn of the 21st century, storage on the Colorado River has declined while stress over the region's water future has intensified. The combined impact of overconsumption, drought, and climate change have exposed longstanding problems with the regional water budget, and have focused national attention on the urgency of improving management. Water managers, river advocates, and other concerned stakeholders and decision-makers are responding, increasingly through basin-wide initiatives that go beyond specifying how looming shortages will be distributed to actually trying to head-off the most painful potential impacts. Many of these efforts are at a critical juncture. As they come to fruition, several questions arise: Are we doing the right things? Is it enough? What needs to happen next?

In this public event, we review recent and emerging innovations and evaluate their likely impact on the river system. Topics will include:

- Progress on Upper Basin contingency planning, including plans for upstream reservoir reoperations, water banking, and demand management;
- Revised Lake Mead curtailment schedules, and the search for a structural deficit solution;
- Emerging plans for Salton Sea stabilization;
- Minute 32X and the continued fight for Delta recovery and expanded US-Mexico partnerships;
- Efforts to move forward with more flexible use of tribal water resources; and,
- Opportunities and constraints shaping system-wide conservation and augmentation efforts

As the program develops, more info will be available at: www.colorado.edu/law/research/gwc/events, or by contacting the conference organizer: Doug Kenney, douglas.kenney@colorado.edu, 303-492-1296.

Bear Ears Continued

Sarah: I think a good place to start talking about this proposed monument is to ask you to describe this place. Where is the Bears Ears and what can you tell us about it?

Charles: The Bears Ears are two buttes in southern Utah not far from the Arizona line, up above the San Juan River, near Mexican Hat. We hear about the four sacred peaks of the Navajo and Bears Ears is within that area and has always had particular significance. And you can see it from great distances. When I asked my friend from Southern Ute what it was like living in his home, he said, *I wake up every morning and I can see Bears Ears*. But the Bears Ears region that the tribes have petitioned to President Obama to have declared a national monument is of course much broader. It goes all the way to the Southwest to the junction of the Colorado and the San Juan, the Confluence country. It includes Cedar Mesa, which for a very long time to me, and I think maybe to you, Sarah, has been really the heart of the Colorado Plateau, this 40 to 50 miles long mesa with twelve canyons down its sides.

In our proposal to the President, the words that kept coming back to me and do always in thinking of this area, are Wallace Stegner's, *"this country fills up the eye and overflows the soul."* It's red rock country, it's dry, it's rocky, it's long vista country, where you can see the whole world and many worlds beyond. And then there is place after place within its formations that are sacred places to the tribes, gathering places for medicines, herbs and basketry materials. It's a place that by any common sense would of long ago been a national park, a national monument, or a wilderness area.

So, Bears Ears and the Bears Ears region is mostly plain old fashioned BLM land, legally. It's got some park land in there, it's got some national forest land in there. Gorgeous, wonderful country just like the whole place is. When you look at the map it just wraps around Canyon Lands and provides the outer protection that Canyon Lands has always needed. People knew almost immediately when it was created in 64' that it needed to be larger. This accomplishes that and is a great conservation proposal.

Sarah: I agree. When anyone hikes around that area, I think what's striking is, well just being there is an extraordinary esthetic experience, but it is chalked full of archeological resources. And I was thinking when you said this earlier that it is stunning that this area hasn't been protected. I started hiking in and around Cedar Mesa more than 25 years ago now. Even then, many people already were saying *it's too late*. So many things had been pillaged and taken but there is still so much left. You round the corner in the canyon and there are amazing preserve sites all over the terrain. You don't have to be an expert, you wonder around and you sense that this is a place of extreme cultural, archeological, and historical significance.

Charles: I have had the same experiences of coming around a bend in a side canyon, and it just seems that no one has ever been there since 10,000 or 1,000 AD, a thousand years ago, over a thousand years ago. It is so fresh and it's hard to get into a lot of that country. You really got to want to get in. It's a destination place.

Sarah: Let me follow up on that. You mentioned the significance of this whole region to the Navajo people, you mentioned your Southern Ute friend, and other tribes involved, the Hopi and Zuni, each hold this place as their sacred terrain. I just want to talk a little more about the process, the involvement of all of the tribal members and their leaders, and their spiritual leaders, and what this means about this moment in public lands policy.

Charles: This is the first national monument ever brought forth by tribes. Tribes have signed off usually as minor signators to other monument proposals but this is the first time they've taken the lead. We

talk about problems between the tribes and environmental organizations, and there are problems, and there are times when they work together. This is a case where the environmental movement really stood tall. When I came into this it was still going to be the conservation groups taking it forward until a meeting that everybody remembers on July 15, 2015. The tribes already had been heavily involved, specifically Utah Diné Bikéyah had developed this really inspiring body of information: interviews, tribal mapping exercises, of archeological reports, of original documents, photographs of aerial mapping. But most of all, the voice of Native people and it's a very rich body of information. Then at the meeting on July 15th - I will never forget, the facilitator at the meeting was Eric Descheenie from Navajo, and he stood up and said, *We've known for a long time that the tribes have to bring this forward, not a non-profit.* Everybody kind of nodded, and then he said - *Well, do I hear a motion to create an Inter-Tribal organization? What should we call it, The Bears Ears Inter-Tribal Coalition?* It was done - just like that, the papers were drawn up. And at that moment, you now had an Inter-Tribal organization based upon tribes and when individual tribal members go to Washington, they are respected, they are heard because of the treaty relationship with the tribes. The force of the tribalism was really evident and has continued and it is something that couldn't be done by individuals, it took the tribes.

Sarah: Because the tribes are the leaders in this, and had done all the work leading up to the proposal you described, it happens to fit into what we've heard is President Obama's stated policy preference for designating monuments. He has gone on to designate many, many monuments since we all started talking about this but he has persisted in prioritizing monuments that provide access to traditionally disadvantaged groups that are sort of social justice public lands monuments.

Charles: Yes, and that's expressly his objective.

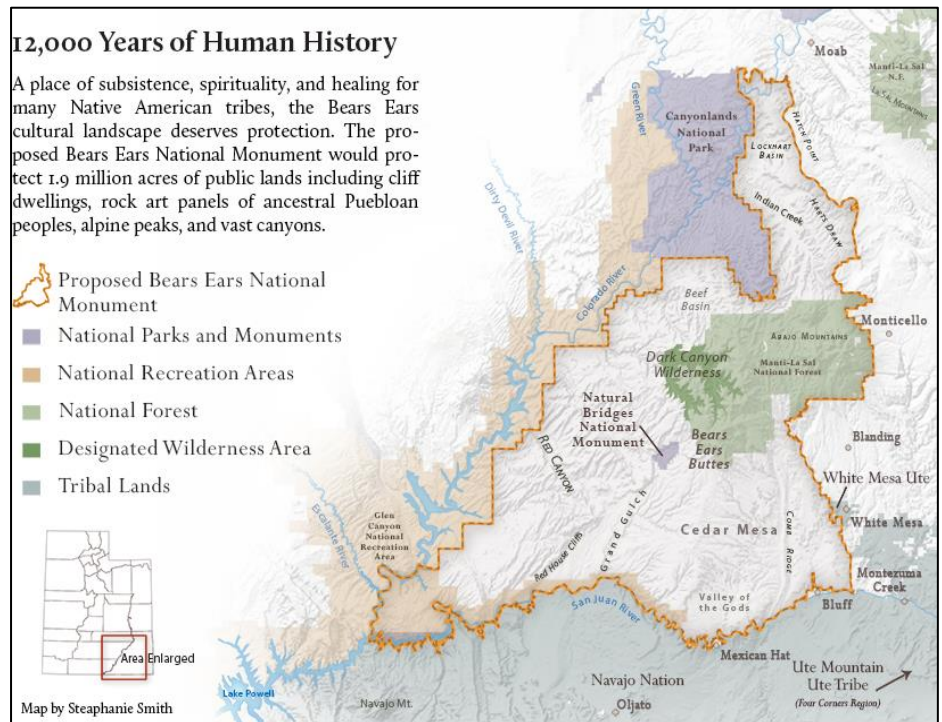


Image courtesy of Stephanie Smith, Grand Canyon Trust



Image courtesy of Josh Ewing, Friends of Cedar Mesa

Sarah: You talked about environmental groups and the past tension between tribal interests and interests of environmental groups. There has also been an adversarial relationship between public lands agencies and the tribes, often public lands designations have harmed tribes and their interests. I have two questions here. First, is this sort of redemptive to use the Antiquities Act to recognize the sacred place of tribes instead of taking stuff away from them, which has been a historical use of the Antiquities Act. And if it is, is there any possibility that there could be more convergence than there has been between local people of southern Utah and the tribes shared historical view didn't always treat them very well?

Charles: Well, I hope that happens. It certainly is redemptive to tribes and this has really taken with tribes nationally and now all of Indian country knows about it and supports it. We have NCAI resolutions, all tribes in the Southwest support it by resolutions. And it's caught the public eye. So the tribes who are involved, deeply believe in what you call the redemptive value that this is necessary action. The tribe's forced removal from this area is so hard for us to understand as Americans. We can't fully understand what it would be like for somebody, an armed official, come and say *get out*. They felt a tremendous sense of personal loss and there are still people around whose great grandparents lived there and passed down stories of the places where they lived, hunted and gathered, prayed, and held ceremonies. And so yes, it is a great sense of redemption because it is the first request made by tribes and also it would be the first true joint-management if the tribal proposal is accepted.

Neil Kornze, the Director of the BLM, recently testified at a hearing on a Utah bill that is presenting a lower grade land management for the area that, *there must be a meaningful role at the table of management by the tribes*. So the government has accepted that the objective of the tribes to have collaborative management. Now, we don't know what it's going to look like yet. That is going to be negotiated after the proclamation comes down, if it does. But collaborative management as defined in the proposal is real joint management. It provides from the beginning to the end of any plan, program, activity that decisions be jointly made by a commission that is made up of five tribal members and three federal members. This collaborative management presents real possibilities, authentic possibilities, of bringing together these separate world views, separate knowledge systems.

Sarah: I want to ask a follow-up question about that because that is one of the very exciting possibilities with this designation, is to allow tribes' ecological knowledge to be elevated so the incredible landscape is managed the way it should be. Could you give an example or two of what that actually is like when you are out on the ground with the tribal leaders, with the native people, with the elders who can talk about the place and observe things and how that might then translate into management?

Charles: One difference between the Anglo knowledge system and Traditional Knowledge is the way things get categorized. We know what the categories are in natural resources; water, timber, range land, minerals and wildlife. When I ask the tribes what areas of management are most important, they don't use those terms.

They use far more precise terms. They turn to springs, they turn to particular kinds of medicines, particular kinds of basket material, and of course, animals. For example, we worry about salamanders because they are a sign of decline. I really believe the tribes are more concerned *for* the salamanders and the other species.

Sarah: Yes, that's really the sense we get of the depth of Traditional Knowledge. To me, it seems we acquire this knowledge through training, and only a small number of people coming from Anglo traditions even know how to find and count the salamanders. Whereas...and it's hard to say these things because one is always worried about over generalizing, but my sense of living with Navajo kids and Hopi kids is every kid could see when the other salamanders were coming and the other species were leaving and how that related to the health of the springs. There is a sense of it as knowledge built into raising human beings.

Charles: That's right, and the way you put it shows how the two knowledge systems can fit together because these kids are going to tell you there aren't as many salamanders. Scientists would say, maybe there aren't as many salamanders so let's do counts and figure out statistically what is happening. Traditional Knowledge also includes history, and stories, and human events, and religiosity of places where sacred things happen and that's part of something you would want to sustain.

Sarah: That is part of what is so exciting about this co-management proposal and you said something very important, which is that these two bodies of knowledge complement and support each other. I know some of the negative reaction to the monument is a fear, and I think we should respect the fear of being excluded. That sense of, *you're keeping us out*. But the way you've described it, it's very much the opposite. These are traditions and ways of seeing and understanding the world that I think a lot of different people and traditions could relate to.

Charles: I think so too, and from a formal and operational standpoint that won't happen because it is a joint decision-making body.

Sarah: And it's open to the public. Public lands, national monument.

Charles: Yes. All the Sunshine laws and NEPA procedures do apply. And it's been interesting making that clear to the tribal people. I always thought maybe they would get less interested if they really realize that these are public lands they are dealing with, not reservation lands, but tribal people have been very interested because it's such meaningful land to them and it's a chance to make that land a lot healthier and protected. It happens that it is not reservation land, but for them it is still a very worthy objective to do that. So, when I tell them you're going to be spending a whole lot of time meeting with scout troops and chambers of commerce and corporations who want to use the land for different purposes. They're quick to think about that and say, *yes we understand that*. They've bought into that. That is what is so impressive about this model of collaborative management. Steve Martin, the former Super Intendent at the Grand Canyon, has said that the next big issue in public land management globally is going to be collaborative management with indigenous peoples.

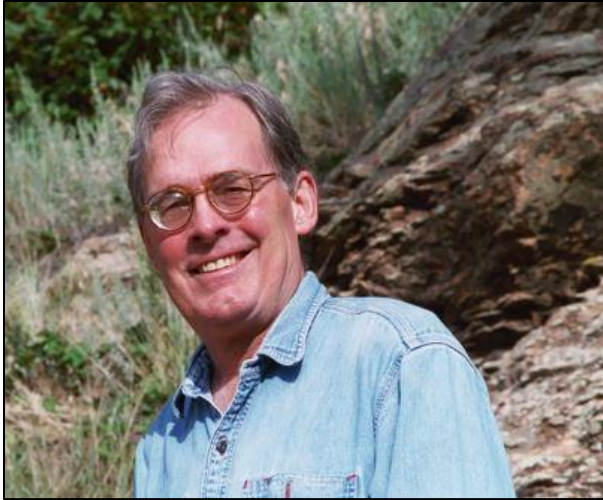


Image courtesy of Tim Peterson, Grand Canyon Trust

Sarah: So we've talked for a while now, and I think we could probably talk for hours, but in the last couple of minutes is there anything else you want to share about the process, where things are, and whether you think this is actually going to happen.

Charles: I had this realization fairly late in it, but we as lawyers, oh my god do we know about process. As soon as we get involved in something, right away we want to know, ok what's the process? What do I file? Who do I file it with? When are the hearings dates? What about discovery? What about exchanging documents? What about...

The operative section in the Antiquities Act is two sentences long. They're medium to long winded sentences, but its two sentences. There are no regulations; there are no guidelines. So for the past year we have just been swimming in the ocean asking, is there a raft up there? We get all this information back but it never comes officially, it's all just rumors. Everything that we hear is a report from somebody about what the high-level officials are thinking and the high-level officials tell us that they're not finished thinking yet. So it is very strange. Now, there is one great thing and it's what runs the law, and that's the deadline. President Obama has to make a decision by January 20. That means that all of his administrative officials have to make decisions well in advanced of that. At first, tribal members and others were very concerned about that, time is running out. But



Charles Wilkinson, University of Colorado Law School, Moses Lasky Distinguished Professor of Law

I see time as on our side. They have to decide and they are not going to let it run out. History would not judge them kindly for that. And so there is that structure, really the only structure - January 20.

I want to finish by the way of this point. The Bears Ears Inter-Tribal Coalition is the most amazing grassroots coalition I've ever seen. To this day it has no employees, it has probably 50-60 people from different organizations who are coming in and doing things of all kinds with a lot of expertise. Whether it's PR, or research, or reserving hotel rooms, or whatever. The different organizations are pitching in travel money. The Grand Canyon Trust pays my travel expenses, otherwise I couldn't do this work. And it's just moving down the road, it started out on October 15, 2015 the day we filed with the

Department of the Interior and the six tribal members got up there and gave the best press conference I have ever seen. Washington DC reporters even applauded at the end. You are told in journalism school to never applaud at the end of a press conference, and yet they all applauded and it was great.

For the following two or three months, we arranged all the op-ed pieces and press releases. And then, all of the sudden, some article would come in and we'd ask who's that? I don't know. Here is a letter to the editor, who wrote that? I don't know. Then some big op-ed piece comes in or newspaper endorsement, who is dealing with that paper? I don't know. And it just spread. And today we get the reports on the press coverage and they are longer than ever.

Sarah: So, it is going to happen?

Charles: Yes, I think it's going to happen. And the best thing is - the federal government really appreciates it. When the Proposal came in, they thought it was great. But now, I think they realize this is something they have to do.

Recent Publications

William Boyd

Accidents of Federalism: Rate Design and Policy Innovation in Public Utility Law, 63 UCLA L. Rev. __ (forthcoming 2016) (with Ann E. Carlson)

The Slain Wood: Papermaking and its Environment Consequences in the American South, (available from Johns Hopkins University Press 2015)

Public Utility and the Low Carbon Future, 61 UCLA L Rev. 1614 (2014)

A Review of Water and Greenhouse Gas Impacts of Unconventional Natural Gas Development in The United States, 2 MRS ENERGY & SUSTAINABILITY: A REVIEW JOURNAL 1-21 (2015) (with D. Arent et al.)

Controlling Methane Emissions in the Natural Gas Sector: A Review of Federal & State Regulatory Frameworks Governing Production, Gathering, Processing, Transmission, and Distribution, Joint Institute for Strategic Energy Analysis, NREL/TP-6A50-63416, 1-79 (NREL 2015) (with E. Paranhos, T. Kozak, J. Bradbury, D. Steinberg, and D. Arent)

A Review of Sector and Regional Trends in U.S. Electricity Markets: Focus on Natural Gas, Joint Institute for Strategic Energy Analysis, NREL/TP-6A50-64652, 1-56 (NREL 2015) (with J. Logan and K. Medlock)

More Food, More Forests, Fewer Emissions, Better Livelihoods: Linking REDD+, Sustainable Supply Chains, and Domestic Policies in Brazil, Indochina, and Columbia. 4 CARBON MANAGEMENT 639 (2013) (with D. Nepstad, et. al.)

Julia Guarino

Julia Guarino, *Protecting Traditional Water Resources: Legal Options for Preserving Tribal Non-consumptive Water Use*, 37 Pub. Land and Res. L. Rev. (forthcoming 2016).

Julia Guarino, *Tribal Food Sovereignty and the Law in the American Southwest*, 11 Journal of Food Law & Policy 83 (2015).

Lakshman Guruswamy

International Energy and Poverty: The Emerging Contours (Routledge, 2015)

Global Energy Justice: Law and Policy (West, 2016)

The Contours of Energy Justice, in International Environmental Law and The Global South (Gonzales ed. Cambridge University Press, 2015)

Energy Poverty, in Delivering Energy Law and Policy in the EU and the US: A Reader (Raphael J. Heffron and Gavin Little eds. Edinburgh UP 2015)

Sharon Jacobs

The Energy Prosumer, 43 Ecology L.Q. __ (forthcoming 2016)

Energy Deference, 40 Harv. Envtl. L. J. F. 49 (2016)

Consumer Generation, 43 Ecology L.Q. (forthcoming 2016)

Bypassing Federalism and the Administrative Law of Negawatts, 100 Iowa L. Rev. (Upcoming) (2015)

Recent Publications Continued

Doug Kenney

K. A. Miller, A. F. Hamlet, D. S. Kenney and K.T. Redmond. *Water Policy and Planning in a Variable and Changing Climate*. CRC Press. 2016

Improving the Viability of Alternative Transfer Mechanisms (ATMs) in Colorado: A Synthesis of Research and Findings from the Getches-Wilkinson Center, 2014-2015.

Kenney et al. 2014. *Research Needs in the Colorado River Basin: A Summary of Policy-Related Topics to Explore Further in Support of Solution-Oriented Decision-Making*. Boulder: Colorado River Governance Initiative

Sarah Krakoff

They Were Here First: American Indian Tribes, Race, and the Constitutional Minimum, 69 Stanford Law Review (forthcoming 2017)

Indigenous Peoples and Climate Change, in Climate Change Law, Vol. 1 of Elgar Encyclopedia of Environmental Law (Dan Farber and Marian Peeters, eds.) (2016)

Sustainability and Justice in Rethinking Sustainability to Meet the Climate Change Challenge, Jessica Owley and Keith H. Hirokawa, EDS., 199-227 (ELI, 2015)

AMERICAN INDIAN LAW: CASES AND COMMENTARY, 3^d ed. (Thomson/West, 2015) (with Anderson, Berger & Frickey)

Race, Membership, and Constitutional Concern, 9 Florida International Law Review 295 (2014)

Law, Violence, and the Neurotic Structure of American Indian Law, 49 Wake Forest Law Review 473 (2014)

Mark Squillace

Grazing in Wilderness Areas, 44 ENVTL. L. 415 (2014)

Meaningful Engagement in Public Lands Decisionmaking, 59 ROCKY MTN. MIN. L. Fnd. 21-1 (2013)

Water Transfers for a Changing Climate, 53 NATURAL RESOURCES JOURNAL 12-02 (2013)

The Tragic Story of the Federal Coal Leasing Program, 27 NATURAL RESOURCES & ENVIRONMENT No. 3 (winter, 2013)

Accounting for Water Rights in the Western United States, in INTERNATIONAL WATER ACCOUNTING: EFFECTIVE MANAGEMENT OF A SCARCE RESOURCE (2012)

NEPA, Climate Change, and Public Lands Decision-making (with Alexander Hood), 42 ENVTL. L. 469 (2012)

Charles Wilkinson

Heeding the Clarion Call for Sustainable, Spiritual Western Landscapes: Will the People Be Granted a New Forest Service?, 33 PUBLIC LAND & RESOURCES LAW REVIEW 1 (2012) (with Daniel Cordalis)

Cases and Materials on Federal Indian Law (6th ed. 2011) (with David H. Getches, Robert A. Williams, Jr. & Matthew L. M. Fletcher)

The People Are Dancing Again: The History of the Siletz Tribe of Western Oregon (2010)

New Faculty and Staff



Kate Finn, American Indian Law Program Fellow

Kate Finn is the American Indian Law Program Fellow. Kate, an enrolled member of the Osage nation, graduated from the University of Colorado with a law degree and a Master's in Public Administration, and holds a Certificate in American Indian Law.

During law school, Kate interned for the Native American Rights Fund and provided research and writing assistance to the United Nations Special Rapporteur on the Rights of Indigenous Peoples through the American Indian Law Clinic. In 2016, Kate authored *Microfinance in Indian Country*, a master's thesis which focused on sustainable economic development in reservation communities. Additionally, Kate co-authored an article, *Responsible Resource Development and Prevention of Sex Trafficking: Safeguarding Native Women and Children on the Fort Berthold Reservation*, which will be published in the fall 2016 volume of the Harvard Journal on Law & Gender.

Prior to attending law school, Kate worked as a victim advocate at the Denver Victim Services Network to ensure that victims of crime in the Denver metro area had access to a comprehensive network of services. She worked on the local level to connect service agencies, but also advocated at the Federal level for adequate protections for victims of crime. Kate is a graduate of Princeton University, and was a Peace Corps volunteer serving in a rural indigenous community prior to returning to her native Colorado.



Jesse Heibel, Getches Fellow

Jesse Heibel currently serves as the Getches Fellow. Jesse's work supports the Acequia Project's work in Colorado's San Luis Valley, as well as the American Indian Law Clinic in their work with tribes to address energy development impacts within their community. His own research focuses on tribal energy development, specifically how existing law and policy has shaped the best practices relating to renewable energy projects on tribal lands.

Jesse graduated from the University of Colorado Law School in May 2016 with certificates in both Environment, Energy and Natural Resources law and American Indian law. He was awarded the Gary C. Bryner Award for Distinguished Public Service in Natural Resource Policy. Prior to becoming the Getches Fellow Jesse worked for the National Conference of State Legislatures where he focused on energy policy issues including energy efficiency, land use and siting, Renewable Portfolio Standards and Clean Air Act compliance.

Student Group Updates

Colorado Natural Resources, Energy and Environmental Law Review

The Colorado Natural Resources, Energy, & Environmental Law Review (ELR) will publish Volume 28 this year. This year's issues will feature exciting content from some of the most well-renowned names in the environmental legal field, with topics ranging from wilderness land use and water rights to Areas of Critical Environmental Concern.

Six Colorado Law students will also have their work published this year, with three student notes coming out in the February issue and three in July. Topics covered in student notes will include international climate issues, guns in national parks, land exchanges, and carbon dioxide-enhanced oil recovery.

ELR's new staff and editorial board have been hard at work preparing for this year's issues. If you are an alumnus of the journal or would like to learn more about publishing opportunities, please contact us at: envtl.law.review@colorado.edu

Environmental Law Society

Interest in CU Boulder Environmental Law Society (ELS) appears to be building more than ever, as about one third of the fall 2016 entering class enrolled in ELS during the Orientation Club Fair! Before classes started, ELS kicked off the year with a well-attended hike up to the Flatirons and plans on hosting a diverse set of events and speaker discussions throughout the year. ELS is excited to work with GWC and its new leadership to build upon this momentum, and ensure students have access to all aspects of environmental law this year.

Keep in touch with the GWC

Learn about our upcoming events, recent research, and publication releases by signing up for our email alerts.

Send us an email at gwc@colorado.edu and we will get you signed up.

Recent Events

2016 Martz Summer Conference

***Coping with Water Scarcity in River Basins Worldwide:
Lesson Learned from Shared Experiences***

June 9th and 10th, 2016

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

Water scarcity is increasingly dominating headlines throughout the world. In the southwestern USA, the looming water shortages on the Colorado River system and the unprecedented drought in California are garnering the greatest attention. Similar stories of scarcity and crisis can be found across the globe, suggesting an opportunity for sharing lessons and innovations. For example, the Colorado River and Australia's Murray-Darling Basin likely can share many lessons, as both systems were over-allocated, feature multiple jurisdictions, face similar climatic risks and drought stresses, and struggle to balance human demands with environmental needs. In this conference we cast our net broadly, exploring several salient topics including: trans-boundary cooperation, water marketing, Indigenous water rights, environmental and social water needs, and drought coping.

Conference video available at:

lawweb.colorado.edu/events/media.jsp

9th Annual Schultz Lecture

**Paul Joskow, MIT Professor of Economics
President, Alfred P. Sloan Foundation**

Thursday, September 22nd

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

Electricity generation accounts for about 30% of U.S. greenhouse gas emissions. While emissions have declined by about 20% in the last ten years, much of this reduction is due to the fortuitous availability of cheap natural gas which has provided incentives to substitute less CO₂ intensive natural gas for coal as a generation fuel. The sector faces many challenges to meet long run 2050 goals of reducing emissions by as much as 80% from 2005 levels. These challenges include the diversity of federal, state and municipal regulation, the diverse and balkanized structure of the industry from state to state and region to region, the failure to enact policies to place a price on all carbon emissions, the extensive reliance on subsidies and command and control regulation to promote renewables and energy efficiencies, uncertainties about aggressive assumptions about improvements in energy efficiency beyond long-term trends, pre-mature closure of carbon free nuclear generating technologies, integrating renewables efficiently into large regional grids, methane leaks, and transmission constraints. The lecture discussed these challenges and suggested policies to reduce the costs and smooth the transition to a low carbon electricity sector.

Lecture video available at:

lawweb.colorado.edu/events/media.jsp

Upcoming Events

Winter, Wilderness, and Climate-Threats and Solutions

In partnership with the Getches-Wilkinson Center, join The Wilderness Society and Protect our Winters for an interactive presentation about energy development and climate impacts on public lands.

Wednesday, October 12th

5:30 p.m.

University of Colorado School of Law

Wolf Law Building, Wittemyer Courtroom

More information and registration available at:

www.colorado.edu/law/research/gwc/events

40th Anniversary of the Federal Land Policy and Management Act of 1976

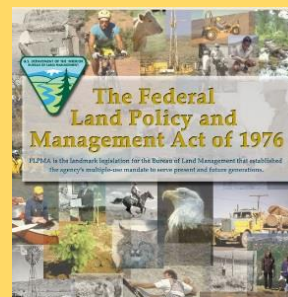
Coming Friday, October 21st

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

More information, event agenda and registration available at:

www.colorado.edu/law/research/gwc/events



2017 Martz Winter Symposium

Coming March 2nd and 3rd, 2017

University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

More information coming soon at:

www.colorado.edu/law/research/gwc/events

2017 Martz Summer Conference

***Fighting Back on the Colorado River:
Carving out Progress on Multiple Fronts***

Coming June 8th and 9th, 2017

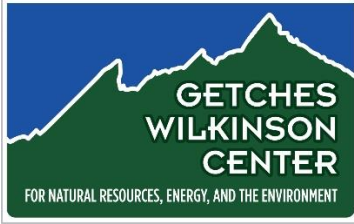
University of Colorado, Boulder

Wolf Law Building, Wittemyer Courtroom

More information, event agenda and registration available at:

www.colorado.edu/law/research/gwc/events





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