

AMICUS

UNIVERSITY OF COLORADO LAW SCHOOL
VOLUME XXVI, NUMBER 1, SPRING 2010

Water Law

AMICUS



 COLORADO LAW

AMICUS is produced by the University of Colorado Law School in conjunction with University Communications.

Electronic copies of AMICUS are available at www.colorado.edu/law/alumdev/publications.

Inquiries regarding content contained herein may be addressed to:

Elisa Dalton
Director of Communications & Alumni Relations
Colorado Law School
401 UCB
Boulder, CO 80309
lawalum@colorado.edu

Writing and editing: Elisa Dalton, Brittany Radic '11, Thomas Ley
Design and production: Kate Dzintars
Photography: Glenn Asakawa, Casey Cass, Andi Fabri, Elisa Dalton, Brittany Radic
Project management: Kimberly Warner
Printing: D&K Printing, Inc., Boulder, CO

The University of Colorado does not discriminate on the basis of race, color, national origin, sex, age, disability, creed, religion, sexual orientation, or veteran status in admission and access to, and treatment and employment in, its educational programs and activities.

Printed on recycled paper.

*Professor Bill Pizzi retires
after 35 years of teaching
at Colorado Law.*



FROM THE DEAN . 2

Solving Society's Most Critical Resource Allocation Problems

WATER LAW . 3

Alumni Solving Water Resource Issues

EDITORIALS . 17

Faculty: Rethinking Western Water Law

Alumnus: Everest & Water—Finite Resources with an Expanding Demand

LAW SCHOOL NEWS . 20

How Does Colorado Law Compare?

Researching and Reporting

Helping Those in Need

Making Law School Affordable

LAW SCHOOL EVENTS . 24

Debating and Solving Problems

Addressing Cultural and Racial Issues

FACULTY HIGHLIGHTS . 27

Assisting Communities

Lecturing

Testifying

Departing

DEVELOPMENT UPDATE . 29

ALUMNI NEWS . 31

Letters

Banquet

Class Actions

CALENDAR . BACK COVER





Lawyers Solving Society's Most Critical Resource Allocation Problems

Raphael Moses '37 once quipped that "if all the water lawyers in Colorado were laid end to end, it would be a good and merciful thing." To be sure, there are many who claim water as their specialty in the West, and an extraordinary number of them are Colorado Law graduates. And Moses was conscious of the public's impression that the field is over-lawyered. In fact, Colorado water law, counting on water courts to resolve conflicts and even to mediate allocation and changes of water use, demands the involvement of lawyers.

As the work of alumni profiled in this *Amicus* illustrates, they are, in the words of Glenn Porzak '73, resolving "issues that will have a profound effect on Colorado's future." We do stress with our students the ideal of lawyers as problem solvers, and water law is a field where this ideal is magnificently fulfilled. The career accomplishments and the enthusiastic commitments of our alumni exuded in their interviews speak well for the satisfactions that can come from serving society as problem solvers in the water resource realm.

We have attempted to show the breadth of water law issues that command the attention of lawyers and involvement of Colorado Law alumni. Throughout the West, the lawyers educated at the University of Colorado Law School have contributed mightily to stretching and sharing finite water resources. This issue highlights the work of a few of them. It would have been easy to highlight many others, as the notes mentioning may other prominent water lawyers demonstrate.

The pervasiveness of water issues and the diversity of water practice is shown by connecting themes that emerge from the cameos of the alumni who are profiled. Consider the Colorado River connection. Jim Lochhead's '78 stellar accomplishments are many as he now takes the helm of the Denver Water Department. He is widely known for his creative work in addressing the complex interstate issues of the Colorado River. Like Lochhead, Robert Wigington '79 is an expert on the Colorado River law. His mission with The Nature Conservancy has been to protect water-dependent ecosystems. Recent graduate Amy Steinfeld '05 shows how a private firm's work in California can address interstate allocation of the complex and critical issues of the Colorado River.

The geographic nexus of the Colorado River leads to another connecting theme, recreational use. Porzak, a private attorney representing cities and other water users, explains in his opinion piece the relationship of the finite nature of the Colorado River to maintaining streamflows for recreational purposes. Dick Bratton '57 approaches this set of issues from the perspective of western Colorado, where most of the Colorado's



flows originate but little water is extracted, showing how the tension between securing a future for the area of origin requires a mix of instream uses and a right to divert water for other purposes.

Bratton champions recreational use, but draws the line at encroachment on the property rights of those who own land along the stream. Professor Mark Squillace's opinion piece presents the argument for a broader concept of public interest in flowing streams that would justify legislation allowing recreational users to cross private lands.

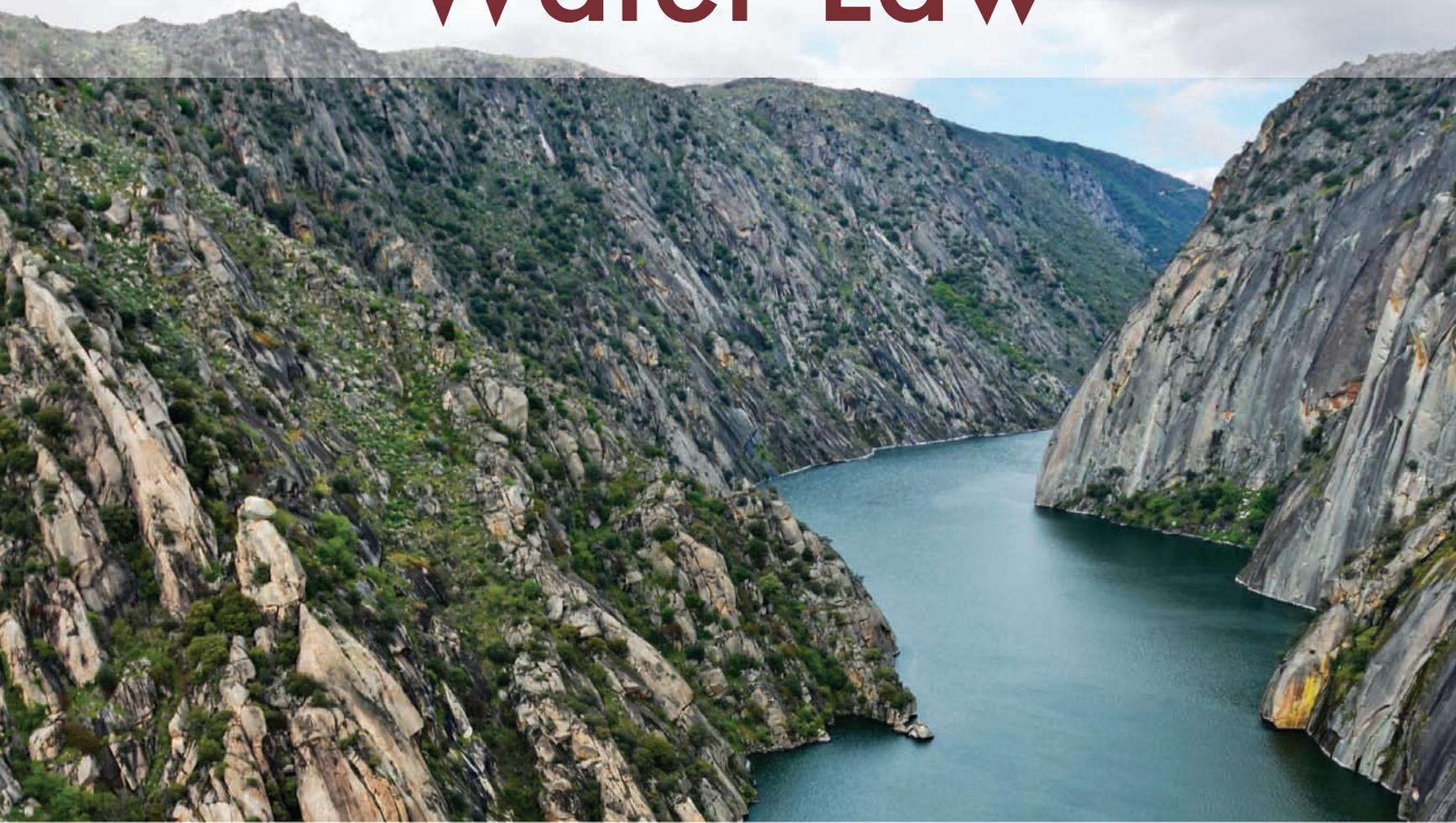
The satisfactions of assisting clients and society in figuring out how to use an essential resource like water efficiently is reflected in the comments of our featured alumni. Peggy Montaña '80 expresses well the water lawyer's reward in helping to "address the uncertainty, the growing population, the issues with protecting endangered species, and the compacts with downstream states."

Perhaps it is no surprise that so many Colorado Law graduates have gone on to practice water law given the tradition of teaching the subject here. Professor Clyde Martz, who we sadly lost this spring (In Memoriam, page 37), included the subject in his pioneering work on natural resources. Moses inspired many of those who today are leaders in the field. Jim Corbridge brought the subject to life for hundreds of his students during his 45 years teaching the subject. Charles Wilkinson and I have been privileged to present the course to generations of students, as has Mark Squillace in recent years. The work of our professors and of the Natural Resources Law Center in water law is highlighted on page 16.

Presumably, Colorado Law's long history of enthusiastic professors teaching large classes of water law students has fueled the proliferation of water lawyers. And we hope it has made for better and more sustainable solutions to water problems. It has surely given direction and fulfillment to the careers of many fine alumni. We hope that future generations of graduates will make similar contributions to solving one of our society's most critical issues.

David H. Getches
Dean and Raphael J. Moses Professor of Natural Resources Law

Water Law



Debate over the use, storage, distribution, and conservation of Colorado's most precious resource has been a central theme in western history for more than 100 years. Colorado Law School has played a major role in the development of western water law, having taught hundreds of America's water lawyers.



Ray Moses '37

Moses Wittemyer Harrison & Woodruff, Boulder, Colorado



According to Raphael Moses, when the Israelites were fleeing Egypt for the Promised Land, God came to them and said, "I've got good news, and I've got bad news. The good news is that I've arranged for the Red Sea to part so you can walk across on dry land. The bad news is that you're going to have to write an environmental impact statement before you can cross."

Moses is known throughout the legal community for this sense of humor. And although he is now retired, he is also known as one of the West's premier lawyers on water law issues.

"I consider myself a geographical accident," said Moses of his career and practice. Sent to live with his aunt and uncle following his parents' deaths, Moses was exposed early to the issues facing his uncle's small practice in Colorado's San Luis Valley.

"My uncle always wanted to go to the state bar convention, but he could never afford it," said Moses. "And as a sole practitioner, it was hard to travel to the convention, which was always in Denver." Once he opened his own law practice, Moses helped remedy that problem, gathering support from non-Denver lawyers to ensure the bar association would alternate its conventions between Denver and one of the other Colorado judicial districts. He eventually worked his way up to president of the Colorado Bar Association in 1959-60.

As a young lawyer, Moses worked with his uncle and although the practice "did every kind of law from adoption to the end of the alphabet," Moses was introduced to water law while representing agricultural water users in the San Luis Valley. "I knew we had a problem because there was a lot of salty marsh water that had to be drained from farmland, and then they would have to pump in clean water," said Moses. "That got me interested in water law because I saw what a difference good, clean water can make."

Moses says that the case he is most proud of in his career is a 1961 case in which he represented Thomas Bender, a farmer whose well had run dry after Colorado Springs began pumping water out of a local stream. Moses took the case up to the Colorado Supreme Court and won, ensuring that his client would continue to receive enough water to work his land. "The Colorado Supreme Court said if you do everything you can, you can keep your water rights," said Moses. "It works like the 5th Amendment—the state can't take your water rights unless you receive compensation."

Moses may have learned about the importance of quality water in a small town in Colorado, but as his career grew, so did the reach of his water law practice.

In part because of the long reach of his practice, and in part because he enjoys it, travel has been a fundamental aspect of Moses' life and career since he first travelled with the Navy during World War II. Although much of his travel was focused in Colorado, he also had the opportunity to speak at United Nations International Conferences on Water for Peace in Mexico, Spain, Belgium, and Argentina.

While he was in Spain, he describes being so sick he could not even deliver his address. Still, he says, his remarks were read. "These talks went to about 50 to 75 people, and they were the movers and shakers in water," said Moses. "It was important that they get the message."

Moses' international work involved more than just speaking. During the 1970s, he represented Colorado on the "Committee of Fourteen," an international committee convened to address issues with the levels of water salinity flowing from U.S. Rivers across the border into Mexico. The negotiations

were based on the 1944 U.S.-Mexico Treaty for the Utilization of Water, which ensured Mexico an annual quantity of water from seven U.S. rivers, including the Colorado River.

Between 1944 and the 1970s when Moses was working on the negotiations, rapid population growth in the southern United States had caused a dramatic decrease in water quality by the time it arrived in Mexico. The negotiations succeeded in reading into the statute a requirement that the water delivered to Mexico be of the same quality as that in the United States.

"There was one lawyer and one engineer from each state that got together, and we were able to work out that problem," said Moses. "We decided to use \$40 million, which was a lot of money back then, to pump good water back into the rivers to keep the salinity at the right level."

For Moses, ensuring access to clean water is of paramount importance still today. "We only have a limited amount of water on the globe, and we've managed to pollute most of the non-salt water," said Moses. "I think desalination is one of the major areas of interest, making the salt water something people can use."

Now retired, Moses says, "I'm fairly pleased with my career, and I've gone as far as I can go." He received Colorado Law's Honorary Order of the Coif in 1962 and William Knous Award in 1971, in addition to CU-Boulder's Alumni Recognition Award in 1950 and George Norlin Award in 1972.

Moses hopes that the next generations of lawyers will continue to work on water quality issues. "The field is wide open, and we need a lot of people working on water," he said. "It's changed from being a matter of quantity to a matter of quality, but we still need a lot of educational work done to address these issues."

"The field is wide open, and we need a lot of people working on water."



Practicing Water Law

Many alumni have found great success specializing in water law at law firms. In addition to Ray Moses, alumni at Moses, Wittemyer, Harrison and Woodruff include **John Wittemyer '65**, **David Harrison '71**, **Timothy Beaton '80**, **James Montgomery '80**, **Richard Mehren '00**, **Carolyn Steffl '02**, and **Will Stenzel '06**.

Frank Cooley '51 is with Cooley Zagar-Brown and has practiced water law in Northwest Colorado for almost 60 years. He received the 1999 Distinguished Alumni Achievement Award for Small Firm Practitioner. **Scott Balcomb '72** of Balcomb & Greene was the Upper Colorado River Commissioner and Seven States Representative. After law school, he joined his father **Kenneth Balcomb '48**, an eminent water lawyer who was general counsel of the Colorado River Water Conservation District.

Many alumni have founded specialty water law firms, including **Kim Lawrence '77** of Lind, Lawrence & Ottenhoff; **Jeffrey Kahn '75** of Lyons Gaddis Kahn & Hall; **Raymond Petros '75** of Petros & White; and **Sandy MacDougall '62**, **Julianne Woldridge '88**, and **Hank Worley '84** of MacDougall, Woldridge & Worley.

Water law firms find Colorado Law graduates to have an unsurpassed education. **Timothy Buchanan '82** and **Veronica Sperling '84** at Buchanan and Sperling are practicing with **Karen Shirley '02**, **Eric Potyondy '06**, and **John Justus '08**. **William Paddock '78** of Carlson, Hammond & Paddock is practicing with **Beth Parsons '00** and **Karl Ohlsen '00**. Paddock also chairs the Colorado Bar Association Section on Water Law. **Glenn Porzak '73** and **Steven Bushong '92** of Porzak Browning & Bushong are practicing with **Fritz Holleman '92**, **Kevin Kinnear '97**, **Kristin Moseley '97**, and **Eli Feldman '05**. **Ramsey Kropf '91** of Patrick, Miller & Kropf is practicing with **Paul Noto '02**, **Craig Corona '06**, and **Laura Makar '08**. Kropf also has been Special Master in Wyoming's Big Horn Adjudication since 1995 and is past Chair of the ABA Water Resources Committee.

James Lochhead '78

CEO, Denver Water, Colorado



Jim Lochhead has worn many hats in his career, in part due to continuously running between government and private practice. However, his career has one theme flowing through it all: water.

"Moving between government and private practice has been satisfying," said Lochhead. "One of my favorite parts has been seeing different sides of the intersection between politics and water law."

Lochhead has had many chances to see those intersections throughout his career. Starting out in private practice, he worked with a Boulder water law firm to open a

branch in Glenwood Springs. In 1994, Governor Romer '52 appointed him executive director of the Colorado Department of Natural Resources, a position he held until 1999, when he joined Brownstein Hyatt Farber Schreck. Now he is returning to the government sector as CEO/Manager of Denver Water, Colorado's largest water utility.

While the intersections between politics and water law are more obvious for those working for the government on water law issues, Lochhead says it is also prevalent in private practice, where he often represents public utilities, municipalities, or states. "When you're representing a public utility or other government entity, you are working with a political appointee or with other people involved in the political process," said Lochhead. "You constantly have to keep in mind that they will use both the litigation and political systems to advocate their cause."

One of Lochhead's favorite parts of practicing water law is the variety of skills he utilizes in his work each day. "For me, Colorado Law was a chance to get a broad-based education," said Lochhead. "Water law expands on this, since it not only provides great litigation experience, but it also involves a lot of skills in negotiation and working collaboratively."

For example, much of Lochhead's work has involved the tricky issues involved in interstate negotiations concerning the Colorado River. "Representing different states or agencies on these issues is a lot of fun," said Lochhead. "You have to have an understanding of the legal dynamics and an understanding of the needs and interests of the other states and countries in order to build a relationship with the other people you're working with. This relationship allows a level of trust on both sides of the negotiating table so that we can work together on the problems."

Lochhead sees a strong future for lawyers who work in water law, particularly in creating innovative ways to address water shortages. For example, Lochhead has helped assess pipeline proposals in the Colorado River, such as the pipeline proposed from Lake Powell to the St. George area in Utah and the proposal to move water from other areas of the Colorado River to Colorado's growing Front Range.

Although these proposals avoid a major issue of diverting water from an agricultural area to an urban area, Lochhead believes it could only serve as a short-term fix to shortage issues. "It may be like shifting deck chairs on the Titanic," said Lochhead. "It better allocates the water resources that exist within the Colorado River Basin, but it does not deal with the shortages in the basin as a whole."

To deal with those shortages, Lochhead acknowledges the need to look at new solutions or renew previously rejected solutions. "We are increasingly looking at the prospect of moving water long distances, including proposals to move water across state lines or even exchanging water from Mexico. Often this involves removing water that can't be put back, raising environmental concerns," said Lochhead. However, Lochhead urges further research into the economic and environmental feasibility of such projects. "In the long term, they need to be on the radar screen," he said. "There could be a synergy with solving two problems [urban growth shortages and environmental issues] with one stone, so it's not worth discounting them out of hand."

Besides finding alternative sources of water, Lochhead cites a need to utilize the water sources we have. He says the Prairie Waters Project, which has had success in reusing water sources in Aurora, Colorado, is a good example of one way to do this. Denver Water is working with Aurora to expand this concept.

Lochhead also encourages proposals to incentivize agriculture to switch from growing high-water consumptive, low-value crops to growing low-water consumptive, higher-value crops, as well as encouraging existing water users to expand their current efforts to recycle and conserve.

One of the concerns with any proposed solution is the increasing impact of regulation. "I worry that we are creating a system of regulation that is so complex that we can't solve the basic issues, such as water shortages," said Lochhead. "We need to develop more equitable solutions to different problems as water law grows more complex."

For this, Lochhead sees a need for relating water management to other areas of law. "There's a general awareness about the issue of water as a scarce natural resource," said Lochhead, "but I don't think a lot of non-water lawyers understand the breadth of what water lawyers do."

"Water law touches on a lot of different areas, politically and environmentally," said Lochhead. "I think that it is a growth area in the legal field, both in the private and government sectors, and that as it continues to grow, we will see more and more intersections between water law and other areas of law. For example, renewable energy proposals have associated water issues. Water education needs to expand beyond the idea of water as a scarce natural resource to address these intersections."

"We need to develop more equitable solutions to different problems as water law grows more complex."



Government Service in Colorado

Colorado law's deep water law history combined with its public service commitment is exemplified through the many alumni who have dedicated a portion of their careers to public service. **Ted Kowalski** '95 is the Section Chief of Water Supply Protection of the Colorado Water Conservation Board and manages Colorado's Wild and Scenic and Recreational In-Channel Diversion programs. Previously, he was a Colorado Assistant Attorney General in the Water Unit. Also with the Water Conservation Board are Water Resources Specialist **Steve Miller** '85 and Contract Manager **Vaughn McWilliams** '03. **Casey Funk** '82 is In-House Counsel with the Denver Water Department. Also with Denver Water is **Henry Teigen** '74, who is Chief of Distribution/Property Management, and **Kristi Riegle** '96.

Peggy Montañó '80

Trout, Raley, Montañó, Witwer & Freeman, Denver, Colorado



For Peggy Montañó, going to work every day is an education in diverse subjects such as the history of federal lands in the western United States, geology, hydrology, and city planning. It is the intersection of so many different areas of study that makes her work in water law so interesting. One of the best parts of her job is the education it gives her in areas traditionally separate from the law.

“Water is so pivotal to our society and how we’re organized,” said Montañó. “It influences where our cities are located, and without it Colorado would not have the vibrant cities or agricultural economy.”

One of her most memorable cases was working on South Platte River federal reserved rights claims of the U.S. Forest Service. The case involved a claim by the Forest Service to maintain huge quantities of senior water rights in the National Forests in the headwaters of the South Platte River, the Fraser River, and other headwater streams, which would usurp existing rights granted under state law. The claim rested on the implied water reservation of Congress, the concept that any time the federal government reserves land for federal use, such as Indian reservations or national forests as in this case, Congress implicitly reserves the minimum amount of water needed to fulfill the specific purposes for which the land is reserved.

Montañó represented Denver Water, which would have been greatly impacted by claims in the Fraser River. She says that much of her investigation involved looking at old newspapers, *Harper's* magazine articles, and congressional testimony from 1895-1905 to determine the congressional purpose behind the Forest Reserve Organic Act of 1897. She also prepared testimony from experts on concepts like “fluvial geomorphology,” the study of how moving water shapes land features and the form of riverbeds.

“It was like going to school all over again, this time focusing on the sciences and learning from some of the leading experts in the world,” said Montañó. “One of the most memorable parts of the trial was the testimony of Luna Leopold [leading geomorphologist and son of “the father of wildlife ecology” Aldo Leopold]. To hear Leopold talk about water systems and their histories and futures was one of the most memorable experiences I’ve had.”

For Montañó, the experts and historical research are all part of her education on water law. She learned the area while working for the Colorado Attorney General a few years out of law school. She says the profession has changed a bit since she arrived in 1986.

“When I first started at the Attorney General’s office, some of the folks in the male-dominated engineering field I worked with weren’t too happy to have an assistant ‘attorney-generalette’ working on their cases,” said Montañó. “But the

then Attorney General, Duane Woodard, made it clear I worked for him and they had no choice. He stood up for me when I needed it. There are a lot more women in the area today, and that is a positive change.”

Although she left the Attorney General’s office for private practice in 1989, Montañó’s work at Trout, Raley, Montañó, Witwer & Freeman continues to focus on the ways her clients, who are often municipal water agencies, can ensure that communities have safe, reliable water supplies and that water is conserved.

“One of the biggest issues in water law right now is the issue of uncertainty. It is caused by climate change, by the growing Colorado population, and by the desire to preserve agriculture together with a vibrant recreation industry. We want it all,” said Montañó. “I think we have enough water in Colorado to meet our needs. What we’re seeing now is an awakening to the need to look at conserving water by all sectors and using it more cautiously.”

Conserving water is more than just “turn off the faucet” for Montañó. For individuals and families, it involves exchanging large lawns for more natural landscapes. For the commercial sector, it involves water reuse as part of corporate conservation policies. For government and public interest groups, it involves evaluating conservation methods to find those most appropriate for Colorado.

“*Water is so pivotal to our society and how we’re organized.*”

“We also need to recognize that water storage is essential unless we want a fundamental change in our way of life,” said Montañó. “We can’t conserve our way out of the shortage we face in Colorado. Our water future is more complicated than we want to admit. These fundamental changes can help us address the uncertainty, the growing population, the issues with protecting endangered species, and the compacts with downstream states. It’s not about finding more water, it’s reallocating the water that we already have.”

Montañó says Coloradans have already begun looking at water in a different way, and that most people want to be a part of the solution. She says studies show a reduction in water use by Denver Water customers and other municipalities, and that more voluntary conservation is occurring as people become more educated about the issues.

“We are certainly more educated now than we were 20, or even 10, years ago,” said Montañó. “Especially since the drought of 2002, people have been talking about the issues in water law. Before the drought, I would be at a dinner party and tell people I was a water lawyer, and they would change the subject. Since the drought, people have become a lot more interested in what I do and they ask many questions.”

Colorado agriculture has also conserved a great deal, and there are some very promising studies being conducted in the public and private sectors that may help us use this limited resource more efficiently.

“Even though I didn’t have a clue when I was at Colorado Law that this was the work I was going to do, I really like it and am thankful I have a chance to practice law in a field that’s so pivotal to our society,” said Montañó.



Practicing Water Law

Colorado Law alumni specialize in water law at firms around the state. In addition to Peggy Montañó, alumni at Trout, Raley, Montañó, Witwer & Freeman include **Bennett Raley** '83, **James Witwer** '89, and **Peter Nichols** '01.

Zach Miller '80 and **Adam Cohen** '99 at Davis, Graham & Stubbs practice natural resources and water law. Miller has represented clients in several of the largest water rights acquisitions and change cases in Colorado history and previously served as an attorney in the Honors Program of the Solicitor at Interior in Washington, DC. **Wayne Forman** '84 and **Adam DeVoe** '00 both work in Brownstein Hyatt Farber Schreck's Water Group, representing clients in Colorado water law and rights. **Lynn Kornfeld** '98 practices at Faegre & Benson in the environmental and natural resources law practice focusing on federal schemes. **Gary Greer** '64 is at Sherman & Howard. At Holland & Hart, **Chris Thorne** '90 chairs the water practice group; **Mark Hamilton** '94 represents Western Slope clients; and **William Caile** '00, **Leah Martinsson** '01, and **Meghan Winokur** '04 handle water rights issue.

At Hill & Robbins are **Jennifer Hunt** '98, **Nathan Flynn** '07, and **Dennis Montgomery** '74, who was previously head of the Water Unit in the Colorado Attorney General's Office and Chairman of the Colorado Ground Water Commission. At Grimshaw & Harring are **Wayne Schroeder** '68 and **Larry Berkowitz** '73, who served as Metropolitan Denver Water Authority President in the late 80s. **Star Waring** '79 and **Mark Detsky** '03 are at Dietze & Davis. **Mark Hermundstad** '80 is at Williams, Turner & Holmes, and **Mitra Pemberton** '06 and **Philip Lopez** '08 are at White & Jankowski.

L. Richard Bratton '57

Bratton Hill Wilderson & Lock, Gunnison, Colorado



For many people in the United States, water is simply a part of life. But for Dick Bratton, it's both a career and something about which he passionately educates the legal community and general public.

Bratton has experienced many of the issues that come up in water law for his entire life. He first encountered water supply issues as a teenager working on ranches to stay in shape for the high school and college football seasons. The agriculture industry is the biggest user of the West's water supply, and it is often the hardest hit industry when a water shortage threatens.

"Historically, when there's a water shortage, they dry up agriculture," said Bratton. "That's unfortunate because there are so many people in that industry, and when you dry up water uses like that, the major impact is on the economy, then on the environment and animal habitats."

During law school, Bratton did take a water law course, but it was not until a few years into his practice that he truly got involved in water law. However, today he is a nationally recognized expert.

For example, in 2002, President Bush appointed him as Federal Chairman of the Upper Colorado River Commission, which includes representatives from Colorado, New Mexico, Wyoming, and Utah. This group works with the Lower Colorado River States (Nevada, Arizona, and California) regulating the amount of water each state can release out of the Colorado River and providing oversight for Lakes Mead and Powell. As Chairman, Bratton served as an arbitrator between the individual representatives of the Upper Basin States. In that role, he participated in successfully navigating the 2007 drought and negotiated an agreement among the seven states that regulated how much water each state can release out of Colorado River and when each state can release that water.

In addition to this national and regional water work, Bratton works on water law cases with a local impact.

"The right to float is very controversial in Colorado right now," said Bratton, referring to the widely publicized debate over the "River Rafting Jobs Protection Act" (HB 10-1188), a bill that would have barred landowners from attempting to control the access of any rafters to rivers on which only a single rafter floated a single time in the preceding 10 years. The bill would have established the companies' right to float, which Bratton believes does not exist on non-navigable rivers, and expanded the right to include the right to portage and other incidental contact with the land bordering the river without trespassing, which nearly everyone agrees does not exist now.

The bill passed the Colorado House of Representatives in February 2010, but Senate amendments required further study on the issue. The bill died when the legislature ended the session on May 12. For Bratton, the proposed legislation would violate the landowner's rights, decrease their property values, and harm their private fishing businesses. Bratton also feels the legislation would constitute a 5th Amendment taking. Landowners currently own the streambeds and all

land bordering the river. Although most boaters believe they have a common law right-to-float so long as they touch only the water, Bratton points out that the decision by the Colorado Supreme Court in the 1979 *Emmert* case held just the opposite, that there is no right to float without first getting the landowner's permission. Incidentally, David Emmert '57, the defendant in that case, was Bratton's Colorado Law classmate.

"I'm generally perceived as aligning with the more traditional water industries, like agriculture," said Bratton. However, he was quick to point out that this is not always the case, citing a case he worked on in the late 80s.

In that case, Bratton convinced the United States to operate Taylor Park Reservoir for uses in the Upper Gunnison Basin, allowing the Uncompahgre Valley water users to take their water out of Blue Mesa Reservoir, rather than Taylor. He later filed for a water right to refill Taylor for later release downstream for recreational uses within the Taylor and Gunnison Rivers. The traditional water community thought that only the State could obtain such a refill right. However, in a case of first impression, the Colorado Supreme Court agreed with Bratton that this was a valid water right. "By controlling the water flow out of Taylor, we were able to increase Brown Trout in the Upper Gunnison River by 90 percent, allowing growth in the local fishing industry," said Bratton. "It also established reliable flows for the local boating industry. Both have been a tremendous economic asset to the Gunnison Valley Basin."

"The right to float is very controversial in Colorado right now."

According to Bratton, some people argue that his current opposition to the current rafting bill contradicts his work on the Taylor Park refill case. However, while he agrees that it is ironic that one position established the local rafting industry and the other position might limit the industry, he believes the positions are not contradictory because the right to float was not involved in that the Taylor Park case and all rights related to floating remain as they did before. The rafting bill would have hurt local landowners while giving more rights to commercial rafting companies.

"Rafting is a big industry and a tremendous local asset, and we need to help it any way we can," said Bratton. "But you can't do it on the backs of land owners."

No matter where he falls on a given case or piece of legislation, however, Bratton is passionate about the need for better public education on water law issues. "The biggest need in water in Colorado is a general approach to water education, particularly for legislators, but also for individuals," said Bratton. "If there is in fact global warning, the West is short on water and the legislatures and the public will need to come up with creative solutions to provide the various qualities of water needed in different areas."

In 1976, Bratton took action to address this need, starting the Water Workshops held annually in Gunnison. These workshops have evolved into one of the premier water workshops in the Western United States, drawing experts and movers and shakers from across the country. In addition, Bratton and many others worked for many years to establish the Colorado Foundation for Water Education, which is now the leader in Colorado in providing water education.

"I've been passionate about the need for better water education throughout my career, and I think this shows through in my 37 years of work with water education," said Bratton. "In the law, people need to know about the quality of water needed and the quality of water available in different areas."



Leading the U.S. Department of the Interior

Alumni have served in many leadership positions within the U.S. Department of the Interior. **Anne Castle '81** is Assistant Secretary for Water and Science after working at Holland & Hart since 1981 specializing in water rights and natural resources law. She said she took the Interior position because it was the "opportunity to be part of the Obama administration and to work with Ken Salazar on issues I've been involved with my whole life." **John Sayre, Sr. '48** served as Assistant Secretary for Water and Science (1989-93), responsible for the U.S. Geological Survey, the Bureau of Reclamation, and the Bureau of Mines. He was as a charter member and director of the Colorado Water Congress (1959-present), Director of the Northern Colorado Water Conservancy District (1960-64), and a Director (1980) and former President (1984) of the National Water Resources Association. Sayre received Colorado Law's Distinguished Alumni Achievement Award for Public Sector service in 1994 and William Knous Award in 1999. **Bennett Raley '83** of Trout Raley Montaño Witwer & Freeman served as Assistant Secretary for Water and Science from 2001-04. He was recognized for his role in wrangling rival water agencies into signing a landmark Colorado River accord in 2003. **Bob Comer '87** was the Rocky Mountain Regional Solicitor for Interior before recently moving to Faegre & Benson. **Michael Connor '93**, who was highlighted in the spring 2009 *Amicus*, is the current Commissioner of the U.S. Bureau of Reclamation. **Michael Gheleta '88** is with the Solicitor's Office in Lakewood and spent 14 years with the U.S. Department of Justice's Environment and Natural Resources Division. He has been involved in judicial development of the Law of the River through litigation of water rights and equitable apportionment claims, federal environmental statutes, and the Mexican Water Treaty on the Colorado River.

Amy Steinfeld '05

Brownstein, Hyatt, Farber, Schreck, Santa Barbara, California



Supply and demand, the proverbial terms drilled into high school students across the United States, are about far more than the current recession for Amy Steinfeld. For Steinfeld, "supply" refers to the available water in the Western United States, which is at a breaking point. "Demand" is the tension between growing urban areas, high water use agricultural areas, and regulations that protect endangered species and the environment.

"It's interesting to work in the water law field right now, because the water supply is dwindling but the population is still growing," said Steinfeld. "As a result,

there's a lot going on at the state level and with local conservation measures."

Steinfeld is an associate at Brownstein, Hyatt, Farber, Schreck, litigating on behalf of California's public agencies and completing transactional work on behalf of public water suppliers and residential and commercial developers.

One of her biggest cases involves the QSA, or Quantitative Settlement Agreement, a complex series of agreements that settle long-standing disputes regarding the allocation and distribution of water from the Colorado River throughout Southern California. The QSAs between four California water agencies, several Indian Tribes, the State of California, and the United States, were designed to ensure that California will stay within its allotment of water from the Colorado River.

The QSA does this in part through agricultural-to-urban water transfers and water conservation programs. The other six states in the Colorado River Basin support the plan, which would reduce California's historic dependence on the Colorado River and ensure more water is available for the other states.

The case involves the mitigation measures for the voluntary agricultural-to-urban water transfers that the QSA authorizes and the funding mechanism for these measures. Currently, irrigated agriculture uses almost 90 percent of the water in the western United States.

The water transfers would reallocate a small percentage of this water to meet existing urban demand.

Steinfeld represents the San Diego County Water Authority, a signatory to several of the QSA agreements, which wishes to uphold the QSA and believes that the water transfer plans authorized by the QSA are in line with California's public policy and environmental regulations. The case is currently on appeal.

"It's an incredible experience to work on this litigation with top water lawyers from some of the largest California water agencies," said Steinfeld. "The QSA settlement is part of a larger plan to help California diversify its water supply, so there's something at stake for more than just the parties to the lawsuit. The decision will have a lasting impact on the water policy and water supply in California and the West."

In addition to litigation, Steinfeld does transactional work on behalf of large

residential and commercial developers. In order to get approval for new building projects, such groups need to prove there is sufficient water available to serve the proposed project for 20 years. Steinfeld drafts water supply assessments for developers and water suppliers.

According to Steinfeld, advising these clients includes encouraging them to find alternatives to traditional water supplies. "Finding water can no longer be relegated to the traditional water suppliers," said Steinfeld. "It's time for other people to step in. Attorneys and developers have to start coming up with creative solutions to serve the project by decreasing a project's water demand through conservation and, if necessary, by locating independent water supplies."

Growing up in Southern California, Steinfeld has witnessed this increasing demand on the West's water supplies her entire life. This fueled her interest in environmental issues. Prior to coming to law school, Steinfeld worked with the California Safety Compliance Corporation (now STR), traveling around the world as an environmental consultant auditing factories for large manufacturing companies. She also developed an environmental audit tool and a forestry chain of custody audit.

She came to Colorado Law specifically for its water law program, knowing that she wanted to work to conserve the West's depleting natural resources. Colorado Law's program allowed her to take hydrology courses outside the law school, but it was professors inside the law school that truly inspired her.

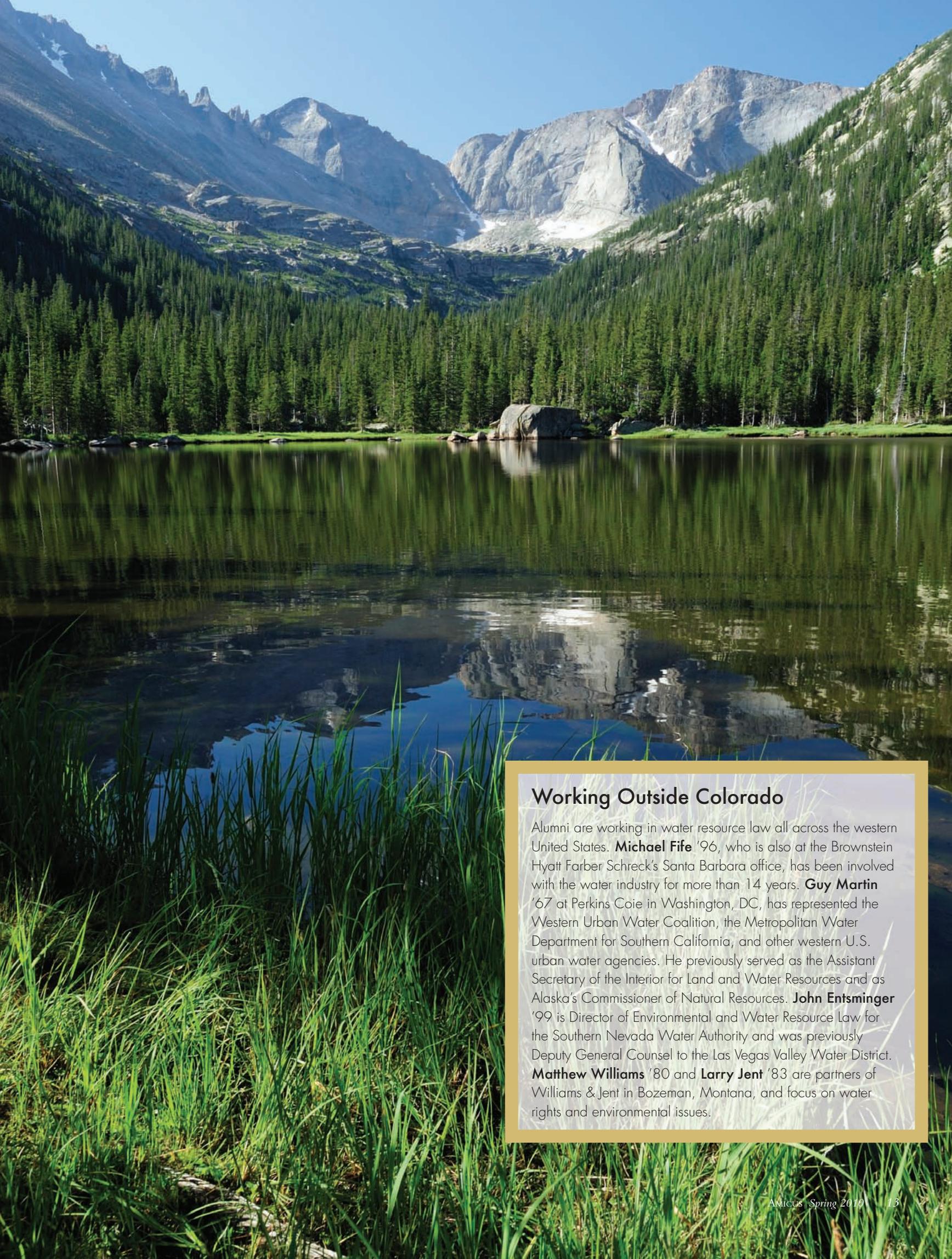
"We are facing a natural drought and a regulatory drought."

During her time at Colorado Law, she spent a summer working with Dean David Getches, a professor at the time, updating a water law casebook he authored along with Emeritus Professor James Corbridge. "Dean David Getches and Professor Corbridge really inspired me to see water law as a way to continue my environmental work," said Steinfeld. "I was able to consider ways to manage our natural resources and water supply effectively."

Steinfeld believes one of the major areas impacting water supplies is the effect that water diversions can have on endangered species. "The intersection between water supply and the Endangered Species Act is a big deal all over the West," said Steinfeld. "Because water pumping disrupts fish, the state has imposed restrictions. Water agencies are having to create new infrastructure and to alter the timing of water diversions to protect those endangered species. For example, the National Marine Fisheries Service recently offered a draft recovery plan to protect the endangered Steelhead fish that could have an enormous impact on state water agencies."

According to Steinfeld, these changes can have a major impact on the water supply. "Not only are we facing a natural drought, but we're facing a regulatory drought," said Steinfeld. "We're facing restrictions on the water supply from species protection laws, drought and climate change, which are together creating a strain on the water supply."

For Steinfeld, there are ways to address environmental protection concerns and to provide clean supplies to California's cities. "The key is to come up with creative solutions, such as water recycling, groundwater recharge, stormwater capture, desalination, and aggressive conservation," said Steinfeld. "My job gives me a great opportunity to work with public and private agencies to be a part of creating these solutions."



Working Outside Colorado

Alumni are working in water resource law all across the western United States. **Michael Fife** '96, who is also at the Brownstein Hyatt Farber Schreck's Santa Barbara office, has been involved with the water industry for more than 14 years. **Guy Martin** '67 at Perkins Coie in Washington, DC, has represented the Western Urban Water Coalition, the Metropolitan Water Department for Southern California, and other western U.S. urban water agencies. He previously served as the Assistant Secretary of the Interior for Land and Water Resources and as Alaska's Commissioner of Natural Resources. **John Entsminger** '99 is Director of Environmental and Water Resource Law for the Southern Nevada Water Authority and was previously Deputy General Counsel to the Las Vegas Valley Water District. **Matthew Williams** '80 and **Larry Jent** '83 are partners of Williams & Jent in Bozeman, Montana, and focus on water rights and environmental issues.

Robert F. Wigington '79

Western Water Policy Counsel, Global Freshwater Team,
The Nature Conservancy, Boulder, Colorado



When Robert Wigington arrived at Colorado Law School, he had little idea he would become one of the West's leading practitioners in environmental flow policy. In fact, he did not even know he was interested in water law. Law school was just something you did with an economics degree.

Still feeling directionless at the end of his first year, Wigington sought advice from his civil procedure professor, Michael Waggoner, who encouraged him to complete his first year and then take some time off from law school.

It took a two-year leave of absence for Wigington to find his passion. But once he found it, he returned to law school and never looked back, becoming the first full-time water attorney for The Nature Conservancy in 1986.

Wigington cites Wyoming water lawyer David Palmerlee as one of the two lawyers who inspired him to a career in water law. When he left law school, he worked as a community organizer in a small Wyoming town, supporting a local ranching group's opposition to a proposed power plant because of its apparent groundwater, air quality, and socio-economic impacts.

"Wyoming had just enacted a state law enabling a contested review of the environmental and socio-economic impacts of such big power plants before they were constructed," said Wigington. "The little group I was working for decided to test this new law and hired David Palmerlee to represent them. Because I had a year of law school training, I essentially became his paralegal, helping research the groundwater issue and organizing witnesses. We lost the case in some ways and the power plant was constructed but with some substantial socio-economic mitigation and water safeguards. After working with Palmerlee, I realized the kind of contribution I could make with a full legal education."

So Wigington went back to law school, clerking in his third year for David Harrison '71, a Boulder water lawyer at Moses, Wittemyer, Harrison, & Woodruff. According to Wigington, Harrison is another attorney who had a major influence on his career.

"I ended up going to work for a rival water law firm right out of law school, but I kept in touch with Harrison," said Wigington. "Harrison was really active as a volunteer water attorney for The Nature Conservancy, and when they decided to hire a water lawyer, he recruited me."

Wigington's first assignment at The Nature Conservancy concerned heading off the potential conflict between water development across the Upper Colorado River Basin and the recovery of the endangered fish dependent on that basin's larger order rivers. However, along the way he began working with the Conservancy's real estate lawyers on the intersection of water rights and land conservation in Colorado and several other western states.

"My favorite case about that intersection was the community collaboration that bought out a massive groundwater pumping threat to the San Luis Valley and gave us the Great Sand Dunes National Park," said Wigington. Both sets of issues led to bigger ones about how to conserve large-scale freshwater ecosystems facing intractable threats like climate change.

"I don't think we've caught up with climate change, while many of the law and policies put in place to settle the West already don't work as well for today's big water problems," said Wigington. "We're no longer trying to settle the West; we're trying to live within its limits. The laws on the books don't cover all the issues with growing cities, a farming backbone, and the need to protect the environment. There's much good reform underway, but when you add climate change to the need to catch up the law to such issues, we could be facing a water crisis in many western river basins."

Wigington does not view his current job as that of a typical lawyer. "I'm not practicing that much law these days," said Wigington. "It's much more strategy development, policy formulation, and problem solving."

For example, Wigington's current focus is on what he calls the "big dries," or large river systems such as the Colorado River Basin and Murray/Darling River Basin in Australia. "The Colorado River Basin is a highly arid basin on which a host of growing cities and farmers depend, several of which take water out of the basin," said Wigington. "That was causing environmental and economic concerns downstream even before the prospect of climate change, and dealing with these questions may require major water management innovations."

"We could be facing a water crisis in many western river basins."

In his search for clues on how to renovate the current water governance model for the Colorado, Wigington is examining Australia's response to the most severe drought on record in the Murray/Darling River Basin. "Australian water reform for the Murray/Darling may be at least five years ahead of where we are in the Colorado River Basin," said Wigington. "Recognizing that the prolonged drought in the Murray/Darling could be a permanent climate change, Australia enacted a national water law in 2007, which enabled its federal government to work with the states to institute and fund much more substantive, basin-wide, and ecologically sustainable water management."

Wigington hopes the Australian response will provide some insights about how we can develop a new partnership with our federal government that can respond to the mounting pressure on the Colorado River from climate change.

"It used to be that water management was considered largely an engineering problem, but that's not the case anymore," said Wigington. "We are learning from the Murray/Darling and many other places around the world that we need the most advanced environmental science, responsive policy, and collaboration among a broad spectrum of interests. For a long time, water was a very specialized interest. Today, it's clear that water affects so many more stakeholders, who all need access to the water policy discussions."

"There are days when I get overwhelmed by the amount of time that this work demands," said Wigington. "But when I can take my two great kids, Timothy and Emily, and their mom, my dearest Nancy, to a place like the Great Sand Dunes National Park and explain how the countless hours helped to create the park and protect its groundwater, I may be forgiven."



Public Interest Water Law

Alumni work through nonprofits to help solve water issues throughout the West. **John McCLOW** '73 is on the Colorado Water Conservation Board for the Gunnison-Uncompahgre Rivers, is General Counsel for the Upper Gunnison River Water Conservancy District, and is a member of the Gunnison Basin Roundtable. He also serves on the Board of Directors of the Gunnison Ranchland Conservation legacy, and is a Life member of Trout Unlimited and Rocky Mountain Elk Foundation. **Ruth Wright** '72 is on the Colorado Water Trust Board of Directors and has led numerous successful efforts to improve conditions of the South Platte River during her service on the Colorado Water Quality Control Commission. She has been an active member of the Northern Colorado Water Conservancy District Board since 1994. **David Guy** '90 is CEO of Yosemite Association, which provides opportunities for people to learn about, enjoy, and experience Yosemite National Park and the Sierra Nevada and fosters partnerships that build a commitment to the long-term preservation and vitality of Yosemite and other national parks. Previously, he was the Executive Director for the Northern California Water Association and currently serves on the Board of Directors of the Water Education Foundation in California. **Brett Swift** '91 is the Northwest Regional Director at American Rivers, which works to protect and restore the special rivers of the Northwest. On Oregon's Deschutes Rivers, she skillfully negotiated a settlement to improve operations of the Pelton-Round Butte hydropower project. **Bart Miller** '95 is the Water Program Director of the Western Resource Advocates. In a multi-year effort, he crafted litigation and settlement negotiations that resulted in a new water right for Black Canyon National Park on the Gunnison River. **Kathy Lynch** '01 is legal counsel for the Wyoming Water Project at Trout Unlimited.

Colorado Law's Contributions to Water Law

Colorado Law has had an impact on water law since early in its history. It has engaged renowned professors, published articles from national and international scholars, hosted countless events, conducted research, and proposed creative solutions to water problems.

Teaching

Some of the most notable western water law experts have taught hundreds of Colorado Law alumni. Ray Moses was a visiting lecturer from 1966-76 (CU resident counsel from 1964-66 and Regent from 1973-75). Joseph Sax taught from 1962-66 and wrote an early casebook on water law in 1968: *Water Law, Planning and Policy: Cases and Materials*. The late Frank Trelease '38, University of Wyoming professor and Dean, wrote a leading casebook in 1965, *Cases and Materials on Water Law*, and was one of the most noted scholars in the field for years. Dean David Getches, who currently holds the Raphael Moses Professorship, and Professor Emeritus James Corbridge taught water law to generations of students and have a casebook currently being used at many law schools, *Water Resource Management: A Casebook in Law and Public Policy and Water Resources Management* (sixth, Tarlock and Benson). Getches also published *Water Law in a Nutshell* and several other water law books.

Scholarship

For 30 years, the *University of Colorado Law Review* has dedicated a yearly issue to natural resources issues and environmental law topics, attracting the foremost scholars in these fields. Volume One of the *Review* (published as the *Rocky Mountain Law Review* from 1928-62) included Moses Lasky's '28 epic article, "From Prior Appropriation to Economic Distribution of the Water by State Via Irrigation Administration." Charles Wilkinson currently holds the Moses Lasky Professorship. Sax wrote three notable water law articles for the *Review* from 1965-90. DC Court of Appeal Judge Stephen Williams, who taught at Colorado Law from 1969-86, wrote an influential water law article in 1973 titled "Optimizing Water Use: The Return Flow Issue."

Colorado Law's water law professors Getches, Wilkinson, Corbridge, and Mark Squillace have published 16 books and chapters and 20 articles on topics surrounding water policy reform, water management, Law of Colorado River, and water rights.

Public Services

Colorado Law professors have consulted and provided insight extensively outside the school. Getches served as Executive Director of the Colorado Department of Natural Resources, conducted the workshop series leading to the "Park City Principles" for the Western Governors Association and Western States Water Council, assisted Senators Timothy

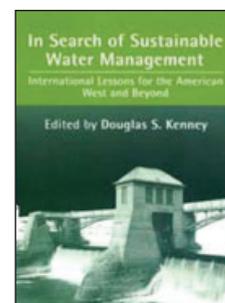
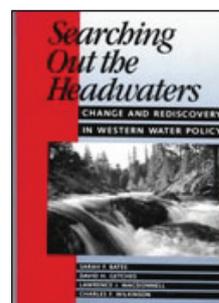
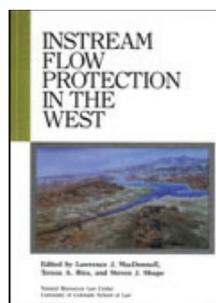
Wirth and William Armstrong in proposing "water language" for Colorado wilderness legislation, and consulted on water issues with Indian tribes, National Academy of Sciences, United Nations, European Community, and entities in Chile, Mexico, Peru, Poland, Russia, Spain, and Turkmenistan.

Professor Wilkinson served as mediator for negotiations concerning fishing access, land use, and streamflows between the City of Seattle and the Muckleshoot Indian Tribe. He was also an expert witness for the United States on reserved water rights under the 1897 Forest Service Organic Act in Snake River Basin Adjudication.

Professor Squillace, Director of the Natural Resources Law Center since 2005, served as Special Assistant to the Solicitor at the U.S. Department of the Interior, working directly with the Secretary Bruce Babbitt on legal and policy issues. He currently serves on the Board of Directors of the Great Lakes United and has written extensively on the Great Lakes Compact.

NRLC's 30 Years of Western Water Policy

Western water resources policy has long been a major focus of Natural Resources Law Center (NRLC), beginning with its first water conference in 1981 on "Water Resources Allocation: Laws and Emerging Issues." During the 1990s, NRLC trained nearly all top officials in the U.S. Bureau of Reclamation. In 2002, to celebrate 20 years of western water research, the "Allocating and Managing Water for a Sustainable Future: Lessons from Around the World" conference featured 70 international and domestic presenters. Several years ago, the NRLC established the Western Water Policy Program to advance its goal of promoting sustainable, equitable, and practical solutions to the pressing regional water problems. The Center has convened 20 water conferences, produced 100 major reports and books, and provided legal and policy innovation for the West. Recent reports include *Searching Out the Headwaters*, *In Search of Sustainable Water Management*, *Instream Flow Protection in the West*, and *Groundwater Law Sourcebook*.





Rethinking Western Water Law

BY PROFESSOR MARK SQUILLACE, DIRECTOR OF THE NATURAL RESOURCES LAW CENTER

The 19th-century miners and homesteaders who settled the West found a vast frontier of seemingly unlimited opportunity and resources. Perhaps the only resource that gave settlers pause was water. Much of the interior West is dry. Most of our precipitation falls as winter mountain snow and we depend on the runoff for the bulk of our water supplies. The early settlers cleverly devised a system of water allocation that preserved certainty for those who put the water to a beneficial use and, not coincidentally, protected themselves first. “First in time, first in right,” is the maxim that governs virtually all water use in the West.

The vast majority of those who are “first in time” today are the agricultural users who succeeded the original homesteaders. But even as the importance of agriculture to Western economies has waned, its water consumption has remained fairly steady. Agricultural users still consume nearly 90 percent of the West’s water resources.

As long as the West’s population remained relatively small, and our water needs relatively stable, our system of water allocation worked pretty well, at least for consumptive uses, in part because it proved flexible enough to accommodate gradual changes in demand. As our cities grew, and as water needs for commercial and industrial purposes increased, groundwater was tapped and projects to store the spring runoff were built. Cost-effective opportunities for “developing” new water resources, however, are now largely gone and our groundwater supplies are nearing exhaustion in some areas.

So, despite the relative success of the current system, stresses have begun to show. And changes now facing the West threaten to carry the system to its breaking point. A crisis may not be imminent but it is inevitable, unless we begin the process now of rethinking Western water law.

The primary drivers for these changes are two. One is familiar. It is our unrelenting growth, especially in urban areas. Over the next two decades, the West’s population is expected to grow by one million people each year. The demand for water to satisfy both the domestic and energy-related needs of these new residents will be impossible to ignore.

The other change—that facing our climate—is unfamiliar and uncertain, but potentially more devastating to our water resources. Recent estimates suggest that the Colorado River Basin could see its historic water flows reduced by 20 percent or more. If we lose anything close to that, a business-as-usual approach to water management will guarantee water conflicts beyond anything we have seen before. At some point we will simply lose the ability to squeeze more users into the existing water rights system. Something will have to give.

One of the often forgotten consequences of our ever-increasing demand for water is the impact on the aesthetic, biological, and recreational resources of our natural streams. Instream flow laws have helped build such rights into the system, but often with very junior priority dates. Under our priority system, these rights will be the first to go if our water supplies dwindle as predicted in some of the climate models.



So what can be done? For political and practical reasons, it is best to acknowledge at the outset that the solution will largely come from within the contours of the current system. Fortunately, however, certain underutilized but well-accepted aspects of the law can be gradually reintroduced and refined to provide the water that the West will need to grow and prosper. Rethinking Western water law should start with three particular reforms.

First, we must get serious and specific about establishing beneficial use limits for water rights. “Beneficial use” is an old water law precept that prohibits waste. Historically, states have been loath to enforce strict limits on wasteful practices for fear of upsetting settled expectations. This has to change.

One positive development pioneered by cities facing stressed water supplies is the evolution of demand-side management. By managing demand to promote conservation, cities can avoid or forestall the need to supplement their supplies. The idea of managing demand needs to be gradually imported to the agricultural sector where most of our water resources are consumed.

Second, water transfers must be streamlined to allow better movement of water to where it is most needed. Currently, transfers are subject to a rule that prohibits harm to existing users. While this general principle makes sense, it often results in blocking the movement of water to higher value uses even where the harm to existing users is speculative or minor. Indeed, water transfers are often avoided even where they make good economic sense because the many existing users able to complain about minor injuries drive up the cost of getting transfers approved. One important refinement of current law would allow transfers even where they cause minor harm to the timing or flows to existing users. Another would allow transfers of the amount of water actually consumed by the pre-transfer use with only limited opportunities for protest. Innovative methods for moving agricultural water to urban needs while still allowing rural communities to thrive should also be part of the mix. We should encourage and promote “dry year options” whereby cities take water from agricultural users only in times of drought. Even more promising, if somewhat more complex, are schemes for aggregating agricultural water rights and freeing up a portion of those rights for permanent transfer through a rotational fallowing program.

Finally, and most importantly, states must restore the long-dormant role of the public interest in Western water law. All of our states acknowledge the essential role of water in our daily lives by uniformly declaring that water is a public resource. The recognition that water resources are public traces back at least to the time of the Roman Empire. Most states also require that water resources be managed to protect the public interest. Colorado is the only state that has explicitly rejected a public interest standard for managing water—a position that seems fundamentally at odds with the notion of water as a public resource. Fortunately, the Court decision that was unwilling to find a public interest obligation under current law left the door open for the legislature to impose such a

requirement. The legislature should accept the Court's invitation to help ensure that Colorado's water is managed for the long-term benefit of all the people.

Of course, imposing a public interest standard and employing it in a meaningful way are two different things. And the record from western states that expressly require water managers to consider the public interest is not promising. Many of these states fail even to define the term public interest, and few states have regularized a process for taking it into account when making water allocation decisions. Yet, despite the lackluster record of the states in protecting the public interest in water resources for present and future consumptive and non-consumptive needs, the potential that it offers for fundamentally rethinking Western water law cannot be ignored.

The West is defined by its open spaces. Our identity is tied to our love for the outdoors and our access to land and water resources for our recreational activities and aesthetic values. Our traditional approach for managing water resources has largely provided for our consumptive needs even if it has performed less well in protecting the water to preserve our quality of life. But the unprecedented demands that will face our water resources in the decades to come will stress our ability to provide even for our more conventional water uses. It is not hard to imagine what these demands will do to the water needed to satisfy the soul. Fortunately, the West's problem is not so much a lack of water—it is the lack of a water policy that serves society. We must begin now to rethink that policy. Current water law will readily accommodate the changes that are needed. The time has come to act. ■

Everest and Water—Finite Resources with an Expanding Demand

BY GLENN E. PORZAK '73, PORZAK BROWNING & BUSHONG LLP

Twenty years ago this month, I found myself standing atop the summit of Mount Everest, unfurling the first CU and Colorado State flags to reach the highest point on Earth. In reflecting upon that experience, I can't help but think how much simpler times were back then. It was an era in which only a handful of expeditions were permitted to climb on Everest each year, there were no telecommunications with the outside world, we predated the guided expeditions so there were no financial incentives to what was happily nothing more than a frivolous endeavor, and only a couple of hundred people had previously reached the summit. In stark contrast, nowadays instacams and motion picture cameras document every move on Everest, there are instant communications with the rest of the world, more than 50 expeditions crowd the peak each season, people pay more than \$60,000 to be guided up the mountain so big money has entered the picture, and more than a couple hundred people reach the summit each year.

In my oxygen-deprived mind, there are parallels between the climb of Everest and the practice of Colorado water law. The state's population is predicted to double, a water-dependent energy industry on the western slope is emerging, there are increased demands for consumptive and nonconsumptive uses of water for Colorado's recreation-based industry, and we are nearing the limit of the state's entitlement under the Colorado River Compact. In short, like Everest, there is an ever-increasing demand to use a finite resource. Add to this climate change and an increased public focus on water, and you have the recipe for greater conflict that will often result in major litigation as water is a threshold commodity that does not lend itself easily to a traditional financial (or for that matter common sense) settlement.

80/20 Rule

It is said that Colorado is governed by the 80/20 rule: 80 percent of the state's population is east of the continental divide that has only 20 percent



of the water, and 80 percent of the water is on the western slope with only 20 percent of the population. For example, Denver obtains more than half of its water supply from the Colorado River Basin on the state's western slope, and numerous other cities in the metropolitan area depend on transmountain diversions from the western slope. The one common denominator to all these transmountain diversions is they are junior to the 1922 Colorado River Compact.

1922 Colorado River Compact

The 1922 Compact divides the Colorado River into an Upper and Lower Basin. Colorado is an Upper Basin state, along with Wyoming and most of Utah and New Mexico. California, Nevada, and most of Arizona are Lower Basin states. The Compact, in essence, provides that 75 million acre feet of the river over any

10-consecutive-year period must be passed to the Lower Basin states. At the time of the Compact negotiations, it was believed that the flow of the Colorado River averaged 15 million acre feet per year. However, it now appears that the number is closer to 12.5 million acre feet. The net effect of all of this is that most experts now believe that Colorado's remaining unused portion of water from the Colorado River Basin is somewhere between 0 and 150,000 acre feet per year. Should Colorado's share be oversubscribed and the 75 million acre feet "delivery obligation" to the Lower Basin states not be met, that would force all water rights junior to the 1922 Compact to cease diverting in times of shortage, which includes a major portion of the water supply for the Front Range.

Emerging Energy Industry

One need only drive between Rifle and Grand Junction or into northwestern Colorado from Meeker to Rangely to understand that major natural gas development is currently under way. In addition, the big oil companies are quietly developing the technology to extract oil from shale on a cost-effective basis. Many question whether oil shale development will ever happen in Colorado. However, given the advancements in oil

shale research and development that has taken place and the fact that Colorado's recoverable oil shale reserves vastly exceed Saudi Arabia's proven crude oil reserves, the question is not if, but when.

A 2008 water assessment report commissioned by the state estimated that nearly 400,000 acre feet of water will be annually required for natural gas, uranium, and oil shale development in Colorado. While some think this number is too high, most believe the number will be greater than the state's remaining Colorado River Compact entitlement. And herein lies the problem. The energy companies already own hundreds of thousands of acre feet of conditional water rights from the Colorado River Basin that predate a number of the present and planned future transmountain diversions.

Conditional Water Rights

The allocation of water in Colorado is based on a priority system. First in time, first in right. In other words, whenever there is a shortage in the physical amount of water available in a stream in comparison to the decreed water rights, the junior rights are curtailed, or "called out," for the benefit of the more senior rights.

Water rights are decreed as either absolute or conditional. Water rights that have not yet been used are decreed as conditional and can be cancelled if not developed within a reasonable period of time. The majority of the energy industry water rights are conditional rights that were obtained in the 1960s and 1970s. By obtaining conditional rights, the owner reserves their place in the priority system. In other words, if the conditional right was obtained in the 1960s, it keeps the 1960 seniority over water rights decreed at a later time. That is true even if the conditional right is not used until a later date. So you could have a 1960 conditional right that was not developed until 2015 being more senior to a water right that was decreed and actually used in 1970.

Under Colorado law, periodic findings of due diligence must be obtained from the water court for water rights that are conditionally decreed. Once a conditional right is developed and put to beneficial use, it can be made absolute and no further diligence findings are required.

Recent case law demonstrates that we are entering a climate in which water courts will more closely scrutinize conditional water rights in future diligence proceedings to prevent the hoarding of priorities to the detriment of those seeking to beneficially use the state's waters. Moreover, the lack of water remaining under Colorado's Compact entitlement, coupled with the seniority of the energy industry conditional rights in relation to more junior absolute rights, is a guaranteed receipt for future diligence challenges. Given the resources of both the energy companies and transmountain diverters, the inevitable result is major litigation.

Recreation Water Rights

Faced with the reality of an ever-expanding demand to consume more water for municipal and industrial purposes, the state's tourism and recreation-based industry realized it needed to ensure it had sufficient water for its needs. While that includes traditional consumptive uses of water for residential developments, golf courses, and snowmaking, tourism also depends upon maintaining large flows in the area streams and rivers for kayaking, rafting, fishing, and pure aesthetics. However, up to the late 1990s, the only ability to appropriate water for in-channel uses was the state's instream flow program controlled by the Colorado Water Conservation Board (CWCB). Yet, a water right for an instream flow could only be obtained by the CWCB and was limited to the minimum

amount to protect the natural environment to a reasonable degree. That typically translated to a relatively small flow rate.

Then came along the audacious filing of the City of Golden which sought to command the entire flow of Clear Creek (1,000 cubic-feet per second) through its downtown area for the city's enormously popular kayak course. On the heels of that filing were similar appropriations by the towns of Breckenridge and Vail. The theory of each of these appropriations was that the Colorado constitution guarantees the right to divert water for any beneficial use. The Colorado Supreme Court had previously held that an in-channel structure constituted a diversion. Hence, it was argued that the in-channel kayak structures, which created the wave forms for boaters, met the requirement for a diversion. As recreation and tourism were the state's second largest industry with huge economic benefits, water used for recreation purposes was clearly a beneficial use. Thus, the argument was made that the prerequisites for the constitutional right to appropriate were met.

Needless to say, these cases provided a firestorm of debate and controversy. Over the course of the next decade, this debate raged in the water courts, the state legislature, and four separate cases before the Colorado Supreme Court. But in the end, recreation water rights for flows up to 1,800 cfs were successfully adjudicated in six of the state's seven major river basins. Given the sheer size of these water rights, they will have a major impact on the future ability to appropriate water for consumptive uses upstream of these recreation rights. In short, the recreation industry now has a seat at the water table and has a say in restricting the size and location of future transmountain diversions.

Faced with this complex landscape of an ever increasing demand for an indispensable, finite resource, the only prediction that can be made with 100 percent accuracy is that the next generation of Colorado water lawyers and judges will have to deal with many difficult and challenging issues—issues that will have a profound effect on Colorado's future. But looking at the quality of our law school's student body, faculty, and administration, there is little doubt that they will be well prepared to meet this challenge. However, for this water lawyer, it's time to head to one of the lesser known Himalayan peaks where life is still simple. And one thing is for certain, it will be without a satellite phone!

Glenn Porzak has been Managing Partner of Porzak Browning & Bushong in Boulder since 1996. Prior to that, he worked for Holme Roberts & Owen for 22 years. In the 60s, as head of wilderness legislation for the Colorado Mountain Club and later its president, Porzak helped pass the original Wilderness Act. In the 70s, he helped craft the original boundaries of the Indian Peaks Wilderness Area. In the 80s, he helped write a bill to enlarge Rocky Mountain National Park. Currently, he's on the CU Foundation's Board of Trustees and was on Colorado Law's Natural Resources Law Center Board of Advisors. Porzak received Colorado Law's 2006 Alumni Distinguished Achievement Award for Private Practice.

An accomplished mountaineer, Porzak has climbed the "Seven Summits"—the highest peak on each of the world's seven continents—is the first known person to climb Rocky Mountain National Park's 100 peaks, and has climbed all 54 of Colorado's 14,000-foot peaks. The CU flag he carried to the Mount Everest summit in 1990 is displayed in the University's Heritage Center.



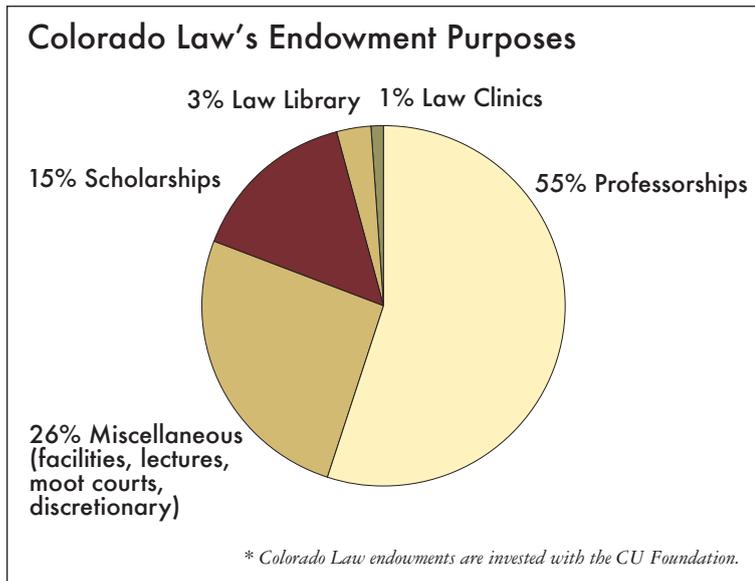
How Does Colorado Law Compare?

Endowments Correlate with Quality and Reputation

Colorado Law is focused on building its endowment—permanent funds that produce income. With state funding unreliable, it is critical to have a dependable source of income from contributions. State of Colorado funding shrunk to less than half of what it was 15 years ago, to only 7 percent of CU-Boulder’s total operating budget.

We are pleased that our endowment has grown from \$22 million in 2003 to \$42 million in 2010! It now produces more than \$1.6 million in income that is used to meet the school’s needs each year.

But . . . Colorado Law must increase its endowment now to maintain the quality of its achievements, faculty, programs, and especially students. Endowment funds provide scholarships that recruit top students regardless of their ability to pay, secure national-class faculty with salary supplements, and improve academic and experiential learning programs.



Law Library Ranked 21st

In March, the *National Jurist* magazine ranked Colorado Law’s William A. Wise Law Library 21 out of 198 law libraries nationwide in the article “What makes a Great Library?” This is a 14 spot jump since the last time law libraries were ranked in 2005. The rankings are based on the number of volumes and titles, student accessibility to study seating and library staff, and the number of hours the library is open each week. “This continued high and improving ranking is a reflection of the splendid library faculty and staff, whose ensemble work keeps the library running in a time of ever-constant change and challenge,” said Professor Barbara Bintliff, Director of the Law Library.

Comparative data show that endowment size correlates to a school’s quality and reputation:

- The top 10 law schools all have endowments of more than \$100 million
- 17 of the top 20 law schools have endowments of more than \$100 million
- 13 public law schools have endowments of more than \$50 million—and Berkeley, Michigan, Texas, and Virginia all have endowments of \$200 million or more

For information on creating an endowed gift, please contact John Pepperdine, Director of Development, at 303-492-1215 or john.pepperdine@cufund.org.

2nd at National Telecommunications Moot Court Competition

Colorado Law's student team finished second in the 16th Annual National Telecommunications Moot Court Competition hosted by Catholic University of America in Washington, DC, in March. The team—Eric Schmidt '11, Devin Looijen '10, and Angela Wade '11—was narrowly beaten by the team from the University of Wisconsin Law School in a split 2-1 decision. The team argued on behalf of the Federal Communications Commission that federal law preempts a state regulation that bans multiple tiers of broadband service to prevent consumer confusion. Professor Brad Bernthal '01 coached the team to second place, which ties for the best result in Colorado Law's history.

Colorado Law Gets Greener

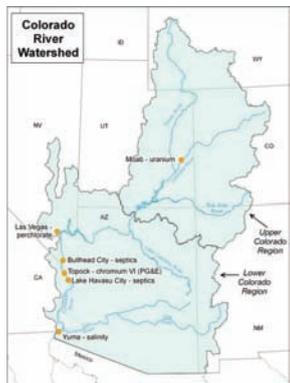
Colorado Law installed 52 solar panels on its roof and an electric car charging station this year. The car charging station, which can accommodate both 210- and 220-volt plug-ins, is a "smart" station, meaning anyone driving an electric car nearby can see whether it is available. The solar panels allow the law school to collect and store up to 11.96 kilowatts an hour, enough to power an average household for 12 hours. The law school worked with Coulomb Technologies to install the charging station and Xcel Energy to install the panels, allowing it to take advantage of an energy rebate and other financing options, and minimizing costs. Visit www.colorado.edu/law/about/wolf/solar.htm to see the amount of solar energy the law school is collecting at any given time.



Researching and Reporting

NRLC Studying Colorado River Governance

Colorado Law's Natural Resources Law Center (NRLC) began work on a new Colorado River Governance Initiative to examine the current governance structure and analyze reform options to determine the extent to which they protect wildlife resources, protect or improve water quality, and promote improved wildlife habitat, while assuring adequate water supplies for human needs. The Colorado River watershed covers 242,000 square miles of North America.



Center Director Mark Squillace notes, "An elaborate system of treaties, compacts, laws, court decisions, and policies—often called The Law of the River—currently govern river management, and each element of this law has beneficiaries who are likely to oppose change. Unfortunately, some parts of the law work against protecting the overall health

of the Colorado River system, which is complicated by factors such as climate change and population growth that impose additional stresses on a resource that even now struggles to meet current demand."

CEES Report Influences SEC Guidelines

Following the advice of Colorado Law's Center for Energy and Environmental Security (CEES), the U.S. Securities and Exchange Commission (SEC) released a new guideline requiring public companies to disclose climate-related risks to their investors in January 2010. The advice came from a report, "Reclaiming Transparency in a Changing Climate: Trends in Climate Risk Disclosure by the S&P 500 from 1995 to the Present," which was co-sponsored by CEES, the Environmental Defense Fund, and Ceres. "The SEC's guidance is an extraordinary breakthrough," said CEES Senior Research Fellow Kevin Doran '03, one of the report's authors. "The guidance recognizes that climate change can present material opportunities and challenges for business, and that companies are obligated to communicate this information to investors."



Read the report at http://cees.colorado.edu/10K_Report_Final_May_27.pdf.

CEES Completes Colorado Energy Profile Website

CEES recently completed the Colorado Energy Profile, which offers an easy-to-use overview of current power plants, energy policies, and coal and natural gas resources statewide. The Governor's Energy Office sponsored the project. Viewers can look at energy data in the areas of wind, solar, bioenergy, geothermal, hydro, energy efficiency, system support, and fossil fuel. In addition, for all those resource types, the public can look at federal, state, and local energy trends, law and policies, and environmental emissions. The information is useful to homeowners, business owners, policymakers, energy researchers, students, and



voters. Find the Colorado Energy Profile at www.energyincolorado.org

Helping Those in Need

Colorado Innocence Project Finds New Home at Colorado Law

The Colorado Innocence Project (CIP) received a new home in January, moving from the Denver office of Arnold & Porter to Colorado Law's Clinical Education Program. The Project identifies individuals who have been convicted of serious crimes, exhausted their appellate remedies, but have colorable claims of innocence. CIP either ensures counsel is appointed to assist these individuals in post-conviction proceedings, per Colorado law, or recruits volunteer lawyers to do so. CIP uses volunteer investigators, experts, and other concerned citizens to assist the inmates directly. Jim Scarboro '70, a Colorado Law Knous Award recipient, was the driving force behind the creation of the CIP. Colorado Law agreed to continue the project, and under the supervision of clinical faculty and the CIP's review committee, students will help review initial inquiries; send, receive, and evaluate the formal applications; speak with trial and appellate counsel; review counsel's files and court transcripts; and consider

the applicability of new forensic techniques. At the end of the spring semester, 10 student volunteers reviewed more than 1,000 applications received since the CIP inception to ensure that no one slipped through the cracks. Some students continue to work with Clinical Professor Ann England to address the new claims received every week.

Clinic Students Help Bring Tribal Children Home

Recognizing that there is “no resource more vital to the continued existence and integrity of Indian tribes,” the U.S. Congress enacted the Indian Child Welfare Act (ICWA) of 1978 to stem the alarmingly high percentage of Indian children being placed in non-Indian foster and adoptive homes. Utilizing a wraparound approach for providing legal services to the Northern Cheyenne Tribe, student attorneys in Colorado Law’s American Indian Law Clinic took on legal service projects for the Tribe while continuing to litigate Colorado ICWA cases. Through a CU-Boulder Outreach Committee grant, the students conducted a community-wide training at the Chief Dull Knife Tribal College on the Northern Cheyenne reservation in Lame Deer, Montana, in February. It focused on improving tribal response times to notice Colorado ICWA cases and the rate of children placed in tribal homes.



The training made the solution apparent: Make more tribal foster and adoptive homes available by developing Tribe foster home licensing standards and streamlining its foster and adoptive parent application form. Professor Jill Tompkins, CU Ethnic Studies Professor Doreen Martinez, and Megan Bentley '11 are producing a tribal foster home recruitment video, “Family is Cheyenne.” In addition, Kathryn Urbanowicz '10 and Zachary Wagner '11 developed a new form used by counties to gather information about a child’s tribal ancestry and provide notice to tribes of potential ICWA cases. The new JDF form 567 “American Indian/Alaska Native ICWA Form” is ready for statewide implementation.

Clifford Calhoun Public Interest Award

For the first time, Colorado Law presented the Clifford Calhoun Public Interest Award to a student; not just one student, but two deserving students—Erica Chavez '10 and Abbie Johnson '10. The award is presented to “persons who contribute to the public service of the law school in the spirit and tradition of the contributions Professor Clifford Calhoun made in his 29-year Colorado Law School career” as a member of the faculty, Associate Dean, and Acting Dean. Dean Getches, Professor Melissa Hart, Public Interest Students Association Co-President Heather Strack '11, and



alumni Dan Pabon '05 and Laura Sturges '05 spoke to the audience about the importance of public service at the award luncheon. Those students who had completed their Public Service Pledge of 50 hours were recognized. Three students volunteered 500+ hours: Mathew Munch, Erica Baasten, and Elaina Shively. Two students volunteered 400+ hours: Ashley Campbell and Jeff Rezmovic. Watch the video at <http://lawweb.colorado.edu/events/media.jsp>.

Also, Colorado Law students were recognized at the Boulder County Legal Services (BCLS) 2010 Pro Bono Luncheon. In 2009, they provided almost 900 hours of free legal services to BCLS clients. Professor Norton Steuben was recognized for contributing 150+ hours.

Students Help Children at Colorado Legal Services

In November, the Juvenile and Family Law Club raised approximately \$3,000 worth of toys for the Colorado Legal Services playroom, which provides a place for children to wait while their parents receive legal services. Professor Laura Spitz and club member Janna Fischer '12 delivered the donations and helped clean up the playroom. “Colorado Legal Services has a lot of clients with kids, and it’s easier for them to meet with their clients when the kids have somewhere they actually want to be,” said Fischer. “It’s easy enough for me to give them a couple of hours to set things up, and it made a difference for an organization that helps families in crisis situations.”

New Animal Law Student Group

Colorado Law’s newest student organization is the Student Animal Legal Defense Fund (SALDF), a chapter of the Animal Legal Defense Fund. There are SALDF groups in 143 law schools nationwide. The group, which already has 15 active members, hopes to educate law students and the local community about animal law issues. “I’m interested in working with animals after I graduate and go into practice,” said SALDF president Jamesy Owen '12. “I wanted to give myself and the rest of the student body a chance to learn about this area.”



Students Win Asylum Cases

This April, students (Scott Young, Michelle Crozier-Haynes, and Tiffany Chang) in Professor Norm Aaronson’s Civil Practice Clinic successfully represented clients from Cameroon and Djibouti in asylum claims in Immigration Court. The cases involved testimony from clients, witnesses, including experts on country conditions and doctors’ reports to verify past torture and persecution. A third case for a client from Guinea was presented, with closing arguments set for October 2010. Last year, students won asylum claims for a gentleman from Sudan (Darfur) and another from Eritrea. Professor Aaronson’s students also represent clients in family law matters and Social Security disability appeals.





Army JAG Major General Tate Visits Colorado Law

Major General Butch Tate, Deputy Judge Advocate General of the U.S. Army and Commander of the U.S. Army Legal Services Agency, visited Colorado Law in March to talk with students about the Judge Advocate General (JAG) Corps. During his talk, Maj. Gen. Tate complimented Colorado Law on its commitment to service, commenting that the school is one of the most public-interest conscious schools he has visited. He also stated that Colorado Law has 27 alumni actively serving in the JAG program. "One thing he said that made an impression on me was that both military officers and lawyers swear to defend and uphold the Constitution," said Capt. David Pigott '11, who is participating in the Army's Funded Legal Education Program. "While they employ different methods, they share the goal of preserving our nation's most fundamental values."

Making Law School Affordable

Low-Cost LSAT Prep Course Makes Law School Possible

Colorado Law and the CU-Boulder campus are providing a low-cost LSAT prep course for low-income students. The prep course, which usually costs \$1,600, is available for only \$120. More than 70 students took advantage of this eight-week course that started in February. This is one of the lowest costing LSAT prep courses offered in the nation. The course is open to CU-Boulder students and alumni who meet the prerequisites for admission, which includes qualifying for CU financial aid. "We hope to encourage under-represented groups to see law school as a possibility and to work and plan for that future," said W. Douglas Costain, CU-Boulder's prelaw advisor and the person who was instrumental in getting the program started. The low cost of the prep course is due to Colorado Law's donation of a classroom, the Law School Admissions Counsel's donation of material, and Colorado Law and CU-Boulder donations of testing resources.

New Cathlin Donnell Fellowship Supports LRAP

Colorado Law received a \$250,000 donation in March from the Donnell Initiative Fund to create the "Cathlin Donnell Fellowship" as a part

of the school's Loan Repayment Assistance Program (LRAP), which provides partial loan repayment to recent graduates working in public interest jobs. The funds will provide 4–6 additional graduates with awards and increase the amount of each award from \$1,800 to \$8,000. The Fellowship will provide loan repayment assistance to graduates who are committed to systemic change through their public interest work to improve the lives of those who have been historically disadvantaged, to improve the justice system, or to preserve environmental integrity. The donation honors Cathlin Donnell, a Colorado lawyer who dedicated her career to solving systemic social problems, particularly as they involved the lives of women and improvements to our justice system.

Gifts to the Clinics

A \$370,000 gift was pledged to run the Natural Resources Clinic for the next two years to replace the more than 20-year support no longer available from the National Wildlife Federation. A single donor pledged \$185,000 and five additional donors pledged the required match of another \$185,000.

The Melvin and Elaine Wolf Foundation committed \$60,000 to establish the Melvin and Elaine Wolf Foundation Endowment Fund for Child Advocacy to support the Juvenile and Family Law Clinic. We currently seek an additional \$60,000 in matching contributions for this Fund.



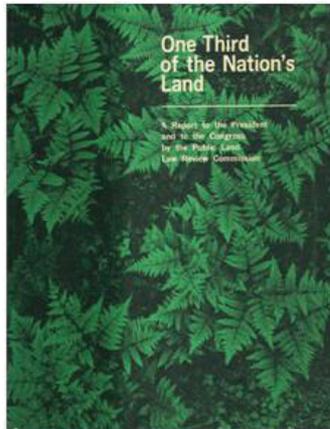
Debating and Solving Problems

NRLC Recognizes 40th Anniversary of “One Third of The Nation’s Lands”

In 1964, Congress established the Public Land Law Review Commission (PLLRC) to review the U.S. public land laws and determine whether revisions were necessary. The Commission’s influential 1970 *Report: One Third of Our Nation’s Lands* became a blueprint for much future public lands legislation including, most notably, the Federal Land Policy and Management Act and the National Forest Management Act. This year’s Natural Resources Law Center’s Annual Clyde Martz Summer Conference, “The Past, Present, and Future of Our Public Lands,” celebrated the 40th anniversary of the Commission’s Report. The Conference reflected on the need for a new Commission and a new report to address the challenges for our public lands in the 21st century.

The Conference reviewed proposals and recommendations from the original PLLRC report and reflected on whether, and to what extent, those recommendations have been followed.

The keynote speaker was Harris Sherman, the Undersecretary of Agriculture for Natural Resources and the Environment. Speakers from the U.S. Department of the Interior included Michael Gheleta, Anne Castle, Marcilynn Burke, Paul Smyth, and Alan Gilbert.



Oil Shale Symposium

The NRLC hosted “The Promise and Peril of Oil Shale” symposium in February to debate issues involving oil shale development. Oil shale is a type of sedimentary rock that contains kerogen, which can be processed to make crude oil. Currently, companies are leasing land in Colorado, Utah, and Wyoming for the R&D of technology to tap into shale oil deposits. Although kerogen is an alternative to traditional U.S. oil sources, it is expensive to manufacture and has a higher environmental impact than the traditional sources.

Alan Gilbert, senior adviser to Interior Secretary Ken Salazar, discussed the Obama administration’s “deliberate” approach to oil shale development, and a “second-wave” of requests from three companies—



ExxonMobile, Natural Soda, and AuraSource—for more land for R&D. Gilbert explained that the Department of the Interior is researching these issues to determine whether oil shale mining is feasible in the United States.

View a conference video and speaker presentations at www.colorado.edu/law/centers/nrlc.

Energy Technology in India

About two million people die every year from the harmful respiratory effects caused by traditional burning of biomass, the sole source of energy for many impoverished people. Colorado Law’s Center for Energy and Environmental Security and the Women’s Energy Justice Network held “Saving the Planet, Saving Lives: Village Household Scale Energy Technologies in India, and the Role of Carbon and Micro Financing” in April. Speakers included some of India’s premier experts in technology dissemination to combat poverty—Dr. Priyadarshini Karve of the Appropriate Rural Technology Institute, and Professor Joyashree Roy, PhD, at Jadavpur University—and the Front Range’s top thinkers in appropriate technology design and carbon finance—Ron Bills of Envirofit International and Dr. Elizabeth Lokey, author of *Renewable Energy Project Development Under the Clean Development Mechanism*.

Reapportioning Colorado

Colorado Law’s Byron White Center for the Study of American Constitutional Law presented the 17th Rothgerber Conference on “Government Speech” in January in the Colorado State Capitol. Topics included the Speech Attribution Question, Government Speech 2.0 (New Technologies), The (Instructive) Embarrassment of Government Speech, Government Persuasion on Product Labels, The Manner of Government Speech, and Propaganda for War and Transparency. Speakers included Professors Randall Bezanson from the University of Iowa, Danielle Citron from the University of Maryland, Abner Greene from Fordham Law, Leslie Jacobs from the University of the Pacific, Helen Norton from Colorado Law, and Steven Smith from the University of San Diego.



Citizens United v. FEC

The Byron White Center and the CU Keller Center for the Study of the First Amendment held a panel discussion in March, “Free Speech and Corporate Speech: *Citizens United v. Federal Election Commission*,” in which Professors Robert Nagel, Richard Collins, and Helen Norton discussed this landmark Supreme Court case.

Silicon Flatirons Center

- **Entrepreneurs Unplugged Monthly Speakers**
 - Ryan Martens and Tim Miller of Rally Software
 - Krista Marks, Co-Founder of Kerpoof
 - Tyler Tysdal, Managing Director of Mantucket Capital
 - Howard Diamond, Chief Executive Officer of Diamond Consulting
- **The Digital Broadband Migration: Examining the Internet's Ecosystem:** Phil Weiser, Colorado Law professor and U.S. Deputy Assistant Attorney General, explained the 10th annual event's focus on the Internet's market structure and the need for innovation, the governance challenges for the interconnected Internet service and content providers, and various structures for content providers. He emphasized that a major challenge facing innovations in the computer, mobile phone, and Internet industries is continuing



POWELL

discussion between start-ups and entrenched companies. This will be important to prevent the established firms from interfering with new technologies. Attendees also heard from Former Federal Communication Commission (FCC) Chairman Michael Powell, Disney Executive Preston Padden, and D.C. Court of Appeals Senior Judge Stephen Williams. View video from the conference at www.silicon-flatirons.org.

- **An FCC for the Internet Age: Reform and Standard-Setting:** Last spring, Silicon Flatirons co-hosted events on FCC reform and on innovation economics and new models of governance. The March 2010 conference was a follow-up and confluence of the progress on FCC reform efforts and how new models of governance and standard-setting fit into those efforts. The consensus about reform is foundational to the credibility of any actions the agency might take.
- **The National Broadband Plan and Accessibility for People with Disabilities:** Experts discussed how to fulfill Congress's vision that all Americans, including people with disabilities, share fully in the benefits of broadband. Participants discussed in March how the recommendations in the National Broadband Plan would address the accessibility and affordability barriers faced by people with disabilities, exploring innovation, legal, policy, and regulatory changes, and open government processes. Opening comments were made by Kareem Dale, Special Assistant to the President for Disability Policy, and Julius Genachowski, Chairman of the Federal Communications Commission.
- **Patents and Free and Open Source Software:** Both patents and open source have been credited with technology innovation. But when the two meet in a single system, they may conflict. This conference examined how open, collaborative sharing mesh with a patent's exclusion rights and controlled licensing, patent law's effect on open source software release and distribution, how people can reduce exposure to patent litigation and liability, and whether new models of patent licensing help collaborative sharing.
- **Entrepreneurship Week:** CU's 2nd Annual Entrepreneurship Week in March culminated with Silicon Flatirons' Annual Mile

High Tech Entrepreneurship Conference, "The Role of Place: Entrepreneurial Immigration, Iteration and Innovation," and the CU New Venture Challenge winners. A panel moderated by



Professor Clare Huntington focused on immigration and entrepreneurship, which sparked a conference-long debate on the concept of a "start-up visa" to make it easier for

international entrepreneurs to start a U.S. business. Eight semifinalists competed for the top three places in New Venture Challenge Competition:

- First: Streat Chefs, a start-up company serving gourmet foods from trailers that can move around the Metro area, was created by Top Chef winner Hosea Rosenberg.
- Second: JobSite Visitor, an online platform for managing construction site photos. Colorado Law's Carson Saporta '11 was part of the team.
- Third: Dymotions "Glidecart" is a shopping-cart attachment that aids those with limited mobility to walk longer distances.

Addressing Cultural & Racial Issues Tribal Legal Protection

Colorado Law co-sponsored a series of events highlighting the successes, failures, and changes in the landscape of American Indian law in January. Kicking off the series, Professor Frank Pommersheim of the University of South Dakota School of Law presented a summary and held a signing of his book, *Broken Landscapes: Indian Tribes and the Constitution*. He theorizes that the federal government repeatedly has failed to respect tribal sovereignty. He offered a solution: a Constitutional amendment reaffirming tribal sovereignty and ensuring that Indian tribes and people receive the respect and dignity they deserve.

Colorado Law also hosted "The Next Great Generation of Indian Law Judges," a symposium exploring the legal issues that U.S. Indian tribes and people currently face, focusing on judicial interpretation of federal statutes. In attendance were Ninth Circuit Court Judge William Fletcher and Utah Court of Appeals Judge William A. Thorne, Jr. The symposium covered topics ranging from criminal jurisdiction and state authority in Indian country to the interpretation of statutes, treaties, and Constitutional issues. It featured Indian law experts from around the country, including Colorado Law Professors Charles Wilkinson and Jill Tompkins, and Dean David Getches.

Denver Mayor Hickenlooper Speaks at Spring Commencement



The Class of 2010, with 176 members, is the largest class to graduate in Colorado Law history. The 115th annual Spring Commencement Ceremony started on May 7 at 6:00 pm in Macky Auditorium with a welcome speech by Dean David Getches, followed by Professor Paul Campos' recognition of the Order of the Coif members and introduction the Honorary Order of the Coif Recipient, Lorenzo Trujillo '93. Class President Jon Fee made a short speech recounting the past year and wishing his classmates well, Class Vice President Jenna Seigel recognized this year's student and faculty awards, Class Treasurer Erik Schuessler presented the class gift to the Loan Repayment Assistance Program, and Class Secretary Katie Kramer introduced Keynote Speaker Mayor John Hickenlooper. Mayor Hickenlooper gave the graduates three main points: be nice, work hard, and be lucky. He spoke about the importance of relationships and that consensus comes from building relations, which has helped him be effective.

Overrepresentation of African Americans in the Criminal Justice System

Colorado Law's Black Law Student's Association hosted a conference in February, "Still Chained? The Overrepresentation of African Americans in the Criminal Justice System," that addressed not only the problem of the disproportionate representation of Blacks in the criminal justice system, but also sought potential solutions to this tragedy of American society.

"African Americans make up 13 percent of the general U.S. population, yet they constitute 28 percent of all arrests, 40 percent of all inmates held in prisons and jails, and 42 percent of the population on death row," said Dr. Barry Krisberg, former president of the National Council on Crime and Delinquency, during his testimony before the House Judiciary Subcommittee on Crime on October 29, 2009. "In contrast, whites make up 67 percent of the total U.S. population and 70 percent of all arrests, yet only 40 percent of all inmates held in state prisons or local jails and 56 percent of the population on death row."



Professor Ann England, Associate Dean Dayna Matthew, and Jennifer Ford '10 organized the event to educate the legal community about this issue and begin looking at solutions. Speakers included Professor of Law Kevin Reitz of the University of Minnesota, Professor of Psychology Jennifer Eberhardt at Stanford University, and Professor of Law Paul

Butler of George Washington University. The program concluded with a dynamic panel of legal professionals—The Honorable Judge Wiley Daniel, Denver Police Department's Division Chief of Research, Training and Technology Dr. Tracie Keese, State Training Director Ann Roan '89, Denver's Chief Deputy District Attorney Lamar Sims, and trial attorney Lisa Wayne.

Professor Rose Addresses Race and Housing at Coen Lecture



At Colorado Law's 53rd Annual John R. Coen Lecture in February, University of Arizona College of Law Professor Carol Rose spoke about the historical practice of racially restrictive covenants and its continued impact today. In her speech, "Racing Property Racially: Restrictive Covenants from the City Beautiful to *Shelley v. Kraemer*—and Beyond," she explained that the housing covenant, a form of contract that enforces neighborhood rules on homeowners and homebuyers, was a product of the new urbanism of the 20th century. As segregation became socially acceptable, some covenants included clauses that the homes could not be sold to non-whites. In 1948, the U.S. Supreme Court decided in *Shelley* that making private, voluntary racial covenants was not unconstitutional, but that the state action was unconstitutional. While racially restrictive covenants are no longer used, she argued that voluntary social segregation is still common. The courts have been wary of expanding *Shelley* beyond its narrow application to housing covenants.



Assisting Communities

Professor Krakoff Argues the Definition of Indian Land



Professor Sarah Krakoff filed an amicus brief in February in the Tenth Circuit Court of Appeals, en banc, arguing in favor of the U.S. Environmental Protection Agency and the Navajo Nation. Other Colorado Law Indian law professors also signed the brief.

Hydro Resources, Inc. v. Environmental Protection Agency addresses whether a proposed uranium mine is within Indian country. The Navajo Nation intervened in the suit, as the area in question is populated entirely by Navajo and their spouses and much of the surrounding land is held in trust for the Navajo Nation. Hydro Resources argues that “dependent Indian community,” part of the federal statutory definition of Indian land, refers to the individual piece of land in question. Professor Krakoff argued that the definition proposed by Hydro Resources does not conform to any commonly accepted meaning of the term “community.” Instead, she proposes that the Tenth Circuit consider the area and determine that the demographics qualify it as a “dependent Indian community.” Professor Krakoff said, “If this community isn’t considered a dependent Indian community, it’s hard to imagine any community outside a reservation would be.”

Hatfield Spurs Online Closed Captioning for the Deaf

Dale Hatfield, executive director of Colorado Law’s Silicon Flatirons Center, informed the Walt Disney Company of a need to include closed captioning of sign language conversations on all of its long-form programs on ABC.com.



During the Federal Communications Commission’s (FCC) broadband inclusiveness field hearing at Gallaudet University in November 2009, deaf actress Marlee Matlin told the FCC that closed captions were being taken out of broadcast content being shown on the Internet. Hatfield informed Disney

of Matlin’s statements and in response, Disney expanded to include closed captions in all its long-form programs online at ABC.com, including its reality and live shows. Disney was the first television network to caption all of its online long programming.

Preston Padden, Executive Vice President of Worldwide Governmental Relations at Disney, said, “This is just one example of the prominent and constructive role that Silicon Flatirons plays in national telecommunications and media policy.”

Professor Bernthal Helps Boulder Attract Google

Clinical Professor Brad Bernthal ’01 and Research Fellow Kaleb Sieh ’09 worked with the city of Boulder to attract Google’s proposed experimental, affordable, ultra high-speed broadband network. Google’s network would provide 1-gigabyte-per-second Internet service, which is roughly 100 times faster than current Internet speeds. In February, Professor Bernthal convened a public/private ad hoc committee of CU-Boulder

representatives, city government officials, and local entrepreneurs and business people. The committee created the Boulder Fiber Forever website, which attracted more than 20,000 hits and 3,000 community submissions in the four weeks before Google’s deadline. Professor Bernthal and Sieh helped draft and edit portions of



Boulder’s formal response to Google. Boulder hopes that the Google network will provide jobs, economic vitality, and enhanced communication services. Google plans to announce the winning city later in 2010. Visit the site at <http://boulderfiber.com>.

Testifying Professor Squillace Testifies for Boaters

Professor Mark Squillace testified in March before the Colorado House Agriculture Committee and Senate Judiciary Committee on the controversial Right to Trespass bill, HB 1188. Professor Squillace and several of his students spoke for the rights of private boaters. “Colorado has one of the country’s most restrictive floating laws,” he said. The bill has pitted rafting companies against private property owners in a legal entanglement that is more than three decades old. The Senate Judiciary Committee voted 4-3 for the bill and it now goes to the full Senate.

Professor Norton Testifies Against Age Discrimination



Professor Helen Norton testified in May before the U.S. Senate Committee on Health, Education, Labor and Pensions hearing to examine S.1756, to amend the Age Discrimination in Employment Act of 1967 (ADEA) to clarify the appropriate standard of proof. She also testified before the U.S. House of Representatives' Committee on the Judiciary in June on the same bill, H.R. 3721. At the hearing, "Protecting Older Workers Against Discrimination Act," Professor Norton stated, "The Supreme Court's 2009 decision in *Gross v.*

FBL Financial Services, Inc. significantly undermines older workers' ability to enforce their rights under ADEA, and threatens to do the same for workers seeking to enforce their rights to be free from discrimination and retaliation under a wide range of other federal employment laws. S.1756 would replace the causation rule articulated by the *Gross* Court with the causation standard long in place under Title VII that more effectively furthers Congress's key interest in removing and deterring barriers to equal employment opportunity."

Professor Hart Testifies Against Opt-out Program

Professor Melissa Hart testified before the Colorado House Judiciary Committee in March on House Joint Resolution 1009 that would have given Colorado the option to opt-out of any health care reform program passed by the U.S. Congress. Testifying for the Colorado Center on Law and Policy, she said, "I think it's an extremely radical interpretation of the 10th Amendment."

Lecturing

Professor Carpenter Chairs FBA Indian Law Conference

Professor Kristen Carpenter was the lead chair for the Federal Bar Association's 35th Annual Indian Law Conference, "Reflecting Back, Looking Forward," near Santa Fe in April. The conference addressed legal areas and their impact on Indian law, including health care reform, the "Cobell settlement," sovereign immunity litigation, cultural property protection, and tribal court authority in domestic violence cases. Professor Carpenter mentioned, "I have attended the Annual FBA Indian Law Conference since my own 1L year in 1995 and have always found it to be a uniquely important gathering of tribal leaders, law students, attorneys, and scholars." Professors Richard Collins and Charles Wilkinson participated in panels, and students from Colorado Law's Native American Law Student Association attended.



Professor Guruswamy Lectures on Energy Problem Solving

Professor Lakshman Guruswamy presented this year's *Colorado Journal of International Environmental Law and Policy* Annual Spring Lecture. His lecture, "Universities and Law Schools as Incubators: Energy & Environmental Problem Solving," focused on the role of universities and law schools in solving energy and environmental problems at all levels.

Dean Getches and Professor Hart at Colorado Access to Justice Conference

Dean David Getches and Professor Melissa Hart spoke in April at the Colorado Access to Justice Conference, "Moving Forward to Equal Justice," which brings together Colorado lawyers, professors, and students who recognize the need to provide greater access to those who face barriers to the legal system. Dean Getches opened the conference alongside Colorado Access to Justice Commission Chair Frederick Baumann and Denver University Sturm School of Law Dean Marty Katz. Professor Hart, who helped launch Colorado Law's Public Service Pledge Program, participated in a panel discussion of "Law School as a Point of Access."

Professor Hart will be the new Director of Colorado Law's Byron White Center for the Study of American Constitutional Law.

Professor Spain Presenting at International Law Conference in Japan

Professor Anna Spain was invited to present her paper, "The Emerging Architecture of International Dispute Resolution in an Era of Climate Change" at the Third International Four Societies Conference in Hyogo, Japan, in August 2010. Her paper, one of only four selected by the American Society of International Law, addresses the current limitations of the international

legal system in resolving international disputes over natural resources. Professor Spain recommends institutionalizing inter-disciplinary approaches to international dispute resolution that utilize mixed methods of adjudication and

mediation to solve the complex problems surrounding natural resource disputes. She believes that such an approach would provide long-term solutions and prevent the re-emergence of such conflicts in the future. Spain said, "I hope to encourage thinking about how international law can promote global peace and security while upholding the highest values of our collective humanity in an era of climate change."





Departing

Professor William Pizzi, an expert in criminal law and procedure, is retiring. He has been at Colorado Law since 1975 and has helped coordinate many of the school's study abroad programs. Professor Pizzi worked on the Colorado Bar Association's Ethics Committee and the Governor's Columbine Review Commission.

Barbara Bintliff, the Nicholas Rosenbaum Professor of Law and Director of the William A. Wise Law Library, is moving to the University of Texas. She will be the new director of the Tarlton Law Library and Jamail Center for Legal Research, the Joseph C. Hutcheson Professor in Law, and a leader of the new MSIS/JD dual degree program. Professor Bintliff came to the University of Colorado in 1984 and is regarded as a noted leader, teacher, scholar, and consultant in the law library profession.



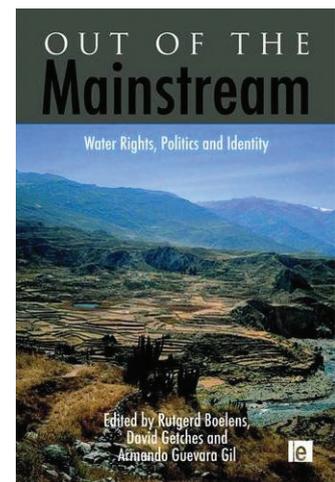
Lorenzo Trujillo '93, Assistant Dean for Students and Professional Programs, also retired. Since 2004, Trujillo administered student organizations, law journals, legal writing program, clinics, ABA accreditation, academic assistance program, moot courts, the Loan Repayment Assistance Program, and many other responsibilities. Trujillo is now Of Counsel at Sherman and Howard.



Professor Laura Spitz, who taught contracts and bankruptcy, is leaving Colorado Law after five years to return to her native Canada.

Dean Getches' Book on Water

Out of the Mainstream: Water Rights, Politics and Identity, co-edited by Rutgerd Boelens, David Getches, and Armando Guevara Gil, was published in March by Earthscan Publications. Water is a source of life, culture, power, conflicting interests, and identity battles. This book examines the multi-scale struggles for cultural justice and socio-economic re-distribution that arise as Latin American communities and user federations seek access to water resources and decision-making power regarding their control and management. It is set in the dynamic context of unequal, globalizing power relations, politics of scale and identity, environmental encroachment, and the increasing presence of extractive industries that are creating additional pressures on local livelihoods. Against all odds, people are actively contesting neoliberal globalization and water power plays. In doing so, they construct new, hybrid water rights systems, livelihoods, cultures and hydro-political networks, and dynamically challenge the mainstream powers and politics.





Challenging Times: Scholarship Update

Recent Scholarship Gifts

Our thanks to all who have contributed to named scholarships. The following will be awarded for the first time in 2010:

- The **Class of 1959 Scholarship**, established by class members in honor of their 50th reunion, is awarded to one or more second- or third-year students with demonstrated financial need.
- The **Class of 1969 Scholarship**, established by class members in honor of their 40th reunion, is awarded to one or more second- or third-year students with demonstrated financial need.
- The **Class of 1974 Scholarship Fund**, established by class members in honor of their 35th reunion, is awarded to an incoming student based on demonstrated merit and financial need.
- The **Kenneth Norman Kripke and Derril K. Kripke Scholarship**, established by Derril Kripke in 2005 in memory of her husband, is awarded to one or more deserving students pursuing a career in trial law who have volunteered services on behalf of the Legal Defense Fund or other programs supporting indigent persons.

Dean's Fund

Sixty-seven alumni have contributed to the Dean's Fund at Giving Society levels this year. You are welcome to join us at this level of involvement and participate in related Giving Society activities (see details at right).

Your contribution at any level will help our students, as we continue to direct most of the Dean's Fund to scholarships. Incoming students are particularly affected by a 15 percent increase in entering tuition and fees to \$28,934 per year for residents. **With Dean's Fund contributions made by July 31, we aim to increase incoming scholarship awards**, giving students greater incentive to accept admission to Colorado Law in the face of more competitive financial offers from other schools.

"My scholarship at the University of Colorado Law School allowed me to choose public service as a career. I commend those who commit to making the same opportunities available to future generations of Colorado Law students."

—Colorado Governor **Bill Ritter '81**



"My scholarship was invaluable in my mainly loan-financed education, but receiving a scholarship in the name of Colorado Law and its alumni made the gift much more personal. Attending a school that supports its students in many different ways—including financially—helped me feel at home in the law school community."

—Angela Aibner '09



Dean's Fund Giving Societies

Dean's Cabinet

(\$5,000 and up)

- Recognition in Fall *Amicus*
- Dean's Mid-Year Report
- Denver Spring/Summer Lunch
- Homecoming Breakfast
- Dinner with the Dean

Dean's Circle

(\$2,500-4,999)

- Recognition in Fall *Amicus*
- Dean's Mid-Year Report
- Denver Spring/Summer Lunch
- Homecoming Breakfast

Dean's Club

(\$1,500-2,499)

- Recognition in Fall *Amicus*
- Dean's Mid-Year Report
- Denver Spring/Summer Lunch

"I am very thankful to receive scholarship support. It is an academic honor and a financial freedom. In addition, it has provided me the opportunity to meet and learn from Colorado Law alumni. I look forward to the day when I will be able to help young lawyers in a similar manner."

—Stu Gillespie '10





When there's a will, there's a way.

dream big

Your will may be your way to nourish promising, legal minds. Build the leaders of tomorrow who will solve problems, serve the community, and pursue justice.

make a difference

So dream big. Support your passion, make a real difference, and leave your imprint on the University of Colorado Law School (and, perhaps, your mark on the world) with a bequest.

support your passion

To find out how easy it is to make a gift through your will, obtain sample bequest language, or learn about other planned giving options, contact Marilyn Moses, Assistant Director of Development, at 303-492-1744 or marilyn.moses@cufund.org.

leave your imprint



UNIVERSITY OF COLORADO
FOUNDATION





Letter from Law Alumni Board Chair A Common Heritage



Fellow Alumni:

This past May, as the alumni representative, I participated in the graduation ceremony. How wonderful to walk into Macky Auditorium in cap and gown, to savor the moment of accomplishment and not have to worry about the upcoming bar exam or obtaining gainful employment as an attorney.

For the Class of 2010, the largest class in Colorado Law history and our newest alums, the joys and tribulations of being new attorneys now await them. The

transition from student to attorney is both a quick and a lengthy one.

Quick because one moment you're on campus contemplating a class outline, and the next clients are asking—and taking—your advice in a subject matter area that may be wholly new to you. Lengthy because it can take years to develop content knowledge, professional judgment and skill, as well as time to learn how best to apply the degree you've earned.

Regardless of your location on the timeline, as one graduation speaker pointed out, it is the relationships you make during law school that stand the test of time. Those relationships bind us with a common "heritage," that of being Colorado Law alumni.

The past year for the University and for the Law School in particular, was a trying one financially, and the next looks to be no different. While our school has a spectacular building, nationally known faculty, and outstanding students, it continues to face an ever-growing distance between state support and financial realities.

The Law School administration has worked to limit the burden on students, faculty, and staff, but the budget has not gone unscathed. Though the cuts have been limited, the concern is persistent that eventually they will begin to impact services, including the outreach and connection the Law School has with its alumni.

I know I speak for the Board when I say we do all we can to ensure that our recent successes—a robust Homecoming and Reunion Program, our most successful Alumni Banquet ever, and this very magazine you're reading—continue to flourish.

Many of you give unfailingly of both your time and funds to Colorado Law, and that effort makes a tremendous difference in the quality of programs the school is able to offer. However now, more than ever before, I urge you to meet or redouble your past efforts and ask your fellow alumni to do the same.

Our common heritage extends beyond us to current students and to those who have yet to apply to Colorado Law. It remains on us to take the lead, however, and keep our relationships strong and vibrant.

It has been a privilege to serve the past year as your Chair.

Eric Rothaus '01
lawboardchair@colorado.edu

Letter from Director of Alumni Relations Mentor a Law Student



Dear Alumni:

Many alumni profiled in this and past *Amicus* issues mention the influence that a mentor had in their careers. And many of you ask how you can give back to the law school and become more involved. Well, Colorado Law has a new Student-Alumni Mentoring Program!

Give your time and pass on your wisdom to an appreciative Colorado Law student. More than ever, our students need additional support navigating entry into the legal world.

Coach them on activities, facilitate new opportunities, counsel them on course selection and extracurricular activities, and teach them the art of networking.

- Mentoring takes less time than you expect
- Five years of experience is enough to be a mentor
- Mentoring expands your network
- Encourage your fellow alumni to join

Please help the new Student-Alumni Mentoring Program succeed and sign up before the end of August. We hope to have 50 alumni mentors at the start of the Fall 2010 semester and an additional 50 by Spring 2010.

Stay connected!

Elisa Dalton
303-492-3124
lawalum@colorado.edu

New Student-Alumni Mentoring Program

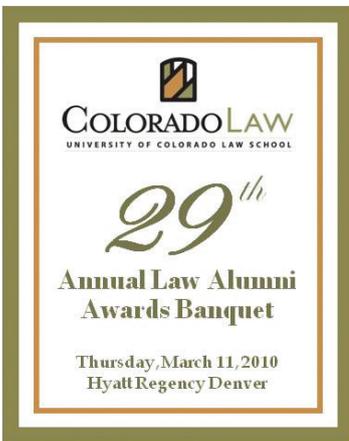
"Your Present. Their Future."

Colorado Law students need mentors to give them advice on specific fields of law, courses, professional groups, volunteer activities, networking, and many other areas. Take a student to lunch, show them your office, bring them to court, make them your guest at a bar association event, or let them shadow you for a day. It will forever affect them and you.

The Alumni Mentoring Program is a new student-run program that pairs current Colorado Law 2L and 3L student mentees with volunteer alumni mentors in the student's desired area of practice.

- Alumni working in Colorado (for now)
- A commitment for a minimum of six months
- Two face-to-face meetings and available via email and phone for questions

Sign up at www.colorado.edu/law/alumdev/mentor.htm



Record Support for 2010 Alumni Banquet

Almost 500 Colorado Law alumni and guests attended the Banquet, which raised \$44,000 for student scholarships thanks to generous contributions from law firms, businesses, nonprofits, alumni, and friends.

Distinguished Achievement Awards

Senator Brandon C. Shaffer '01
for Recent Alumnus

Gilbert Goldstein '42 of MDC Holdings,
Inc. for Executive in Industry

Melissa D. Hubbard '83 for Private Practice

William Lee Knous Award

Gary M. Jackson '70 of DiManna &
Jackson LLP in Boulder

Watch the video of testimonials from
Jackson's friends and family at

[http://lawweb.colorado.edu/
events/media.jsp](http://lawweb.colorado.edu/events/media.jsp)

Speakers and Presenters

Dean David Getches

Todd Fredrickson '91

Alice Madden '80

Larry A. Mizel

Judge Larry Naves '74

Eric Rothaus '01, Law Alumni Board Chair

Jared Seidenberg '04

Jan Steiert '78, Banquet Chair

Lead Sponsors

Capstone Sponsor: MDC/Richmond
American Homes Foundation

Keystone Sponsors: BAR/BRI of Colorado;
Gibson, Dunn & Crutcher; and Wheeler
Trigg O'Donnell





Stay Connected!

Go to www.colorado.edu/law/alumdev to:

- Update your contact information
- Submit a Class Note
- Sign up for the Student-Alumni Mentoring Program
- Receive the Alumni eNewsletter
- Connect to LinkedIn and Facebook
- View alumni and CLE events
- Connect with volunteer opportunities
- See "Where in the world are our alumni?"
- Help identify our "Lost" alumni

Go to www.colorado.edu/law/careers to:

- Sign up for the *BuffaLaw Jobs Newsletter*
- View upcoming career events
- Post job opportunities
- Contact the Office of Career Development at 303-492-8651 or lscareer@colorado.edu

Hire Smart...

Colorado Law graduates have a **94 percent*** bar exam passage rate.

...smart lawyers, smart business decisions



* July '09 Colorado Bar Exam First-timers



Class Actions

'47



Bob Inman, a founding partner of Inman Flynn Biesterfeld Brentlinger & Moritz, celebrated his 90th birthday in January.

'58

Harry Sterling retired from Sherman & Howard after a 52-year law career.

'68

Steve Farber is working with Hollywood producer Charlie Lyons to get his book *On the List* turned into a motion picture.

'69

Richard Ball is running for State Senator in District 15, Larimer County.

Hank Brown has retired from his professor position at the University of Colorado. In February, he was the featured speaker at the Logan County Republican Lincoln Day Dinner, and in May, he received the CU-Boulder's 2010 George Norlin Award at the 80th Annual Alumni Association Awards Ceremony.

'71

Stephen Carter joined Gardfield & Hecht as Of Counsel.

'72

James Allison was inducted into the American College of Trial Lawyers for his work as the head of the criminal division of the U.S. Attorney's Office in Denver.

'74

Larry Naves retired as Denver's District Court Chief Judge and joined the Judicial Arbiter Group, working in remediation and arbitration.

'77

John Suthers is seeking reelection in November for Colorado Attorney General.

'78



Ann Frick, formerly of Jacobs Chase Frick Kleinkopf & Kelley for 15 years, was appointed by Governor Ritter to the Denver District Court bench. If retained by voters, Frick's full term will be six years.

'79

Mark Fogg received the Denver Bar Association's 2010 Award of Merit.

'80

Edward Stirman retired as a county court judge in Fort Collins, Colorado, and set up a new law practice focused on bankruptcy and estate planning: www.stirmanlawoffice.com.

'82

Stan Garnett, Boulder County's District Attorney, is a Democratic candidate for Colorado Attorney General.

'84

Neal Cohen became a partner at Holme Roberts & Owen's Boulder office.

'85



Christopher Macaulay was named president of the Denver-based company StrucSure Home Warranty.

'86

Stephen Bretsen, Associate Professor and Volkman Chair of Business and Law, was granted tenure at Wheaton College, Illinois.

F. Brittin Clayton was promoted to Shareholder at the Denver office of Isaacson Rosenbaum.

'87

Bob Comer joined the Faegre & Benson Denver office as Special Counsel.

'88

Nancy Kuhn is the Director of Jackson & Campbell's Business Law group, specializing in Federal tax matters.

'89

Elsa Martinez-Tenreiro was awarded the 2009 Chris Miranda Outstanding Hispanic Lawyer award by the Colorado Hispanic Bar Association.

'91



Markus May was named Chairman of the Chicago Bar Association Corporation and Business Law Committee and is on the Board of Directors for the Midwest

Business Brokers and Intermediaries Association.

Louise Staab was named as a shareholder at Robinson Waters & O'Dorisio.

'92

Kerri Doll joined the Illinois Bankers Association as Vice President and Senior Counsel in the Springfield office.

'93

Kelly Barlean, city attorney for Sterling, is running for CU Regent in the Fourth Congressional District.

Daniel Deasy became a partner in Heckenbach/Ammarell.

Curt Sanders was named partner at Sherman & Howard.

'94

Michael Carrigan is running for reelection for CU Regent the First Congressional District.

Vance Knapp has joined the Sherman & Howard Denver office as Partner.

'95

George Brauchler was named partner at the Denver law firm Feldman Nagel & Associates.

Clayton James joined Hogan Lovells in Denver as a Partner.

'96

Lew Harstead became a partner at Johnson & Repucci.

Larry Smith was named Executive Director of the Association of Legal Administrators, which offers legal management education, resources, and networking.

'97

Luke Brennan joined Ritsema & Lyon's Grand Junction Office.

Elizabeth Brodsky received the Pro Bono Lawyer of the Year Award from the Boulder County Bar Association.

'98

Jennifer Evans joined Faegre and Benson's health care practice as Special Counsel in Denver.

Katrina Jones was appointed as a Deputy Public Administrator for the 17th Judicial District (Adams and Broomfield Counties) and continues to practice elder law as a senior associate at Chayet & Danzo.

Anastasia Khokhryakova was elevated to Counsel in Hogan Lovells' Denver office.



Christine Mastin, Managing Partner of Mastin Law Firm, was named one of the *Denver Business Journal's* 2010 "Forty Under 40" for her work in immigration law. She is

also running for State Representative for House District 3, which encompasses Englewood, South Denver, West Wash Park, and Cherry Hills Village.

Kelly Matthews was named Shareholder at Robinson Waters & O'Dorisio.

'99

Sean McAllister was named to the Board of Directors of Cannabis Science, a research firm focused on developing alternative delivery methods for medical marijuana. He is the recent founder of the Cannabis-Business Institute, a consulting firm representing medical marijuana dispensaries in Colorado. He was appointed to Governor Ritter's Drug Policy Task Force, a subcommittee of the statewide Colorado Criminal and Juvenile Justice Commission.

G. Aaron Suazo became a partner in Heckenbach/Ammarell.

Class Actions

'00

Ryan Christ joined Sherman & Howard's Denver office as Counsel in the firm's real estate practice.

Erin Hunter became a member of West, Brown, Huntley & Thompson.

Robert Traver was named as a Principal Partner at the Sheridan Ross.

Pamela Vanderpool joined Kelly Garnsey Hubbell + Lass as Of Counsel.



Kara Veitch was named Shareholder at Isaacson Rosenbaum, was the recipient of the Denver Bar Association's 2010 Young Lawyer of the Year award, and was named one of the *Denver Business Journal's* 2010 "Forty Under 40" for her community involvement helping women and children.

'01

Jonathan Anderson, Of Counsel at Holland & Hart, was named one of the *Denver Business Journal's* 2010 "Forty Under 40."

Stuart Corbridge was named partner of Vranesh and Raisch.

Stephen Csajaghy was named Partner of Rothgerber Johnson & Lyons.

Jason Dunn, shareholder at Brownstein Hyatt Farber Schreck, was named one of the *Denver Business Journal's* 2010 "Forty Under 40" for his work fighting against meth use in Colorado.

Adam Peters joined Wilkinson Barker Knauer's new Denver office.

Laurie Ronholdt joined Beiging, Shapiro & Burrus as an Associate.

J. Michael Shea, Director of the Licensing and Enforcement Division for the Colorado Secretary of State, received the National Notary Association's 2010 March Fong Eu Achievement Award for his decades-long effort to establish professional standards for Colorado's Notaries Public.

Michael Snider was named Partner in Baker & McKenzie. He joined the Houston office's Tax Practice Group in 2006.

Craig Welling was appointed as Governor Bill Ritter's Chief Legal Counsel.



David Wolf and **Norie Kizakiwere** married at Nata-dera Temple in Norie's hometown of Nata, Japan. Norie and David live in Boulder. David is the Chief Investment Officer and

a Managing Partner of BSW Wealth Partners. David can be reached at david@bsw.com.

'02

Alison Wadle was named Partner of Holme Roberts & Owen.

'03

Abraham Laydon has joined Burns Figa & Will as Special Counsel.

Cyrus Rajabi organized a fundraising event in Denver called Hope for Haiti to provide relief for earthquake victims, and raised more than \$9,000.

'04



Jocelyn Fabry was named Chief Judge of the Sault Ste. Marie Chippewa Tribal Court.

Suzanne Leff joined Winzenburg Leff Purvis & Payne as an Associate.

Lucas Lorenz joined Miletich Pearl as an Associate.



Adam and Karen Trojanowski had their second child, Charlie, on December 17.

'05

Nikea Bland joined Elkus & Sisson as an Associate.

James Clay was named Partner of Hogan Lovells.

Crisanta Duran is running for Colorado State House of Representatives' 5th District (Cañon City, Cimarron Hills, Colorado Springs, and Fort Carson, Colorado).

Eric Gunning joined Wilkinson Barker Knauer's new Denver office.

Paul Wisor joined Sherman & Howard's Denver office as an Associate.

'06

Joan Marsan joined Brownstein Hyatt Farber Schreck's Albuquerque office as an Associate in the natural resources group.

'07

Ryan Kalayama joined Garfield & Hecht as a Litigation Associate.

Richard Murray, Jr. joined Hall & Evans as a Special Counsel.

Mark Walker joined Wilkinson Barker Knauer's new Denver office.

'08



Christopher LaCour married **Laura Guerra** in January in Texas. The couple lives in Clarksville, Tennessee, and Christopher is a Captain in the JAG Corps.

'09

Donald Andrews joined Garlin Driscoll Howard as an Associate in the firm's civil and criminal defense litigation practice.

Kendall Burgemeister joined Bratton Hill Wilderson & Lock as an Associate.

Barry Burns joined Kutak Rock as an Associate in the structured finance department.

Sera Chong joined Faegre & Benson's health care and nonprofit practice in Denver as an Associate.

Melanie Gavisk joined Arnold & Porter as an Associate.

Jay Harris joined the Crow Tribal Legislature as an Associate Counsel in Crow Agency, Montana, and is an enrolled member of the Tribe.

Emily Holmes joined Brownstein Hyatt Farber Schreck as an Associate.

Rebecca Klymkowsky will be taking a position of law clerk for 20th Judicial District Chief Judge Roxanne Ballin in August 2010. She is moving from a position as Law Clerk at the Federal District Court for the Middle District of Pennsylvania.

Jonathan Langer joined Baker and Hostetler's Denver firm as an Associate.

In Memoriam

Charles W. Kreager '37 passed away May 2 at age 96. He practiced property and probate law and served in the FBI during World War II.

Joseph Colin James Jr. '40 died April 15 at age 93. James was a Lieutenant in World War II-Pearl Harbor, and then practiced law in Colorado and lectured and served in many genealogy associations.



Robert F. Tyler Sr. '40 passed away on February 23 at the age of 95. Tyler served as the Deputy District Attorney in Delta, Colorado, before serving in WWII, and then practiced law in California for 48 years.

Kenneth H. York '41 passed away this past December following complications from a stroke. York became a Professor of Law at both UCLA and Pepperdine and Editor of the legal quarterly, *The Brief*.

Matt J. Kikel '46 passed away this past November at age 88. He was a Pueblo County district attorney and then chief judge of Colorado's 10th Judicial District.

Clyde R. Hampton '52 passed away February 14 at age 83 from Parkinson's. He was a pioneer environmental lawyer, employed for 33 years as a General Attorney for Conoco. He was active in the Colorado Bar Association, American Bar Association, Rocky Mountain Mineral Law Institute, and American Petroleum Institute.

John B. Howse '69 died in December at age 81. Howse was an Army pilot, serving 20 years and retiring out of Vietnam in 1966. He practiced law in Colorado before moving to Corpus Christi, where he taught all the law-related courses at Texas A&M-Corpus Christi.



Ronald Lee Ballard '72 passed away on January 25. He joined the law firm of Fennemore Craig where he eventually became a shareholder in 1978.

In Memoriam



Jay Bauer '72 passed away on March 2. He established a law practice in Breckenridge, Colorado, and was considered one of the state's preeminent real estate lawyers and

provided educational presentations to lawyers at the annual Colorado Real Estate Symposium. Bauer served on the Colorado Bar and Summit County Bar Associations and co-hosted a local Summit County radio program.



Larry G. Johnson '77 died unexpectedly of a heart attack on December 27. Johnson practiced in at Robert J. Hopp & Associates as a construction, real estate, and business transactional/

trial attorney.

Alan L. Inglis '83 died on March 31 after being hit by a car while riding his bike. He served in the U.S. Navy Air and was an Air Force Master Marksman. Inglis owned a solo practice civil litigation law office in Rancho Cucamonga for the past 25 years.

John J. Matthew '87 passed away peacefully on December 3 at age 63. Matthew practiced law for a short time and then joined RE/MAX Alliance. He retired in 2002 as the number one individual RE/MAX agent for the State of Colorado and the Rocky Mountain Region.

Jane M. Harm '92 passed away on April 6. Harm practiced corporate law as a shareholder at Lohf Shaiman Jacobs Hyman & Feiger, focusing on mergers and acquisitions.

Warren P. Myers '09, who passed away May 9, was a practicing immigration attorney in Longmont. He had served as a legal intern at the Immigration Court in Denver and as an intern at the non-profit Immigrant Legal Center of Boulder County.

Clyde O. Martz, who passed away May 18, was retired senior of counsel in Davis Graham & Stubbs' natural resources department. He joined the firm in 1962 after serving 15 years as a Colorado Law professor of natural resources law. He served as Assistant Attorney General of the Lands and Natural Resources Division of the U.S. Department of Justice (1967-69), Solicitor of the Department of the Interior (1980-81), mining law consultant to the President's Materials Policy Commission (1951), consultant to the Public Land Law Review Commission (1968-69), and Colorado Special Assistant Attorney General (1971-75). In 1951, he published the first natural resources law casebook, *Cases and Materials on the Law of Natural Resources*, combining the previously discrete subjects of water law, mining law, and oil and gas law. Donate to the Clyde Martz Endowment for the Natural Resources Law Center at www.cufund.org/giving-opportunities/fund-description/?id=7101.



Know a Potential Lawyer?

Colorado Law has a proud history and produces great lawyers. Our alumni have the best understanding of what qualities an individual must have to be successful in our law programs. Thus, we place a huge value on alumni referrals. Do you know someone who would make a good addition to the Colorado Law student community? Tell interested undergraduates who impress you about the Law School and help continue our high standards. Give this referral certificate to a promising applicant and create a future alum.



COLORADO LAW

Alumni Referral

We are pleased to waive the \$65 application fee for the following applicant:

Applicant's Name

Alum Name

Class Year

Alum Address

Applicants must include this card with their application.

6/2010

Colorado

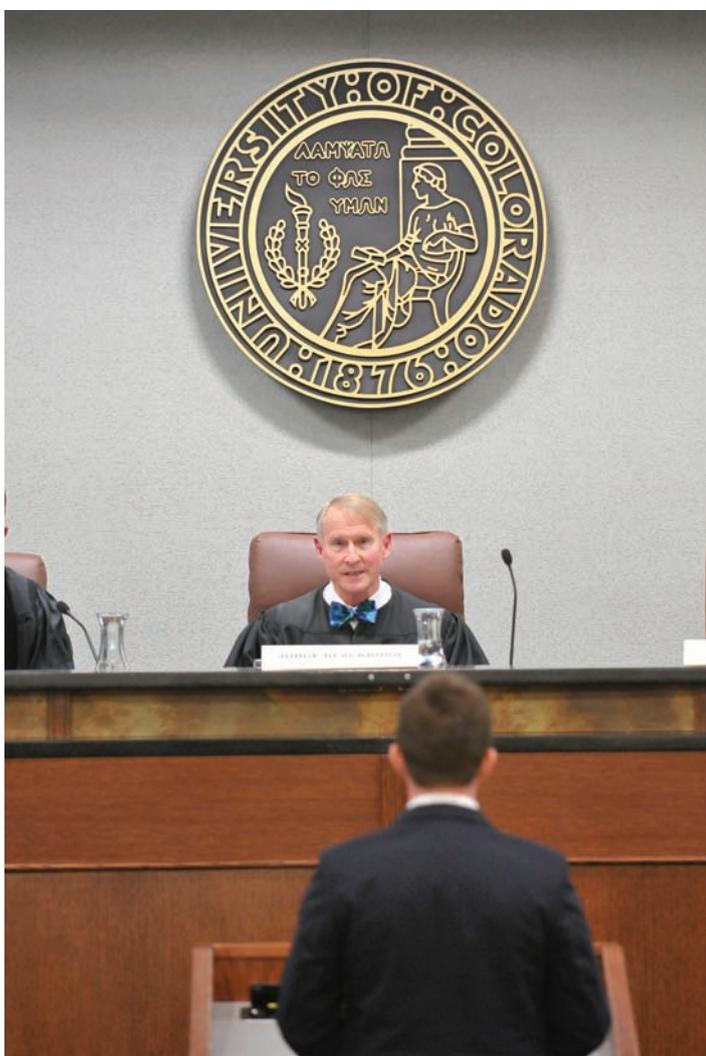
University of Colorado at Boulder

Law School
401 UCB
Boulder, Colorado 80309

Non-Profit Org.
US Postage
PAID
Denver, CO
Permit No. 1577



Law School Calendar



2010

September 8

Silicon Flatiron Center's Conference: Wireless Broadband: Markets, Models and Spectrum

October 4

Silicon Flatirons Conference: From Broadcast (MULTICAST) to Video-Anywhere (UNICAST), Denver

October 22-24

Homecoming / Reunion Weekend (CLE)

November 4

Austin W. Scott, Jr. Lecture: Professor Scott Peppet

2011

March

30th Annual Alumni Awards Banquet

March 28

John R. Coen Lecture: Yale Law Professor William Eskridge