

Natural Resources Law Institute and Environmental and Natural Resources Law Program

Annual Report 2009

INSIDE THIS ISSUE

On the Horizon in the 2009-10 Academic Year	2
Major Events in 2008-09	3
Another Banner Year for Moot Courts.	4
Distinguished Graduates 2008	5
William Funk Named to Robert E. Jones Professorship.	6
Faculty Scholarship 2008-09	7
Pacific Environmental Advocacy Center (PEAC)	8
International Environmental Law Project (IELP)	10
Center for Animal Law Studies (CALS)	12
Faculty Presentations	16
<i>Animal Law</i>	17
<i>Environmental Law</i>	18
Recent Podcasts.	19
Making a Difference	20

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Janice Weis. Contributions
welcome! Email nrli@lclark.edu
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Lewis & Clark
Law School



Exciting things are happening here!

The 2008-09 academic year was a wonderful adventure for Lewis & Clark's environmental and natural resources law program. Duke Law's **Chris Schroeder** started us off with a view from the past, with his Distinguished Visitor lecture taking us back to the "environmental decade of the '70s" when our program was young, to draw lessons for present policymakers. Our annual environmental law conference for federal judges was pre-empted this year by our hosting an even bigger gala event, the Conference Celebrating the 40th Anniversary of the Federal Judicial Center, with **Supreme Court Justices Anthony Kennedy** and **Sandra Day O'Connor** making special trips to campus to talk with our law students.

Visiting Professor **Gabriel Eckstein** taught a course in international water law simultaneously here and at his home institution of Texas Tech; NRLI Distinguished Scholar **Dale Goble** provided his Idaho humor to colleagues and students while he was here working on his wildlife book; Visiting International Scholar **Yin Hongxiang** delved

into the roots of citizen suits to look for elusive common ground with China's laws; more than 20 professors from other law schools came to speak at October's Animal Law Conference, January's ABA Northwest Water Law Symposium and April's "Greening the Grid: Building a Legal Framework for Carbon Neutrality," while our own professors spoke at scores of venues across the world in addition to moderating and speaking at our own conferences and events. One of the year's special highlights was our students' second national championship in a row and sixth win overall at the Pace National Environmental Law Competition. And there was much, much more ... we will try to cover most of it in the following pages, and you can follow our progress in our web pages and podcasts online.

One professor who spoke at "Greening the Grid" expressed his hope for more opportunities for "joyful collaboration." This statement captures succinctly the tenor of this year for us at Lewis & Clark Law School.

—Janice and Lin

Natural Resources Law Institute and Environmental and Natural Resources Law Program

On the Horizon in the 2009-10 Academic Year

In addition to these highlighted events, the Law School has a full calendar of environmental, natural resources, and animal law events throughout the academic year. Many of our events are free and open to the public. To keep posted on what's happening or download podcasts of events, please visit our website at <http://go.lclark.edu/elaw>, or get on our email list by sending a subscription request to nrli@lclark.edu.

2009 DISTINGUISHED ENVIRONMENTAL LAW GRADUATES AWARDS AND WILLIAMSON AWARD CEREMONY



Distinguished Graduate honorees: Paul Horwitz '82, Kathleen Trever '93, Nicole Cordan '95

Williamson Award honoree: Kristen Monsell '09

Thursday, October 1, 2009, 5:30 p.m.

Lewis & Clark Law School

Contact: Linda D'Agostino at lindad@lclark.edu or 503-768-6784

<http://go.lclark.edu/elaw>

22ND ANNUAL DISTINGUISHED NRLI VISITOR LECTURE



J.B. Ruhl, Matthews & Hawkins Professor of Property, Florida State University College of Law

After Cap-and-Trade: The Climate-Forced Path of Environmental Law

Thursday, October 1, 2009, 6:00 p.m.

Lewis & Clark Law School

Contact: Linda D'Agostino at lindad@lclark.edu or 503-768-6784

<http://go.lclark.edu/elaw>

2009 ANIMAL LAW CONFERENCE



Animal Law: The Links

October 16-18, 2009

Lewis & Clark Law School
Contact: Liberty Mulkani at lmulkani@aldf.org or (707) 795-2533 x 1023

<http://go.lclark.edu/animal/law/conference>

2010 ENVIRONMENTAL LAW FORUM



The Clean Air Act at a Crossroads: Turning 40, Confronting Climate Change

April 22-23, 2010

Lewis & Clark College

Contact: Oregon Law

Institute at oli@lclark.edu or 503-768-6580 or 800-222-8213

<http://go.lclark.edu/law/clean/air/act/conference>

CONTINUING LEGAL EDUCATION FOR THE FOREST SERVICE



2009 Introduction to Policy and Legal Aspects of Endangered Species Act for Forest Service Staff

November 2-5, 2009

Lewis & Clark College

Contact: Linda D'Agostino at 503-768-6784

<http://www.fs.fed.us/biology/education/workshops/pla/>

2010 Endangered Species Act for Forest Service Line Officers and Staff

May 3-6, 2010

Lewis & Clark College

Contact: Linda D'Agostino at lindad@lclark.edu or 503-768-6784

<http://www.fs.fed.us/biology/education/workshops/esal/>

2010 ENVIRONMENTAL LAW AND ANIMAL LAW SUMMER SCHOOL



June 1 – August 9, 2010

Lewis & Clark Law School

Contact: NRLI at

nrli@lclark.edu or

503-768-6784

<http://law.lclark.edu/>

[programs/summer_school/environmental_classes/](http://law.lclark.edu/programs/summer_school/environmental_classes/)



Major Events in 2008-09

21ST ANNUAL NRLI DISTINGUISHED VISITOR LECTURE

***Moving the 21st-Century Environmental
Agenda: Lessons From the Environmental
Decade of the 1970s***



Distinguished Visitor
Christopher Schroeder,
Charles S. Murphy Professor
of Law and Public Policy

Studies, Duke Law School, presented a thought-provoking lecture to a full house in September 2008.

Download or view the lecture at
<http://lawlib.lclark.edu/podcast/?p=520>

2008 DISTINGUISHED ENVIRONMENTAL LAW GRADUATE AWARDS PRESENTATIONS

***George Jugovich '83, Pennsylvania
Department of Environmental Protection***

David Mann '91, Gendler & Mann

Stephanie Parent '92, Parent Law

The 2008 Distinguished Graduates share a passion for public interest environmental work. Between them they have shaped environmental policy, set important precedent and taught and mentored countless others in the field. See page 5 for more details.

Download or view the awards presentations at
<http://lawlib.lclark.edu/podcast/?p=520>

2008 ANIMAL LAW CONFERENCE



***One Earth: Globalism
and Animal Law***

Close to 250 animal law experts and advocates from around the world convened at Lewis & Clark Law School in October for the 16th Annual Animal Law Conference to discuss the interconnections between animal law and a broad array of issues such as religion, farming, environmentalism, and homeland security. The event, held October 17-19, 2008, was sponsored by the Center for Animal Law Studies at Lewis & Clark in collaboration with the Animal Legal Defense Fund.

Download or view the conference panels at
<http://lawlib.lclark.edu/podcast/?p=526>

ABA NORTHWEST WATER LAW SYMPOSIUM

***A collaboration between students at four
Pacific Northwest law schools***

Lewis & Clark was pleased to host and sponsor the first annual ABA Northwest Water Law Symposium in January 2009, bringing together water law experts from across the region to address the critical issues facing the Northwest U.S. and, by extension, all areas facing similar water conflicts and constraints. Issues included prior appropriation and the public interest, marine protected areas and reserves, water trusts, the politics and science of Columbia River dams, ocean renewable energy development, tribal rights to water and salmon, effects of liquefied natural gas on water quality and quantity, and conjunctive management of water resources. Former Oregon Secretary of State Bill Bradbury provided the keynote address.

Download or view the conference panels and wrap-up session at
<http://lawlib.lclark.edu/podcast/?p=640>

2009 NATIONAL ENVIRONMENTAL LAW FORUM



***Greening the Grid: Building
a Legal Framework for
Carbon Neutrality***

In this conference, held April 23-24, 2009, speakers and participants engaged in an in-depth discussion

of whether and how to "green" the nation's energy transmission grid with renewable energy sources and move to a no-carbon or low-carbon energy system. A number of renewables were under the microscope: wind, solar, hydropower, ocean energy, nuclear, and "clean coal." Panelists proposed various methods of getting renewable energy up and running. The conference culminated in a wrap-up roundtable with conference speakers moderated by Professor Melissa Powers.

Download or view the conference panels and wrap-up session at
<http://lawlib.lclark.edu/podcast/?p=886>

*For more program events in 2008-09, see our
Recent Podcasts listing on page 19.*



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Champions (from left): Erica Maharg,
Elizabeth Zultoski and Tarah Heinzen

Another Banner Year for Moot Courts

Second National Championship in a Row for Environmental Moot Court Team

For the second year in a row,
and the sixth time in 16 years,
Lewis & Clark's National

Environmental Moot Court team swept to the national championship at Pace Law School. This year's team, which consisted of third-year students Tarah Heinzen and Erica Maharg and second-year student Elizabeth Zultoski, triumphed over 67 other teams, including victories over the University of Houston and the University of Colorado in the quarterfinals, Harvard and Drexel in the semifinals, and Louisiana State and the University of Utah in the finals.

This year's problem was complex, involving a shipwreck off the U.S. coast, an exploration company and the Kingdom of Spain both seeking title to the wreck, and the United States claiming permits were required for the salvage. The final round was judged by the Honorable William K. Sessions III, Chief Judge, U.S. District Court for the District of Vermont, the Honorable Charles J. Sheehan, Judge, Environmental Appeals Board, U.S. Environmental Protection Agency (EPA), and

Gary Nurkin, Attorney, U.S. EPA Region 2 (who drafted much of the problem). A videolink to the championship round and an interview with team coach Professor Johnston are available at <http://legacy.lclark.edu/dept/elaw/mootfeb09.html>

This championship team joins five other Lewis & Clark teams in the past 16 years that have won the competition, a remarkable record considering that the team with the next-highest number of championships has won twice.

Over the past 16 years, Lewis & Clark teams have:

- Advanced to the quarterfinals (top 27 teams) 15 times
- Advanced to the semifinals (top 9 teams) 13 times
- Advanced to the finals (top 3 teams) 10 times
- Won six national championships

2009 National Finalists: Animal Advocacy and Environmental Negotiation Teams

2009 NATIONAL ANIMAL ADVOCACY COMPETITION

Lewis & Clark competitors shone at the sixth annual National Animal Law Competitions held at Harvard Law School in February. At the

TARAH HEINZEN WINS NATIONAL ENVIRONMENTAL WRITING COMPETITION

Soon after returning from her moot court championship at Pace, 3L Tarah Heinzen received word that she had also won New York University School of Law's annual Environmental Law Essay Contest. The winning essay on an environmental law issue of current national or international significance receives a prize of \$1000, courtesy of the NYU Center on Environmental and Land Use Law, and is published in the *NYU Environmental Law Journal*. Tarah's



article about addressing air pollution from factory farms is scheduled for publication.

Appellate Moot Court Competition, four teams ultimately go to the semifinals, and both of Lewis & Clark's teams—Andrew Freeman and Zachary Norris, and Bryan Telegin and Carey Whitehead—reached the semis. Bryan and Carey went on to the final round of two, judged by Ninth Circuit Judge Susan Graber, Third Circuit Judge D. Brooks Smith of the Third Circuit and District Judge Lee Rosenthal of the Southern District of Texas. Bryan and Carey expertly handled tough questions from all three judges in the final round, but were narrowly defeated by University of Washington's team. Bryan and Carey also won the prize for Best Respondent Brief.

In the Closing Argument competition, Lewis & Clark's Annmarie Robustelli also advanced to the final round and received excellent comments from the judges.

The teams were coached by CALS Director Pam Frasch, with the assistance of numerous environmental law faculty and staff, particularly Professor Craig Johnston who spent many hours putting the teams through grueling practice rounds.

2009 NATIONAL ENVIRONMENTAL NEGOTIATION COMPETITION

For the fourth year in a row, Lewis & Clark's team reached the final rounds of the Merhige Environmental Law Negotiation Competition at the University of Richmond School of Law.

With less than two weeks to work with the national problem, team members Jake Bush, Mark Billingsley, Brook Detterman and Charlie Parrott sacrificed free time and part of their spring break to prepare for two rounds of negotiations based on a hypothetical state's renewable energy portfolio. Third-year students and returning national team members Jake Bush and Brook Detterman won their quarterfinal round and finished in the finals. "All of our four team members conducted themselves with grace, skill, style, sportsmanship and confidence," according to co-coaches Jared Kahn and Katherine Lin, who represented Lewis & Clark in the 2008 Merhige final rounds.

Distinguished Graduates 2008

GEORGE JUGOVICH '83

George received one of Lewis & Clark's first Certificates in Environmental and Natural Resources Law in 1983. After graduating, he spent 17 years as counsel for the Pennsylvania Department of Environmental Protection, where he authored Pennsylvania's sentencing guidelines for environmental crimes. He then spent seven years as senior council for Citizens for Pennsylvania's Future, where he challenged longwall mining and groundwater pollution and championed renewable energy, drafting the state's

model energy statute for municipalities. In addition he has developed and taught environmental law, wildlife law, environmental crimes, and hazardous waste law courses as an adjunct professor at the University of Pittsburgh and Duquesne Law Schools. He has now returned to the Department of Resources, where he is Senior Litigation Counsel.



DAVID MANN '91

An environmental law student who received every award offered by the environmental faculty, David has gone on to litigate many of the major public interest environmental law cases in the state of Washington. He was named a Washington Super Lawyer by his peers in 2006, 2007 and 2008. He has also served as president and trustee of the

Northwest Fund for the Environment and the Washington Environmental Council. An avid cyclist, David is race director for a non-profit organization operating the oldest velodrome (bicycle racing track) in the Pacific Northwest.



STEPHANIE PARENT '92

Upon graduation from Lewis & Clark, Stephanie was an attorney with the U.S. Department of Justice representing the Department of Agriculture, where she gained experience litigating public lands cases. After several years, she and her family returned to Portland where she became a managing attorney and clinical professor for the Pacific Environmental Advocacy Center. While at PEAC, Stephanie developed a powerful record of precedent-setting victories,

including many of the important 9th Circuit public lands cases in this decade. She also mentored many students who have gone on to become powerful public interest litigators in their own right. Stephanie now has her own firm in Portland, Parent Law, where she continues advocating for environmental nonprofit clients.



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Scholars who hold the Robert E. Jones Professorship are leaders in advocacy and ethics who will educate future litigators in the spirit of justice exemplified by Judge Robert E. Jones. Judge Jones, a 1953 alumnus of Northwestern School of Law, has demonstrated the spirit of justice throughout an illustrious legal career spanning more than half a century. His practice included stints as private practitioner, president of the Oregon Trial Lawyers, Republican representative in the Oregon House of Representatives, Oregon Circuit Court judge and Supreme Court justice, and federal judge for the District of Oregon, where he is now a senior judge. He presided over a number of high-profile cases, including one upholding Oregon's Death With Dignity law against a federal challenge and another as presiding judge in the case of the "Portland Seven," charged with conspiring to fight in Afghanistan for the Taliban against United States forces. He has also presided over major civil litigation including breast implant cases and the Louisiana-Pacific siding class action. Since 1964 Judge Jones has worn the additional mantle of adjunct law professor at Lewis & Clark Law School, teaching evidence, trial advocacy and advanced advocacy. Known as a "leading school-master of the judiciary," He also served on the faculty of the National Judicial College, the American Academy of Judicial Education, and the Federal Judicial Center. He and his son, Judge Jeffrey Jones, are co-authors of a three-volume work on federal civil trials and evidence published by Thomson West/Reuter Group.



William Funk Named to Robert E. Jones Professorship

Lewis & Clark Professor William Funk, a nationally recognized authority in administrative and environmental law, became the inaugural Robert E. Jones Professor for Advocacy and Ethics in a ceremony at the law school in May. Federal Judge Robert E. Jones, the distinguished senior judge for the District of Oregon for whom the professorship is named, formally presented him with the endowed chair.

Professor Funk came to Lewis & Clark Law School in 1983 following an exemplary career. He received his Bachelor of Arts from Harvard University and his Juris Doctor from Columbia University School of Law, where he was a Harlan Fiske Stone Scholar and James Kent Scholar, won the Lawrence S. Greenbaum and Archie O. Dawson Awards for appellate advocacy, and was a founding editor of the Columbia Journal of Environmental Law. After graduating from Columbia, he clerked for Judge James Oakes of the U.S. Court of Appeals, Second Circuit. He then became a staff attorney in the Office of Legal Counsel of the U.S. Department of Justice, where he received a special commendation for outstanding service. He then served as the principal staff member of the Legislation Subcommittee of the U.S. House of Representatives Permanent Select Committee on Intelligence, where he was instrumental in the drafting of the Foreign Intelligence Surveillance Act. Later, as assistant general counsel at the U.S. Department of Energy, he earned a special citation for exceptional performance from the Secretary of Energy.

At Lewis & Clark, Professor Funk's teaching focuses on courses in Administrative Law, Constitutional Law, and Environmental Law. In 2004-05, he was a Senior Fulbright Scholar at the University of Heidelberg, where he taught both American constitutional law and environmental law. In 2009, Lewis & Clark named him a Jeffrey Bain Faculty Scholar and Professor of Law. He has chaired and served

on numerous faculty committees.

Professor Funk writes regularly on administrative and environmental issues. He is the author of *American Constitutional Structure* and a co-author of one of the leading administrative law casebooks, *Administrative Procedure and Practice: Problems and Cases*, as well as *Administrative Law: Examples & Explanations* and the *Federal Administrative Procedure Sourcebook*. Together with Professor Craig Johnston '85, Professor Funk is also a co-author of *Legal Protection of the Environment*, an environmental law casebook. He has chaired both the Administrative Law and Natural Resources Law Sections of the American Association of Law Schools. He is also active in the American Bar Association, including having chaired its Administrative Law and Regulatory Practice Section and served on its Council. Presently he is serving on an ABA Task Force addressing preemption of state tort law. Professor Funk is also a Center for Progressive Reform Scholar, a Fellow of the American Bar Foundation, and a member of the prestigious American Law Institute.

At the May ceremony Dean Bob Klonoff declared, "Bill Funk is the complete package: extraordinary scholarship, top flight teaching, and strong service to the law school community. He has all of the qualities that make Judge Jones such a giant: keen intellect, passion, and adherence to the highest ethical standards. We are proud that Bill has been selected for this important professorship."

Professor Funk acknowledged the honor, saying, "It is a distinct privilege to receive a named Lewis & Clark professorship and join the esteemed ranks of Professors Brunet, Huffman, and Newell, but it is a very special honor for me that this professorship is given in the name of Judge Robert E. Jones, a judge I have respected and admired since first coming to Oregon 26 years ago. Now it is up to me to live up to that name."

Faculty Scholarship 2008-09

Professor Michael C. Blumm

BOOKS: *Native American Natural Resources Law: Cases and Materials* (Carolina Academic Press, 2d ed. 2008) (co-authored with Judith Royster, University of Tulsa)

ARTICLES: "SUWA v. Norton and the Unraveling of Federal Public Land Planning," 18 *Duke Env'tl. L. & Pol'y F.* 105 (2008) (co-authored with Sherry Bosse '07)

"Imposing Judicial Restraints on the Art of Deception: The Courts Cast a Skeptical Eye on Columbia Basin Salmon Restoration Efforts," 38 *Env'tl. L.* 47 (2008) (co-authored with Hallison Putnam '09)

"Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Judicial Reaffirmation," 49 *Nat. Resources J.* (forthcoming 2009) (co-authored with Jane Steadman '09) advance copy available at <http://ssrn.com/abstract=1356223>

"Reserved Water Rights" in *Waters and Water Rights*, Lexis/Nexis (forthcoming 2009)

REPRINTS: The National Agricultural Law Center has posted four of Professor Blumm's articles on its site under agriculturally significant water law articles, available at <http://www.nationalaglawcenter.org:80/bibliography/results/?id=77>. The articles are "Mono Lake and the Evolving Public Trust in Western Water," 37 *Arizona L. Rev.* 701 (1995) (with Thea Schwarz), "The Rhetoric of Water Reform Resistance: A Response to Hobbs' Critique of Long's Peak," 24 *Env'tl. L.* 171 (1994), "Pinchot, Property Rights, and Western Water: A Reply to Greg Hobbs," 24 *Env'tl. L.* 1203 (1994) and "Unconventional Waters: The Quiet Revolution in Federal and Tribal Minimum Streamflows," 19 *Ecology L.Q.* 445 (1992).



Front row, from left: Bob Miller '91, professor; Pamela Frasch, assistant dean and executive director (CALS); Melissa Powers '01, assistant professor; Susan Mandiberg, professor; Allison LaPlante '02, clinical professor (PEAC); Tom Buchele, managing attorney and clinical professor (PEAC); Laura Handzel, program assistant (CALS). **Second row, from left:** Janice Weis, associate dean and program director; Chris Wold '90, associate professor and clinical director (IELP); Erica Thorson '05, clinical professor (IELP); Dan Rohlf, professor and clinical director (PEAC); Dan Mensher '07, clinical professor (PEAC); Craig Johnston '85, professor; Jan Neuman, professor. **Third row, from left:** Lin Harmon '91, associate director; Bill Funk, professor; Kathy Hessler, clinical professor and director (Animal Law Clinic). **Fourth row, from left:** Linda D'Agostino, program assistant; Mike Blumm, professor; Aubrey Baldwin '05, clinical professor (PEAC). **Not pictured:** Professors Henry Drummonds and Jim Huffman.

Professor Amy Bushaw

ARTICLES: Amy Bushaw, "Growth of the Sustainability-Inspired Business," *Env'tl. & Energy L. & Pol'y J.* (forthcoming 2009)

Assistant Dean Pamela D. Frasch

Executive Director of the Center for Animal Law Studies

BOOKS: *Animal Law: Cases and Materials*, Carolina Academic Press (Fourth Edition) (forthcoming 2009) (co-authored with Sonia S. Waisman and Bruce A. Wagman)

CHAPTERS: Pamela D. Frasch, "Criminal Law" (co-authored with Dana M. Campbell) in *Litigating Animal Law Disputes* (J. Schaffner, ed.), ABA Publishing (forthcoming 2009)

WORKS IN PROGRESS: *Animal Law in a Nutshell*, Thomson West (forthcoming 2010) (co-authored with Katherine Hessler)

Professor William Funk

Robert E. Jones Professor of Advocacy and Ethics

BOOKS: *Administrative Law: Examples & Explanations* (3d ed., Aspen Law & Business, 2009) (co-authored with Richard Seamon)

Faculty News, continued on page 15

Lewis & Clark
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Pacific Environmental Advocacy Center (PEAC)

PEAC is Lewis & Clark's nationally-recognized environmental litigation clinic. PEAC is led by experienced environmental lawyers who collaborate with law school faculty, staff and students to protect natural resources through pro bono representation, litigation, training and education. This was a busy year at PEAC as students and professors tackled a number of initiatives.



Air Quality

PEAC represents a coalition of five local, regional and national environmental organizations in three air quality initiatives. First, PEAC filed a citizen suit in federal court alleging violations of air quality laws at Portland General Electric's Boardman coal-fired power plant, which releases approximately 5 million tons of carbon dioxide into the atmosphere per year. Oral argument on PGE's motion to dismiss is scheduled for September. Second, PEAC participated in the Oregon Department of Environmental Quality (DEQ) and Environmental Quality Commission (EQC) Regional Haze rulemaking process that would require installation of pollution control technology. Third, PEAC provided technical assistance on legislative and state and local administrative proceedings on electricity ratemaking. PEAC attorneys Aubrey Baldwin, Allison LaPlante and Tom Buchele and students Kristen Monsell, Johannes Epke and Gilbert Mears worked on these initiatives.

LNG Terminals

On behalf of a coalition of conservation organizations, PEAC is challenging three Liquefied Natural Gas (LNG) port and

storage terminals proposed in Oregon. Each of these terminals would include over 220 miles of high-pressure gas pipelines crossing sensitive wildlife habitats in Coos Bay, the Columbia Estuary and the Umpqua and Mt. Hood National Forests, as well as farms, private forestlands, rivers, streams and wetlands. In addition to potential adverse impacts on public health, safety, the environment, and property values, PEAC's clients are concerned about greenhouse gases from the energy needed to freeze the LNG in far-distant ports, transport it to the U.S. and thaw it for transmission.

PEAC filed extensive comments on both the draft and final Environmental Impact Statements for the first terminal in the process. After the Federal Energy Regulatory Commission ("FERC") approved the facility, PEAC attorneys Tom Buchele and Aubrey Baldwin, assisted by students Neal Clark, Tarah Heinzen, Casey Barnard, and Hallison Putnam, filed a 153-page Request for Rehearing in October 2008. The states of Oregon and Washington, Native American tribes, and the National Marine Fisheries Service also filed requests for rehearing. After FERC denied these requests in January 2009, PEAC appealed the Ninth Circuit Court of Appeals. The appeal is currently stayed pending FERC's

reconsideration of the State of Oregon's request to halt the facility. Should FERC uphold its decision, briefing of the appeal will likely occur in early fall 2009.

Major Bridge Expansion

PEAC represents a coalition of environmental and public transit advocacy groups concerned about the Columbia River Crossing ("CRC"), a proposed 12-lane bridge with a price tag exceeding \$4 billion that would replace the existing six-lane Interstate 5 bridge over the Columbia River. In 2008, PEAC submitted 128 pages of comments on the Federal Highway Administration's Draft Environmental Impact Statement ("DEIS") for the project, objecting to the plan to significantly increase vehicular traffic in contravention of regional commitments to sustainable development, increasing greenhouse gas emissions and sprawl. PEAC also charged the FHA did not assess the project's disproportionate impacts on low income communities and people of color stemming from noise and air pollution, and did not consider impacts of diverting bridge run-off water into the Columbia Slough, which provides habitat for migratory birds and endangered salmon. PEAC attorney Tom Buchele and students Tarah Heinzen and Mark Billingsley worked on the project.





Water Quality

COOLING THE WATERS: PEAC has worked for the past three years on behalf of client Northwest Environmental Advocates to improve water quality standards in order to provide water sufficiently cool for the survival of threatened and endangered salmon, steelhead, and trout. PEAC's work has focused on administrative advocacy and a lawsuit against federal agencies overseeing Oregon's water quality standards. In February 2009, on PEAC's motion to compel production of documents, the court ruled that the agencies had improperly expanded the scope of the "deliberative process privilege" to withhold requested documents and noted that certain withheld documents showed that the agencies' decision-making improperly considered policy over science in setting a temperature standard for bull trout protection. In May, the court ordered

the agencies to turn over all remaining documents for judicial inspection. PEAC attorneys Allison Allison LaPlante and Dan Mensher were assisted this year by students Matt Moore and Erica Maharg.

TOXIC POLLUTANT STANDARDS:

PEAC has also been representing Northwest Environmental Advocates in its work to clean up toxic pollutants in Oregon's waters to ensure that threatened and endangered species such as salmon and bull trout are given clean habitat and a chance to recover. Last year, PEAC settled a suit against the U.S. Environmental Protection Agency ("EPA") and the agency agreed to review and take final action on Oregon's proposed toxic pollutant water quality standards by January 2009. The EPA could not comply with this provision, however, until other federal agencies provided it with a timely and complete biological opinion on the standards. In May, PEAC served a notice of intent to sue the National Marine Fisheries Service and the U.S. Fish and Wildlife Service ("the Services") alleging failure to comply with their duties to produce a timely and complete biological opinion. PEAC Attorney Allison LaPlante has been negotiating with EPA and the Services to push for prompt and thorough action. Allison is also advising NWEA in related state rulemaking proceedings regarding criteria for protection of human health from

consumption of fish with high levels of toxic pollutants.

BALLAST WATER: PEAC attorneys Allison LaPlante and Dan Mensher, along with student Julie Nimnicht, worked with Debbie Sivas of the Stanford Environmental Law Clinic to represent three environmental groups challenging EPA's new permit for pollutants discharged from ships. Following the Ninth Circuit's decision in plaintiffs' favor last summer invalidating EPA's exemption of ship ballast water from the Clean Water Act, EPA created a general permit in place of the exemption. In January, PEAC sued to challenge the permit for failure to address the toxic pollutants and invasive species that ships discharge. Allison and Dan, with significant help from Julie, have since then briefed several motions before the Panel on Multi-Circuit Litigation, the Ninth Circuit, and the D.C. Circuit.

LEACHING LANDFILL: On behalf of its conservation group clients, PEAC has continued its efforts to obtain regulation of a fifty year-old unlined landfill allegedly emitting methane, contaminating ground-water, killing aquatic life, threatening river users and undermining extensive restoration efforts at the Tualatin River National Wildlife Refuge less than a mile downstream. Students Claire Tonry, Oday Salim, and Jim Richardson have played key roles in developing legal theories, finding key evidence in 50,000 pages of produced documents, and preparing a summary judgment motion. In July, PEAC attorney Dan Mensher argued the motion in federal district court. The plaintiffs have also amended their complaint to add two claims under the Resource Conservation and Recovery Act ("RCRA") that aim to address many problems and hazards present in the landfill itself.

PEAC, continued on page 14



International Environmental Law Project (IELP)

IELP is Lewis & Clark's international environmental law clinic. For more about IELP, visit http://www.lclark.edu/law/clinics/international_environmental_law_project/

During the 2008-09 academic year IELP professors and students were busy on a number of fronts:

Environmentally Sensitive Areas

IELP helped the government of Mauritius, an island nation off the coast of Africa east of Madagascar, to develop legislation to protect its environmentally sensitive areas (ESAs). Mauritius is home to wildlife species found nowhere else in the world, many of which are now threatened with extinction due to habitat loss and invasive species. IELP students Dave Allen, Chris Gunn, and Nick de la Fuente worked with IELP Director Chris Wold to assess the strengths and weaknesses of Mauritian environmental legislation for protecting ESAs. They also drafted a Law to Protect Environmentally Sensitive Areas, which the Mauritian Ministry of Environment is now reviewing. For this project, Prof. Wold twice traveled to Mauritius to work with government officials and civil society to design conservation strategies appropriate to Mauritius.

Trade in Endangered Species

IELP is working on several projects to implement the Convention on International Trade in Endangered Species (CITES).

MARINE SPECIES: IELP is working with a small group of CITES governments and other non-governmental organizations (NGOs) to develop rules for trading in whales, sharks, and other marine species taken on the high seas. One of the permits required for this type of trade is an "introduction from the sea" certificate. Although the CITES treaty defines "introduction from the sea," it does so in a way that requires refinement. The Parties



and NGOs have been attempting to resolve controversial issues, including whether the flag State or the port State should issue the permit. Given the state of the world's oceans, and the number of marine species in international trade and listed on the CITES Appendices, defining these terms such that the rules are legally sound and wise from a policy perspective is increasingly urgent.

IELP has been representing the Species Survival Network on the working group for a number of years and has drafted a number of reports and legal opinions on the issue. Professor Wold is traveling to Geneva again this fall to participate in what should be a final push to develop clear rules before the meeting of the Conference of the Parties convenes in Doha, Qatar in March.

MEASURING WILDLIFE TRADE: A major premise of the CITES permitting scheme is that by tracking trade, we can assess at what point trade in a particular species becomes detrimental to the survival of that species in the wild. However, Parties often fail to report trade in objectively

verifiable, metric units of measurement. The issue affects many species, but it has been a particular problem for ivory trade. For example, much of the trade in narwhal ivory is reported as "pairs of carvings" or "sets of carvings," but this information fails to note whether each of those carvings is a carved tusk or simply a small figurine or bead. A pair of tusks and a pair of beads have a significantly different impact on wildlife populations—for example, each narwhal has one tusk, so two carved tusks in trade represents the loss of two narwhal from the wild population. On the hand, two beads in trade may just be small portions of a single tusk.

To address this issue, IELP worked with the Whale and Dolphin Conservation Society (WDCS) to draft a resolution to rationalize the units of measurement that Parties use to report wildlife specimens in trade. IELP and WDCS eventually persuaded a few key countries to take up the issue, and, at the most recent CITES meeting in Geneva (July 2009), the Secretariat recently agreed to work with UNEP-WCMC to investigate this issue. Clinical Professor Erica Thorson attended this meeting and coordinated efforts to get the issue on the agenda. IELP student Genaro Lopez contributed significantly to this recent success.

NARWHAL CONSERVATION: Led by Clinical Professor Thorson, two IELP students, Genaro Lopez and Meredith Younghein, provided legal support for efforts to list the narwhal (*Monodon monoceros*) on Appendix I of CITES. The Whale and Dolphin Conservation Society commissioned IELP to conduct a detailed history and analysis of trade in narwhal ivory, including a review of Greenland's Annual Reports to the CITES Secretariat and the Annual Reports of all importing countries. The work also involved extensive inquiry into the way Greenland issues permits for narwhal exports and



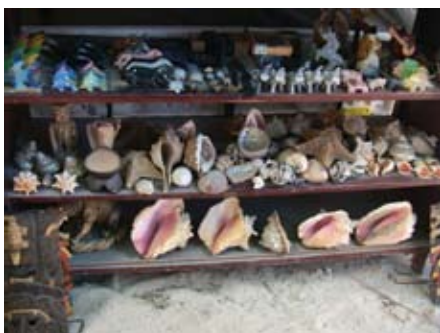


legal advice on the exact language of the listing as a number of CITES exemptions and other issues complicate trade in narwhal specimens.

TRADE IN TOURIST SOUVENIRS:

IELP, on behalf of a number of organizations, partook in efforts to redraft and amend the European Union's wildlife regulations, focusing in particular on trade in tourist souvenirs.

Clinical Professor Thorson also continues to work with a small group of governments and NGOs to clarify the CITES rules for trade in wildlife specimens imported and exported as tourist souvenirs. The Convention text exempts from the permitting requirements trade in certain tourist souvenirs, but the language is unclear and the Parties have struggled to streamline implementation of the exemption. Professor Thorson has worked with students trace the history of the exemption and draft new rules for implementing the terms of the treaty that support the treaty's conservation goals.



PURPOSE CODES: Deriving also from concerns about the reporting of ivory trade, IELP is working on behalf of a number of organizations to ensure that Parties are reporting on import and export permits the purpose of each transaction. Because CITES makes important distinctions between commercial and non-commercial trade, identifying the purpose of trade is vital to the success of the treaty. Working with a small group of governments and other NGOs, IELP is working to ascribe useful, clear definitions for all of the purpose codes that the Parties currently use.

Convention on Migratory Species

IELP is continuing its work on other wildlife law issues. This past year, IELP provided a legal analysis to the United Nations Environment Program and the Secretariat of the Convention on Migratory Species (CMS) on policy and legal reasons for overcoming U.S. resistance to joining CMS. Students Dave Allen, Chris Gunn, and Nick de la Fuente worked closely with Professor Wold on the legal opinion.

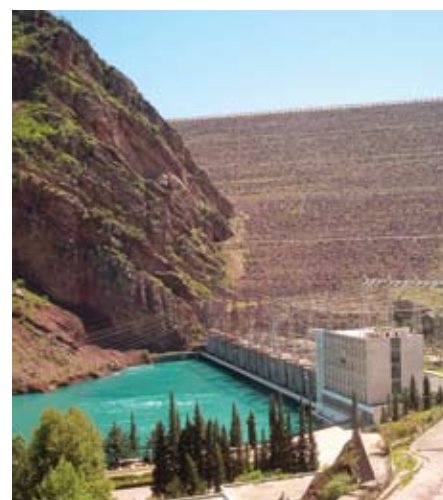
Whaling Convention

IELP has conducted an extensive survey of the history of aboriginal subsistence whaling management under the International Convention on the Regulation

of Whaling, which has supported efforts to curb commercial whaling conducted under the auspices of aboriginal subsistence whaling. In addition, IELP is preparing a comparative legal analysis of international scientific bodies in support of efforts to reform the Scientific Committee of the International Whaling Commission. IELP students Sarah Kutil, Lizzy Zultoski, and Clarke Thurmon worked diligently on these projects throughout the 2008-2009 school year.

Climate Change

IELP has also taken on projects concerning climate change. For example, on behalf of South Asian Waterkeeper groups from India, Nepal and China, IELP, led by Professor Thorson and aided by students Meg Patterson and Ashley Jones, drafted a "Peace Treaty for Water Security in Asia" for the South Asian countries that would promote cooperation and conservation in light of the hastening of Himalayan glacial retreat due to climate change. The draft treaty proposes a number of innovative cooperative efforts, including regional disaster preparedness plans and river development assessments.



**Lewis & Clark
Law School**

Center for Animal Law Studies (CALS) at Lewis & Clark

in Collaboration with the Animal Legal Defense Fund

CALS Files Amicus Brief

In June, on behalf of a group of 45 animal law professors from across the nation, CALS filed an amicus curiae brief in the U.S. Supreme Court animal cruelty case, *U.S. v. Stevens*. In 2005, a jury convicted Respondent Robert Stevens of violating a federal law, 18 U.S.C. § 48 (“Section 48”), that criminalizes the sale of depictions of animal cruelty. Roberts sold videotapes showing dogfights and “hog-dogging,” in which a pit bull mutilated a live pig. Stevens’ actual involvement went considerably beyond the sale of the videos, as he narrated and produced them and advertised them in dogfighting magazines. The Third Circuit overturned the conviction, finding Section 48 a facial violation of the

Free Speech Clause of the First Amendment. The United States appealed, and the Supreme Court granted certiorari in April.

The CALS brief was filed in support of neither party, but to provide the Court with expert opinion on the narrow question of whether preventing animal cruelty is a compelling governmental interest. Attorneys Megan A. Senatori of Dewitt Ross & Stevens and Pam Frasch of CALS argued in the affirmative. Forty-five professors representing 50 law schools co-signed the brief.

The Supreme Court will hold argument on the case this fall. If the Justices agree with the law professors, their decision will have historic implications for animals throughout the United States. The brief is online at tinyurl.com/CALSamicus09.

National Animal Law Competition

CALS hosted the sixth annual National Animal Law Competition at Harvard Law School in early February. The Competition consists of two parts: the Appellate Moot Court Competition for teams of two advocates, and the Closing Argument Competition for individual advocates.

This year’s Appellate Moot Court problem involved a federal pre-emption question: whether 49 U.S.C. §80502, also known as the “Twenty-Eight Hour Law,” preempts state anti-cruelty laws. The Twenty-Eight Hour Law provides that animals cannot be transported by “rail carrier, express carrier or common carrier” (except by air or water) for more than 28





From left to right: CALS team Kathy Hessler, clinic director; Pam Frasch, assistant dean and director of CALS; and Laura Handzel, program assistant

consecutive hours without being unloaded for five hours for rest, water and food. Michelle DeLappe & Nicholas Hudson of the University of Washington School of Law won the competition, and Bryan Telegin & Carey Whitehead of Lewis & Clark Law School placed second. Andrew Freeman & Zachary Norris of Lewis & Clark Law School and Hannah Faddis & Thien An Truong of New York Law School finished as semifinalists. Federal Judges Susan Graber (9 Cir.), D. Brooks Smith (3 Cir.), and Lee Rosenthal (S.D. Tex.) presided over the final round.

The Closing Argument Competition involved the lethal shooting of companion animals in a home by a police officer with a search warrant during investigation of an alleged white-collar crime. Cheyne Adam & David Lipschutz of The John Marshall Law School tied for first place. Robyn Katz of Texas Tech University School of Law and Annmarie Robustelli of Lewis & Clark Law School placed as finalists.

CALS Director Pam Frasch and Animal Law Clinic Director Kathy Hessler served as coaches to the Lewis & Clark teams and individual competitors.



2008 Animal Law Conference

One Earth: Globalization and Animal Law brought a sold-out crowd to Lewis & Clark Law School in October. Speakers from across the country once again convened to discuss current issues in the field. Lewis & Clark podcasted many panels, which can be downloaded for free at <http://lawlib.lclark.edu/podcast/?p=526>.

CALS and the Student Animal Legal Defense Fund will host the 17th Annual National Animal Law Conference, *Animal Law: The Links*, at Lewis & Clark on October 16-18. Dozens of prominent animal law scholars and practitioners will be presenting at this conference, with a keynote by Pulitzer Prize-winning New York Times Columnist Nicholas Kristoff. For more information see http://www.lclark.edu/law/student_groups/student_animal_legal_defense_fund/animal_law_conference/

Summer Animal Law Program

Each summer CALS offers a variety of two-week intensives in animal law for law students, lawyers and other interested professionals. This year, the 2009 Summer Animal Law Program offered three exciting classes taught by experts in the field. Erica Thorson, Lewis & Clark Clinical Professor and Staff Attorney for the International Environmental Law Project, taught "International Wildlife"; Steven Wise, author and President of the Center for the Expansion of Fundamental Rights, taught "Animal Rights"; and Jon Lovvorn, Vice President and Chief Counsel for Animal Protection Litigation & Research of the Humane Society of the United States, taught "Animal Law: Litigation, Lobbying and Legislation." A listing of 2010 courses will be available in late fall.

Lewis & Clark
Law School

Natural Resources Law Institute and Environmental and Natural Resources Law Program

PEAC, continued from page 9

COMPLIANCE SCHEDULES: PEAC sued EPA on behalf of two environmental groups in 2007, challenging EPA's approval of Oregon's use of "compliance schedules," which would allow National Pollutant Discharge Elimination System ("NPDES") permit-holders discharging pollutants into streams to delay or avoid meeting water quality standards. PEAC attorney Dan Mensher has been working on settlement negotiations, seeking a way to allow DEQ the flexibility it needs to develop and enforce water quality standards while ensuring that dischargers protect water quality throughout the state. Student Julie Nimnicht assisted this year.



SETTLEMENT WITH BLUE HERON: PEAC attorney Dan Mensher was able to settle a case for its client Willamette Riverkeeper this summer, involving discharges into the Willamette River by Blue Heron Paper Company. In the settlement, both Oregon DEQ and Blue Heron have agreed not only to remedy the problems of water quality compliance, but also significantly reduce a wide range of other pollutants the facility discharges. Student Julie Nimnicht assisted with the case.

STORMWATER REGULATION: This summer, PEAC attorney Dan Mensher settled a case with DEQ involving inadequate regulation of pollutants in contaminated stormwater and inadequate assurance of accountability by permit holders. The settlement provided that DEQ will create a new permit structure that will protect water quality, expand the permit's reach, and ensure that permit-

holders adequately monitor their discharge. Students Erica Maharg and Oday Salim worked on the case. Currently, Dan serves on the DEQ Stormwater Advisory Committee, which is working with the state to create the new permit.

Endangered Species Act

ESA REGULATIONS: Towards the end of President Bush's term in office, his Administration promulgated significant revisions to regulations implementing the Endangered Species Act that exempted greenhouse gas emissions from consideration under section 7 of the statute and weakened the ESA's interagency consultation process in other ways. PEAC filed suit on behalf of National Wildlife Federation to challenge these regulations. Early in his new Administration, President Obama issued a memo asking federal agencies not to use these regulations while his administration reviewed them; Congress also passed a budget rider authorizing the Secretaries of Commerce and Interior to rescind the new regulations without going through normal procedural requirements. The Secretaries withdrew these regulations in May 2009.

VERNAL POOL SPECIES: On behalf of a coalition led by Center for Biological Diversity, PEAC director Dan Rohlf successfully challenged a Habitat Conservation Plan and Incidental Take Permit affecting vernal pool species in the City of San Diego.



Vernal pools are seasonal natural pools that support native wildlife; 98% of San Diego's pools have already been destroyed by urban development. The federal district court entered a broad injunction against further development activities affecting vernal pools prior to completion of an adequate plan for protecting this unique ecosystem. Industry intervenors appealed to the Ninth Circuit to contest the scope of the injunction; briefing on the appeal is underway.

FLOODPLAIN DEVELOPMENT: PEAC filed suit against the Federal Emergency Management Agency ("FEMA") on behalf of several conservation groups, charging that FEMA did not comply with its duty under the ESA to consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service over the impacts on listed species (particularly salmon and steelhead) stemming from subsidized flood insurance issued by the agency in Oregon for development in floodplain habitat vital to ESA-protected aquatic species. Briefing will begin in this case soon.



Faculty News

continued from page 7

Professor William Funk *continued*

Introduction to American Constitutional Structure (American Casebook Series) (Thompson/West 2008)

Legal Protection of the Environment (West, 2d ed. 2007, coauthored with Craig Johnston and Victor Flatt)

CHAPTERS: "Preemption by Federal Agency Action," in *Preemption Choice: The Theory, Law, and Reality of Federalism's Core Question* (William Buzbee, ed., Cambridge Univ. Press 2008)

PAPERS: "The Truth About Torts: Regulatory Preemption at the National Highway Traffic Safety Administration," Center for Progressive Reform (2008) (co-authored with Thomas McGarity, Nina Mendelson, Sidney Shapiro, David Vladeck and Matthew Schudtz)

"The Truth About Torts: Regulatory Preemption at the Consumer Product Safety Commission," A Center for Progressive Reform White Paper (2008) (with co-authors Sidney Shapiro, David Vladeck, Nina Mendelson, Thomas McGarity, and Matthew Shudtz)

"Limiting Federal Agency Preemption: Recommendations for a New Federalism Executive Order," Center for Progressive Reform (2008) (co-authored with Sidney Shapiro, David Vladeck, Nina Mendelson, Thomas McGarity and Matthew Shudtz)

ARTICLES: "Public Participation and Transparency in Administrative Law: Three Examples as an Object Lesson," 61 *SE Admin. L. R.* 171 (2009)

"Constitutional Implications of Regional CO₂ Cap-and-Trade Programs," *UCLA J. Envtl. L. and Pol'y* (forthcoming 2009)

Clinical Professor Katherine Hessler *Director of the Animal Law Clinic*

WORKS IN PROGRESS: *Animal Law in a Nutshell*, Thomson West (forthcoming 2010) (co-authored with Pamela Frasch)

Professor James L. Huffman *Erskine Wood Sr. Professor of Law*

ARTICLES: "Speaking of Inconvenient Truths—a History of the Public Trust Doctrine," 18 *Duke Envtl. L. & Pol'y F.* 1 (2008)

"Background Principles and the Rule of Law: Fifteen Years after Lucas," 35 *Ecology L.Q.* 1 (2008)

"The Federal Role in Water Resources Management," 17 *N.Y.U. Envtl. L.J.* 669 (2008)

"Beware of Greens in Praise of the Common Law," 58 *Case W. Res. L. Rev.* 813 (2008)

"Comprehensive River Basin Management: The Limits of Collaborative, Stakeholder-Based, Water Governance," *Nat. Resources J.* (forthcoming 2009)

Professor Craig Johnston

BOOKS: *Legal Protection of the Environment* (West, 2d ed. 2007, coauthored with William Funk and Victor Flatt)

Professor Susan Mandiberg

ARTICLES: "What Does an Environmental Criminal Know?" 23 *Natural Resources & Env't* 24 (2009)

"Culpability or Cover?" to accompany David Uhlmann's cover story "Strange Bedfellows: Bush's Surprising Record on Criminal Enforcement," *Environmental Law Institute Environmental Forum* (May/June 2008)

"A Graduated Punishment Approach to Environmental Crimes: Beyond Vindication of Administrative Authority in the United States and Europe," *Colum. J. Envtl. L.* (forthcoming 2009) (co-authored with Michael G. Faure)

"Locating the Environmental Harm in Environmental Crimes," *Utah L. Rev.* (forthcoming 2009)

Professor Robert J. Miller

BOOKS: *Native America, Discovered and Conquered: Thomas Jefferson, Lewis & Clark, and Manifest Destiny* is now out in paperback (University of Nebraska Press) and is being used in a number of colleges across the country.

ARTICLES: "An Indigenous Lens into Comparative Law: The Doctrine of Discovery in the United States and New Zealand," 111 *W. Va. L. Rev.* 849 (2009) (co-authored with Jacinta Ruru)

Professor Janet C. Neuman

ARTICLES: "Chop Wood, Carry Water: Cutting to the Heart of the World's Water Woes," 23 *J. Land Use & Envtl. Law* 203 (2008)

Assistant Professor Melissa Powers

BOOKS: *Climate Change and the Law* (Lexis-Nexis 2008) (with co-authors Chris Wold and David Hunter)

CHAPTERS: "Land Use Regulation versus Property Rights: What Oregon's Recent Battles Could Mean for Sustainable Governance" in *Governance for Sustainability: Issues, Challenges and Successes* (Klaus Bosselman, Ron Engel and Prue Taylor, eds.), IUCN – The World Conservation Union, Environmental Law and Policy Series Vol. 70 (2008)

ARTICLES: "The Cost of Coal: Will Climate Change Force Regulators to Reject Coal as a Source of 'Cheap' Electricity?," *U. Pa. J. Bus. L.* (forthcoming 2009)

Lewis & Clark
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Professor Daniel J. Rohlf

PEAC Clinical Director

ARTICLES: “Conserving Endangered Species in an Era of Global Warming,” 38 *Envtl. L. Rep.* 10203 (2008) (co-authored with John Kostyack).

“Avoiding the ‘Bare Record’: Safeguarding Meaningful Judicial Review of Federal Agency Actions,” *Ohio N. U. L. Rev.* (forthcoming 2009)

Clinical Professor Erica J. Thorson

IELP Staff Attorney

CHAPTERS: “The World Heritage Convention & Climate Change: The Case for Climate-Change Mitigation Strategy Beyond the Kyoto Protocol” in *Adjudicating Climate Control: Sub-National, National, and Supra-National Approaches* (W. C. Burns & H. Osofsky, eds.), Cambridge University Press (forthcoming 2009)

“ABA International Environmental Law: Year in Review 2008,” *International Law* (forthcoming 2009)

ARTICLES: “Sharing Himalayan Glacial Meltwater: The Role of Territorial Sovereignty,” 19 *Duke J. Comp. & Int’l L.* 487 (2009)

Associate Professor Chris Wold

IELP Director

BOOKS: *Climate Change and the Law* (Lexis-Nexis 2008) (with co-authors Melissa Powers and David Hunter)

ARTICLES: “World Heritage Species: A New Legal Approach to Conservation,” 20 *Georgetown Int’l Env’tl. L. Rev.* 337 (2008)

“Evaluating the NAFTA and Commission for Environmental Cooperation: Lessons for Integrating Trade and Environment in Free Trade Agreements,” 28 *St. Louis U. Pub. L. Rev.* 201 (2008)

Faculty Presentations

PEAC Clinical Professor Aubrey Baldwin

Panelist, “Current Topics in Environmental Litigation,” American Air and Waste Management Association National Meeting Technical Program 2008, Portland, OR

Participant, 2008 Coal-fired Power Plant Litigators Meeting, sponsored by the Energy Foundation and the Wallace Global Fund, Washington, D.C.

Panelist, “Fighting Coal-Fired Power Plants,” 2009 Public Interest Environmental Law Conference at the University of Oregon, Eugene, OR

Assistant Dean Pamela D. Frasch

*Executive Director of the Center for
Animal Law Studies*

“All Law is Animal Law: Teaching Animal Law Across the Curriculum,” 2009 American Association of Law Schools National Conference, San Diego, CA

Professor William Funk

*Robert E. Jones Professor of
Advocacy and Ethics*

Panelist, “Teaching Doctrine in a Post-Realist World,” SouthEastern Association of Law Schools Annual Meeting, Palm Beach, FL (August 2009)

Speaker, “The Obama Administration and Climate Change,” Center for American Studies & German American Lawyers Ass’n, Heidelberg, Germany (July 2009)

Speaker, “U.S. Supreme Court Jurisdiction,” Freie Universitaet, Berlin, Germany (July 2009)

Moderator, “Restructuring the Grid to Promote Renewable Energy Development,” in “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

Panelist, “Constitutional Implications of Regional Greenhouse Gas Initiatives,” ABA Midyear Meeting, Boston, MA (February 2009)

Speaker, “Recent Developments in Federal Administrative Law,” Oregon Law Institute Program on Administrative Law, Portland, OR (February 2009)

Speaker, Workshop for Non-Profits and Hill Staff on “Preemption of State Tort Law by Federal Agency Action,” Washington, DC (December 2008)

Panelist, “Constitutional Implications of Regional Greenhouse Gas Initiatives,” ABA Administrative Law Fall Conference, Washington, DC (October 2008)

Panelist, “Transparency in Government Decisionmaking,” in “Recommendations for the New President,” ABA Administrative Law Fall Conference, Washington, DC (October 2008)

Speaker, Workshop for Non-Profits and Hill Staff, “Preemption of State Tort Law by Federal Agency Action,” Washington, DC (July 2008)

Panelist, “Teaching Constitutional Law in the 21st Century,” Southeastern Association of Law Schools Annual Meeting, Palm Beach, FL (July 2008)

Speaker, “Public Participation and Transparency in Administrative Law—Three Examples as an Object Lesson,” for a 2008 conference on American and European Administrative Law at the University of Montpellier, France (May 2008)

Associate Director Lin Harmon

Instructor, “Legal Process and Administrative Law,” Endangered Species Act for Forest Service Line Officers course, San Diego, CA (May 2009)

Conference Committee member and moderator of the “Wind” panel in “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

Professor Craig Johnston

Moderator of “Nuclear” panel in “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

PEAC Clinical Professor Allison LaPlante

Moderator of “Solar” panel in “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

Professor Robert J. Miller

Keynote speaker, “New Worlds, New Sovereignities” conference, University of Melbourne, Australia

Organizer, Third Lewis & Clark Indian Law Scholars Working Papers Roundtable, Portland, OR (July 2008)

Speaker, Second Annual Native American Studies Conference at University of Georgia (Fall 2008)

Professor Janet C. Neuman

Speaker, “Rethinking Western Water Law,” University of Colorado’s Natural Resources Law Center Annual Conference, Boulder, CO (June 2008)

Assistant Professor Melissa Powers

Conference Organizer, Speaker, and Moderator of “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark Law School’s Environmental Law Symposium (April 2009)

“Environmental Permitting Issues for Alaska Native Corporations,” Alaska Bar Association CLE (July 2008)

Professor of Law and PEAC Clinical Director Daniel Rohlf

Speaker, “The Integrity of Federal Agencies’ Administrative Records in Environmental Litigation,” Law Dean’s Lecture Series at Ohio Northern University’s Pettit College of Law

Moderator of “Hydro” panel in “Greening the Grid: Building a Legal Framework for Carbon

Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

Clinical Professor and IELP Staff Attorney Erica J. Thorson

Speaker, “Developing a Peace Treaty for Water Security in Asia,” Annual Waterkeeper Conference, Seattle, WA

Associate Dean and Program Director Janice Weis

Conference Committee and Moderator of “Clean Coal” in “Greening the Grid: Building a Legal Framework for Carbon Neutrality,” Lewis & Clark’s Environmental Law Symposium (April 2009)

Associate Professor and IELP Director Chris Wold

Speaker, “Evolution of Environmental Provisions and Institutions in Regional Free Trade Agreements,” for The Changing Tide of Trade conference, St. Louis University School of Law

Faculty News, continued on back page

Animal Law

Volume 15, Issue 1

EDITOR’S NOTE: Laura Cadiz, *Fifteen Volumes of Animal Law*

INTRODUCTION: Joyce Tischler, *Building Our Future*

ARTICLE: Dane E. Johnson, *Statute of Anne-imals: Should Copyright Protect Sentient Non-Human Creators?*

ESSAYS: Caroline Forell, *Using a Jury of Her Peers to Teach About the Connection Between Domestic Violence and Animal Abuse*

Rebecca J. Huss, *Lessons Learned: Acting as Guardian/Special Master in the Bad Newz Kennel Case*

COMMENTS: Alexis C. Fox, *Using Special Masters to Advance the Goals of Animal Protection Law*

Kate Paulman, *See Spot Eat, See Spot Die: The Pet Food Recall of 2007*

Volume 15, Issue 2

INTRODUCTION: Dana M. Campbell, *A Call to Action: Concrete Proposals for Reducing Widespread Animal Suffering in the United States*

ESSAY: Jonathan R. Lovvorn & Nancy V. Perry, *California Proposition 2: A Watershed Moment for Animal Law*

ARTICLES: Marianne Dellinger, *Using Dogs for Emotional Support of Testifying Victims of Crime*

Edward A. Fitzgerald, *The Alaskan Wolf War: The Public Trust Doctrine Missing in Action*

Marla K. Conley, *Caring for Dolphins, Otters, and Octopuses: Speciesism in the Regulation of Zoos and Aquariums*

2007-08 LEGISLATIVE REVIEW: Rita D. Yonkers, Legislative Review Editor

Nancy R. Hoffman & Robin C. McGinnis, Authors

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Natural Resources Law Institute and Environmental and Natural Resources Law Program

Environmental Law

Volume 38, Issue 4

ARTICLES: Joel A. Mintz, *Taking Congress's Words Seriously: Towards a Sound Construction of NEPA's Long Overlooked Interpretation Mandate*

Jeffrey M. Gaba, *Rethinking Recycling*

Keith H. Hirokawa, *Property Pieces in Compensation Statutes: Law's Eulogy for Oregon's Measure 37*

Meredith Blaydes Lilley and Jeremy Firestone, *Wind Power, Wildlife, and the Migratory Bird Treaty Act: A Way Forward*

Terence J. Centner, *Courts and the EPA Interpret NPDES General Permit Requirements for CAFOs*

Annecoos Wiersema, *A Train Without Tracks: Rethinking the Place of Law and Goals in Environmental and Natural Resources Law*

COMMENTS: James N. Saul, *Overly Restrictive Administrative Records and the Frustration of Judicial Review*

Jane G. Steadman, *Protecting Water Quality and Salmon in the Columbia Basin: The Case for State Certification of Federal Dams*

Volume 39, Issue 1

ARTICLES: David P. Kehoe, *United States V. Abrogar: Did The Third Circuit Miss The Boat?*

Mary Christina Wood, *Advancing the Sovereign Trust of Government to Safeguard the Environment for*

Present and Future Generations (Part I): Ecological Realism and the Need For a Paradigm Shift

Mary Christina Wood, *Advancing the Sovereign Trust of Government to Safeguard the Environment for Present and Future Generations (Part II): Instilling a Fiduciary Obligation in Governance*

Andrew P. Morriss, *Borders and the Environment*

Stephanie Lindsay, *Counting Every Drop: Measuring Surface and Ground Water in Washington and the West*

COMMENTS: Brent Carpenter, *Warm is the New Cold: Global Warming, Oil, UNCLOS Article 76, and How an Arctic Treaty Might Stop a New Cold War*

Bryan A. Green, *Lessons from the Montreal Protocol: Guidance for the Next International Climate Change Agreement*

Volume 39, Issue 2

ESSAYS: Christopher H. Schroeder, *Global Warming and the Problem of Policy Innovation: Lessons From the Early Environmental Movement*

ARTICLES: Andrew P. Morriss & Benjamin D. Cramer, *Disestablishing Environmentalism*

Kristina G. Fisher, *The Rhino in the Colonia: How Colonias Development Council v. Rhino Environmental Services, Inc. Set a Substantive State Standard for Environmental Justice*

William Woodyard & Glenn Boggs, *Public Outcry: Kelo v. City of New London—A Proposed Solution*

COMMENTS: Mark W. Wilson, *Why Private Remedies for Environmental Torts Under the Alien Tort Statute Should Not Be Constrained by the Judicially Created Doctrines of Jus Cogens and Exhaustion*

Kathy Black, *Trashing the Presumption: Intervention on the Side of the Government*

Volume 39, Issue 3

ARTICLES: Keith H. Hirokawa, *At Home with Nature: Early Reflections on Green Building Laws and the Transformation of the Built Environment*

Fred Bosselman, *Swamp Swaps: The "Second Nature" of Wetlands*

Mark Latham, *Environmental Liabilities and the Federal Securities Laws: A Proposal for Improved Disclosure of Climate Change-Related Risks*

2008 Ninth Circuit Environmental Review

Case Summaries

Chapters

John Cathcart-Rake, *The Friends of Yosemite Valley Saga: The Challenge of Addressing the Merced River's User Capacities*

Suzanne Bostrom, *Ballast Water Discharges and Aquatic Invasive Species*

Ninth Circuit Index

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Recent Podcasts

A sampling of the past year's program podcasts available for free download at www.lclark.edu/dept/elaw/podcasts.html

Air Quality

An Overview of the Clean Air Act
(September 23, 2008)

PEAC Clinical Professor Aubrey Baldwin

Animal and Wildlife Law

Eliminating Invasive Species
(March 10, 2009)

Professor Dan Rohlf, Animal Law Clinic Director Kathy Hessler, and Nathan Baker, staff attorney for Friends of the Columbia Gorge

16TH ANNUAL ANIMAL LAW CONFERENCE
(October 17-19, 2008)

Numerous panels from the conference

Military and Homeland Security Exemptions from Laws Affecting Wildlife
(October 18, 2008)

Jay Johnson-Castro, Sr., human rights activist and founder, Border Ambassadors, and Zak Smith, project attorney, National Resources Defense Council

Recovery Within the Endangered Species Act (September 17, 2008)

University of Idaho Law Professor Dale Goble, NRLI Distinguished Scholar

Environmental Justice

Migrant & Farm Workers' Rights
(March 19, 2009)

Janice Morgan, Director, Legal Aid Services of Oregon Farmworker Program, and Ilene O'Malley, attorney, Oregon Law Center Migrant Farmworker Program

Environmental Justice Dilemmas in Portland: Problems and Potential Solutions
(November 6, 2008)

Lewis & Clark College Professor Bruce Podobnik

Environmental Law and Science

Environmental Impacts of Concentrated Animal Feeding Operations
(November 18, 2008)

Kendra Kimbirauskas, Sierra Club Conservation Organizer

Environmental Litigation and Public Interest

The Legal Work of Klamath-Siskiyou Wildlands Center and Rogue Riverkeeper
(October 22, 2008)

Lesley Adams and Christopher Len, KS Wild

International and Comparative Environmental Law

Troubled Waters: Bringing International Attention to the Oceans' Plight
(October 18, 2008)

Janis Searles Jones, Vice President, Legal Affairs and General Counsel, Ocean Conservancy, and Kim McCoy, Quartermaster and International Executive Director, Sea Shepherd Conservation Society

Pandas in Peril: Advancing Animal Law in Asia (October 18, 2008)

Paul Littlefair, Senior Manager, International Programmes, RSPCA, and University of Hong Kong

Law Professor Amanda Whitfort

National Environmental Moot Court Competition

Lewis & Clark's Winning 2009 National Championship Round (February 21, 2009)

Recorded at Pace National Environmental Moot Court Competition

Native American Natural Resources

"Discovering" Native America
(October 14, 2008)

Lewis & Clark Law Professor Bob Miller

Ocean and Coastal Law and Policy

Troubled Waters: Bringing International Attention to the Oceans' Plight
(October 18, 2008)

Janis Searles Jones, Vice President, Legal Affairs and General Counsel, Ocean Conservancy, and Kim McCoy, Quartermaster and International Executive Director, Sea Shepherd Conservation Society

Sustainability and Economic Development

Student Advocates for Business and Environment speaker series:

Rethinking School Lunches
(February 26, 2009)

Cory Schreiber, restaurateur and leader of Oregon Department of Agriculture farm-to-school program

Developing Grassroots Sustainability Regulations (November 7, 2008)

Melora Golden, Recode Oregon Community Organizer

Water Law

FLOW: The Privatization of and Conflict Over Global Water Resources (March 9, 2009)

Professor Jim Huffman and Visiting Professor Gabriel Eckstein

The Legal Work of Klamath-Siskiyou Wildlands Center and Rogue Riverkeeper
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NRLI 2009 Report, Natural Resources Law Institute

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Lewis & Clark Law School's Environmental and Natural Resources Law Program, frequently ranked #1 in the nation by *U.S. News & World Report* and recipient of the 2001 ABA Award for Distinguished Achievement in Environmental Law, strives to be a local, regional and international resource for the advancement of environmental and natural resources law research. Current programs and activities include:

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LL.M. Program in Environmental and Natural Resources Law, offering advanced studies in the field for lawyers from around the world

A new Joint J.D./LL.M. Program in Environmental and Natural Resources Law enabling students to obtain both degrees at an accelerated pace

Natural Resources Law Institute, supporting an annual research fellow, distinguished faculty visitor, visiting scholars from around the globe, and faculty research

Environmental Law, the first law journal in the country devoted to environmental law issues, now in its 39th year

Animal Law, the country's first law journal devoted entirely to discussion of legal issues relating to animals

Pacific Environmental Advocacy Center, providing environmental litigation services to local, regional and national clients

International Environmental Law Project, providing international environmental legal services to international governments and nonprofit clients

The Center for Animal Law Studies of Lewis & Clark in collaboration with the Animal Legal Defense Fund, promoting legal education for animal advocacy

Dynamic student organizations including Coalition Advocating Transportation Sensibility, Environmental Justice Advocates, Environmental Law Caucus, Northwest Environmental Defense Center, Public Interest Law Project, Student Advocates for Business and Environmental Responsibility, and Student Animal Legal Defense Fund

Conferences and Continuing Legal Education on a variety of environmental topics for students, practitioners, judges, and federal agencies

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Faculty News

continued from page 17

Pamela Frasch and **Kathy Hessler** are planning a series of five symposia with the Johns Hopkins University Center for Alternatives to Animal Testing in order to assess and explore the implications of a recent National Academy of Science report challenging the efficacy of mammalian animal testing.

Lin Harmon has been appointed to the ABA/Law Student Division Competitions Committee, where she serves on the subcommittee overseeing the ABA Negotiation Competition. The three-year appointment culminates in chairing the subcommittee in 2010.

Bill Funk was appointed by the President of the American Bar Association to a Task Force on Preemption of State Tort Law in April. In July Professor Funk became a Fellow of the American Bar Foundation.

Jim Huffman was appointed to the Hoover Institution's Property Rights Task Force.

Dan Mensher was appointed to the Oregon Department of Environmental Quality Stormwater Advisory Committee to provide input to DEQ on proposed changes to stormwater permits.

Robert Miller has been named President of the Board for the Tribal Leaders Forum.