

MICHAEL C. BLUMM

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1978-Present

Lewis and Clark Law School
Portland, Oregon

Jeffrey Bain Faculty Scholar (2011-present); Professor of Law (1985-present); Associate Professor (1982-1985); Assistant Professor (1979-82); Natural Resources Fellow (1978-79). Co-Director, Northwest Water Law and Policy Project (1994-2001); Editor, Anadromous Fish Law Memo, Oregon State University Sea Grant College Program (1979-1990).

Visiting Professor, Boalt Hall, University of California-Berkeley (2004); Fulbright Professor, University of Athens (1991); Visiting Professor, University of Melbourne (1988); Visiting Professor, University of San Francisco (1983).

Courses Taught: Property, Public Lands and Resources Law, Natural Resources Law, American Legal History, Native American Natural Resources Law, Environmental Law, Pacific Salmon Law, Constitutional Law, Water Law, Wildlife Law, Northwest Energy Law, Alaskan and Canadian Natural Resources Law, Ocean and Coastal Law.

1977-78

U.S. Environmental Protection Agency, Office of Water Enforcement, Permits Division, Washington, D.C.

Attorney/Advisor: Drafted permit issuance criteria and state program approval regulations under section 404 of the Clean Water Act; negotiated intergovernmental agreements with the U.S. Army Corps of Engineers; drafted EPA's policy on coastal zone management.

1974-77

Center for Natural Areas (affiliated with the Smithsonian Institution), Washington, D.C. Assistant Director of Law (1976-77); Legal Assistant (1974-76).

Member of an interdisciplinary environmental management team involved in legal, economic, and institutional analysis of federal, state and local government conservation plans and development projects. Clients included the President's Council on Environmental

Quality, the U.S. Environmental Protection Agency, the Nuclear Regulatory Commission, the National Oceanic and Atmospheric Administration, the State of Alaska, and Los Angeles County.

EDUCATION

- LL.M. 1979
(Highest Honors) National Law Center, George Washington University, Washington, D.C. Thesis: "A Legal and Institutional Evaluation of the U.S. Army Corps of Engineers Dredge and Fill Regulatory Program."
- J.D. 1976
(Honors) National Law Center, George Washington University, Washington, D.C. Trustee Scholarship. Internship with the President's Council on Environmental Quality (1975-76).
- B.A. 1972 Williams College, Williamstown, Massachusetts.(*cum laude*) Honors in American History and Literature. Mead Scholarship. Varsity Football.

BOOKS

Native American Natural Resources Law: Cases and Materials (Carolina Academic Press, 1st ed. 2002, 2d ed. 2008) (annual teacher's updates) (co-author).

Sacrificing the Salmon: A Legal and Policy History of the Decline of Columbia Basin Salmon (BookWorld Publications, 2002)
(<http://www.powells.com/biblio/1-9075228252-0>)

The Northwest Salmon Crisis: A Documentary History (Oregon State University Press 1996) (contributing author).

Waters and Water Rights (The Michie Co. 1991, 1994, 1996, Lexis-Nexis 2004, 3d. Ed. 2009) (author of chapters on Reserved Water Rights, Federal Hydroelectric Regulation (1991-2000), and the Columbia River Basin).

Environmental Law: International Library of Essays in Law and Legal Theory and (Dartmouth Publishing Co. 1992, New York University Press, 1993).

NEWSLETTER

Anadromous Fish Law Memo, 50 issues (1979-90) (published by Oregon State University Sea Grant). (<http://www.fishlib.org/library/Bibliographies/AFLM.html>)

MONOGRAPHS

The Columbia River Basin: From the Stevens Treaties to the Northwest Power Act (available from the Northwest Water Law and Policy Project, 1994).

Salmon Law and History: Sources and Analysis (available from the Northwest Water Law and Policy Project, 1994) (co-author).

Highways and the Environment: Resource Protection and the Federal Highway Program (study for the National Transportation Research Board, 1994; winner of Vance Award for best publication on transportation law in 1994).

RECENT ARTICLES (2004 to present)

(SSRN author page = <http://papers.ssrn.com/author=186450>)

"Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision," 44 *University of California Davis Law Review* (forthcoming 2011).

"Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Law," 52 *Environment Magazine* 6 (2010) (co-author).

"Present At the Creation: The 1910 Big Burn and the Formative Days of the U.S. Forest Service," 37 *Ecology Law Quarterly* (UC Berkeley) 1217 (2010) (book review).

"The Public Trust Doctrine and Private Property: The Accommodation Principle," 27 *Pace Environmental Law Review* 649 (2010).

"Background Principles, Takings and Libertarian Property; A Reply to Professor Huffman," 37 *Ecology Law Quarterly* (UC Berkeley) 805 (2010) (co-author).

"The Public Trust Doctrine – A Twenty-First Century Concept," 16 *Hastings West-Northwest Journal of Environmental Law and Policy* 105 (2010).

"Debunking The 'Divine Conception' Myth: Environmental Law Before NEPA," 37 *Ecology Law Quarterly* (UC Berkeley) 269 (2010) (book review) (also published at 121 *Oregon Historical Quarterly* 632 (2009)).

"Indian Treaty Fishing Rights and Habitat Protection: The *Martinez Decision* Supplies a Resounding Judicial Reaffirmation," 49 *Natural Resources Journal* (New Mexico) 653 (2009).

"Imposing Judicial Restraints on the 'Art of Deception:' The Courts Cast a Skeptical Eye on Columbia Basin Salmon Restoration Efforts," 38 *Environmental Law* 47 (2008) (co-author).

"Enacting Libertarian Property: Oregon's Measure 37 and Its Implications," 85 *Denver University Law Journal* 279 (2008) (co-author).

"*Norton v. SUWA* and the Unraveling of Federal Public Land Planning," 18 *Duke Journal of Environmental Law and Policy* 105 (2007) (co-author).

"Justice Kennedy and the Environment: Property, States-Rights, and a Persistent Search For Nexus," 83 *Washington Law Review* 665 (2007) (co-author).

"From Martz to the Twenty-First Century: A Half-Century of Natural Resources Law Casebooks and Pedagogy," 78 *Colorado Law Review* 647 (2007) (co-author) (for a symposium).

"The Mirage of Indian Reserved Water Rights and Western Streamflow Restoration in the McCarran Amendment Era: A Promise Unfulfilled," 36 *Environmental Law* 1157 (2006) (co-author) (for a symposium).

"Practiced At the Art of Deception: The Failure of Columbia Basin Salmon Recovery Under the Endangered Species Act," 36 *Environmental Law* 709 (2006) (co-author).

"Protecting the Columbia River Gorge: A Twenty-Year Experiment in Land-Use Federalism," 21 *Journal of Land Use and Environmental Law* (Florida State) 201 (2006) (co-author).

"'Not Much Less Necessary Than the Atmosphere...They Breathed:' Salmon, Indian Treaties, and the Supreme Court—A Centennial Remembrance of *United States v. Winans* and Its Enduring Significance," 46 *Natural Resources Journal* (New Mexico) 489 (2006) (co-author).

"The Pioneer Spirit and the Public Trust: The American Rule of Capture and State Ownership of Wildlife," 35 *Environmental Law* 673 (2005) (co-author) (for a symposium).

"*Gonzalez v. Raich*, the 'Comprehensive Scheme' Principle, and the Constitutionality of the Endangered Species Act," 35 *Environmental Law* 491 (2005) (co-author).

"*Lucas's* Unlikely Legacy: The Rise of Background Principles As Categorical Takings Defenses," 29 *Harvard Environmental Law Review* 321 (2005) (co-author).

"Bureaucratic Boundaries vs. Clean Water: A Reply to Cliff Villa," 34 *Environmental Law* 815 (2004) (co-author).

“The Bush Administration’s Sweetheart Settlement Policy: A Trojan Horse Strategy For Advancing Commodity Production on the Public Lands,” 34 *Environmental Law Reporter* (Environmental Law Institute) 10397 (2004).

“Flies, Wolves, Spiders, Toads and the Constitutionality of the Endangered Species Act,” 34 *Environmental Law* 309 (2004) (co-author).

“Retracing the Discovery Doctrine: Aboriginal Title, Tribal Sovereignty, and Their Significance to Treaty-Making and Modern Natural Resources Policy in Indian Country,” 28 *Vermont Law Review* 713 (2004).

OLDER ARTICLES (1976-2003, by subject matter)

A. General Environmental Law

“Roads Not Taken: EPA vs. Clean Water, 33 *Environmental Law* 79 (2003) (for a symposium).

“Twenty Years of Environmental Law: Role Reversals Between Congress and The Executive, Judicial Activism Undermining The Environment, and The Proliferation of Environmental (and Anti-Environmental) Groups,” 20 *Virginia Environmental Law Journal* 5 (2001) (for a symposium).

“Environment, Economy, and Community in the Pacific Northwest,” 17 (University of Montana) *Public Land and Resources Law Review* 1 (1996).

“Studying Environmental Law: An Overview and a Seminar Outline,” 12 *Journal of Energy, Natural Resources and Environmental Law* 309 (1992).

“A Primer on Environmental Law and Some Directions for the Future,” 11 *Virginia Environmental Law Journal* 381 (1992), *reprinted in 2 Environmental Law Anthology* 809 (Law Book Publishers, 1992-93) (also published in Greek in the *University of Athens Law Review*, 1992).

“The Fallacies of Free Market Environmentalism,” 15 *Harvard Journal of Law and Public Policy* 371 (1992) (for a symposium), *reprinted in 2 Environmental Law Anthology* 431 (Law Book Publishers, 1992-93); and *An Environmental Law Anthology* 319 (Anderson Pub. Co., 1996).

Pluralism and the Environment: The Role of Comment Agencies in NEPA Litigation,” 14 *Harvard Environmental Law Review* 277 (1990) (co-author), *reprinted in Land Use and Environment Law Review* 607 (1991).

"The National Environmental Policy Act At Twenty: A Preface," 20 *Environmental Law* 447 (1990) (for a symposium).

"Liberty, the New Property, and Environmental Law," 24 *University of San Francisco Law Review* 385 (1990) (for a symposium).

"The Origin, Evolution, and Direction of U.S. National Environmental Policy Act," 5 (Australian) *Environmental Law and Planning Journal* 177 (1988).

"Environmental Decisionmaking, Judicial Review, and the Democratization of the Leviathan State: Some Comments on the Huffman/Funk Colloquy," 4 *Advocate* no. 2 at 10 (Lewis and Clark Law School alumni magazine, 1985).

"Implementing the Clean Water Act: Progress, Problems, and Possibilities," in *Readings in Water Quality Management* (Ann Arbor Sciences, 1980).

"The Marine Sanctuaries Program: A Framework for Critical Areas Management in the Sea," 8 *Environmental Law Reporter* (Environmental Law Institute) 50016 (1978) (reprinted in Senate Commerce Committee, *Hearings on the Marine Protection, Research, and Sanctuaries Act*, Serial No. 95-65, at 45) (co-author).

"Evaluating State Coastal Zone Plans: Questions to Ask," in *Coastal Zone '78*, at 98 (1978) (co-author).

"The Promise of Federal Consistency Under Section 307 of the Coastal Zone Management Act," 6 *Environmental Law Reporter* (Environmental Law Institute) 50047 (1976) (co-author).

B. Constitutional Takings of Property

"Palazzolo and the Decline of Justice Scalia's Categorical Takings Doctrine," 29 *Boston College Environmental Affairs Law Review* 137 (2002) (for a symposium).

"Libertarian Property, Natural Law, and the Just Compensation Clause in the Federal Circuit," 25 *Environmental Law* 171 (1995) (for a symposium).

"Property Myths, Judicial Activism, and the *Lucas* Case," 23 *Environmental Law* 907 (1993) (for a symposium).

C. Public Lands

"Water For National Forests: The Bypass Flow Controversy and The Great Divide in Western Water Law," 18 *Stanford Environmental Law Review* 3 (1999) (co-author).

"The Proposed Transfer of BLM Timber Lands to the State of Oregon: Environmental and Economic Questions," 32 *Land and Water Law Review* (University of Wyoming) 353 (1997) (co-author) (for a symposium).

"The Case Against Transferring BLM Lands to the States," 7 *Fordham Environmental Law Journal* 387 (1996).

"Public Choice Theory and the Public Lands: Why Multiple Use Failed," 18 *Harvard Environmental Law Review* 405 (1994).

"Ancient Forests and the Supreme Court: Issuing a Blank Check for Appropriation Riders," 43 *Washington U. Journal of Urban and Contemporary Law* 35 (1993) (for a symposium).

"Ancient Forests, Spotted Owls, and Modern Public Land Law," 18 *Boston College Environmental Affairs Law Review* 605 (1991).

D. Water Law

"Renouncing the Public Trust Doctrine: An Assessment of the Validity of Idaho House Bill 794," 24 *Ecology Law Quarterly* (University of California-Berkeley) 461 (1997) (co-author).

"Seven Myths of Northwest Water Law and Associated Stories," 26 *Environmental Law* 141 (1996) (for a symposium).

"Mono Lake and the Evolving Public Trust in Western Water," 37 *University of Arizona Law Review* 701 (1995) (co-author).

"Pinchot, Property Rights, and Western Water: A Reply to Greg Hobbs," 24 *Environmental Law* 1203 (1994).

"The Rhetoric of Resistance To Water Reform: A Response To Hobbs' Critique of Long's Peak," 24 *Environmental Law* 171 (1994).

"Unconventional Waters: The Quiet Revolution in Federal and Tribal Minimum Streamflows," 19 *Ecology Law Quarterly* (University of California-Berkeley) 445 (1992).

"Public Property and the Democratization of Western Water Law: A Modern View of the Public Trust Doctrine," 19 *Environmental Law* 573 (1989) (for a symposium).

E. Tribal Natural Resources

“Reversing the *Winters* Doctrine?: Denying Reserved Water Rights For Idaho Wilderness and Its Implications,” 73 *University of Colorado Law Review* 173 (2002).

“Judicial Termination of Treaty Rights: The Snake River Case,” 36 *Idaho Law Review* 449 (2000) (co-author).

“The Indian Treaty Piscary Profit and Habitat Protection in the Pacific Northwest: A Property Rights Approach,” 69 *University of Colorado Law Review* 407 (1998) (co-author).

“The Indian Court of Appeals: A Modest Proposal to Eliminate Supreme Court Jurisdiction Over Indian Cases,” 46 *Arkansas Law Review* 203 (1993) (co-author) (for a symposium).

“Native Fishing Rights and Environmental Protection in North America and New Zealand: A Comparative Analysis,” 8 *Wisconsin International Law Journal* 1 (1989) (also published at 4 *Canterbury (N.Z.) Law Review* 211 (1990)).

“Aboriginal Title, The Common Law, and Federalism: A Different Perspective,” in *The Emergence of Australian Law* (Butterworths, 1989) (co-author).

F. Salmon/Hydropower

“Avoiding Dam Breaching Through Off-Site Mitigation: NMFS’s 2000 Biological Opinion on Columbia Basin Hydroelectric Operations,” 32 *Environmental Law* 241 (2002) (co-author).

“The BPA Power-Salmon Crisis: A Way Out,” 31 *Environmental Law Reporter* 10726 (2001) (co-author) (earlier version published in *Restoration*, the journal of the Oregon Sea Grant Program).

“The Decline of the Hydropower Czar and The Rise of Agency Pluralism in Hydroelectric Licensing,” 26 *Columbia Journal of Environmental Law* 81 (2001) (co-author).

“Salmon and The Endangered Species Act: Lessons From The Columbia Basin,” 74 *Washington Law Review* 519 (1999) (co-author) (for a symposium).

“The Amphibious Salmon: The Evolution of Ecosystem Management in the Columbia Basin,” 24 (University of California-Berkeley) *Ecology Law Quarterly* 653 (1997) (for a symposium).

“Beyond the Parity Promise: Struggling to Save Columbia Basin Salmon in the Mid-

1990s,” 27 *Environmental Law* 21 (1997) (co-author) (for a symposium).

“Salmon Law and Policy in 1985: A Brief Overview,” 26 *Environmental Law* 651 (1996) (for a symposium).

“Columbia Basin Salmon and the Courts: Reviving the Parity Promise,” 25 *Environmental Law* 351 (1995) (for a symposium).

“Saving Idaho's Salmon: A History of Failure and A Dubious Future, Part II” (chapter in CURRENT TRENDS AND POLICIES IN WATER LAW, a 1994 publication of the American Bar Association) (co-author).

“Saving Idaho's Salmon: A History of Failure and A Dubious Future,” 28 *Idaho Law Review* 669 (1992) (for a symposium).

“The Unraveling of the Parity Promise: Hydropower, Salmon, and Endangered Species in the Columbia Basin,” 21 *Environmental Law* 657 (1991) (co-author).

“Federalism, Hydroelectric Licensing, and the Future of Minimum Streamflows After California v. Federal Energy Regulatory Commission,” 21 *Environmental Law* 113 (1991).

“The Northwest Power Act's Institutional Innovations and Unfulfilled Promises,” 2 (University of Oregon) *Journal of Environmental Law and Litigation* 165 (1987).

“The Appointments Clause, Innovative Federalism, and the Constitutionality of the Northwest Power Planning Council,” 8 (University of Utah) *Journal of Energy Law and Policy* 1 (1987).

“Why Study Pacific Salmon Law?—A Course Outline,” 22 *Idaho Law Review* 629 (1986).

“A Trilogy of Tribes v. FERC: Reforming the Federal Role in Hydropower Licensing,” 10 *Harvard Environmental Law Review* 1 (1986).

“Reexamining the Parity Promise: More Challenges Than Successes to the Implementation of the Columbia Basin Fish and Wildlife Program,” 16 *Environmental Law* 461 (1986) (for a symposium)

“Small Scale Hydropower and Anadromous Fish: Lessons and Questions From the Winchester Dam Controversy,” 16 *Environmental Law* 583 (1986) (co-author) (for a symposium).

“NEPA Meets the Northwest Power Act (And Prevails): The Ninth Circuit Orders An EIS on the Bonneville Power Administration's Power Sale Contracts,” 25 (University of New

Mexico) *Natural Resources Journal* 1005 (1985).

"ALCOA v. Central Lincoln PUD and Some Myths About Northwest Electric Power Policymaking: A Call For Continued Judicial 'Hard Looks'," 15 *Environmental Law* 365 (1985).

"Implementing the Parity Promise: An Evaluation of the Columbia Basin Fish and Wildlife Program," 14 *Environmental Law* 277 (1984).

"Beyond Mitigation—Restoring Federally Damaged Salmon Runs Under the Columbia Basin Fish and Wildlife Program," 14 *Environmental Law Reporter* (Environmental Law Institute) 10010 (1984) (earlier version published in *Western Natural Resource Litigation Digest*, Fall 1983).

"Risk Management and Northwest Electric Power Planning: Some Lessons From the Rearview Mirror," 13 *Environmental Law* 739 (1983) (for a symposium).

"The Northwest's Hydroelectric Heritage: Prologue to the Pacific Northwest Electric Power Planning and Conservation Act," 58 *Washington Law Review* 175 (1983) (for a symposium).

"Fulfilling the Parity Promise: A Perspective on Scientific Proof, Economic Cost, and Indian Treaty Rights In the Approval of Columbia Basin Fish and Wildlife Program," 13 *Environmental Law* 103 (1982).

"Promising a Process for Parity: The Pacific Northwest Electric Power Planning and Conservation Act and Anadromous Fish Protection," 11 *Environmental Law* 497 (1981) (co-author).

"Hydropower vs. Salmon: The Struggle of the Pacific Northwest's Anadromous Fish For a Peaceful Coexistence With the Columbia River Power System," 11 *Environmental Law* 211 (1981).

G. Wetlands

"The Clinton Wetlands Plan: No Net Gain in Wetlands Protection," 9 *Florida State Journal of Land Use and Environmental Law* (1994).

"Wetlands Law: 'No Net Loss' and Its Decline," 4 *Rivers* 122 (1992) (co-author).

"Federal Wetlands Protection Under the Clean Water Act: Intergovernmental Tension, Regulatory Ambivalence, and a Call for Reform," 60 *University of Colorado Law Review* 695 (1989) (co-author).

"The Clean Water Act's Section 404 Program Enters Its Adolescence: An Institutional and Programmatic Perspective," 8 *Ecology Law Quarterly* (University of California-Berkeley) 409 (1980).

"Wetlands Protection and Coastal Planning: Avoiding the Perils of Positive Consistency," 5 *Columbia Journal of Environmental Law* 69 (1978).

SELECTED GOVERNMENT REPORTS (principal author)

1977 *Environmental Planning and the Siting of Nuclear Facilities: The Integration of Water, Air, Coastal, and Comprehensive Planning Into the Nuclear Siting Process* (prepared for the U.S. Nuclear Regulatory Commission).

1977 *An Analysis of the Environmental Impacts of the Alternatives to Transport Alaska's Prudhoe Bay Natural Gas* (prepared for the Council on Environmental Quality).

1977 *An Assessment of the Need for a National Marine Sanctuaries Program* (prepared for the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration, Department of Commerce).

1976 *The Decision To Transport Alaskan Natural Gas From Prudhoe Bay: Issues and Decisionmakers* (prepared for the Office of Planning and Evaluation, Environmental Protection Agency).

1976 *The Role of Law in the Design and Management of the Santa Catalina Island Conservation and Recreation Plan: A Guide For Management* (prepared for the Los Angeles county Department of Parks and Recreation).

1976 *The Federal Role in Alaska's Coastal Zone Management Program* (prepared for the Office of the Governor, Alaska Coastal Management Program).

1976 *An Inventory and Analysis of Federal Statutes Affecting the Alaska Coastal Management Program* (prepared for the Office of the Governor, Alaska Coastal Management Program).

1975 *An Inventory and Analysis of Existing Land Management Tools in Alaska* (prepared for the Office of the Governor, Alaska Coastal Management Program).

AWARDS, PROFESSIONAL ACTIVITIES AND AFFILIATIONS

Chair, American Association of Law School's Natural Resources Law Section, 2005-07.

Northwest Power Act Leader, selected by the Northwest Power Planning Council and

the Bonneville Power Administration, 2005.

Co-Director, Northwest Water Law and Policy Project, 1994-2001.

Principal Investigator (Anadromous Fish Law Project), Oregon State University Sea Grant Program, 1979-1990.

Distinguished Environmental Visitor, Florida State University, 1994; University of Calgary, 1990; Universities of Melbourne, Adelaide, Tasmania, and Queensland (Australia), 1988.

Lewis and Clark Law School Committee Chair, Appointments Committee, 2006-07; Promotion and Tenure Committee, 1994-1996; Natural Resources Committee, 1983-87, 1988-91, 1993-94, 1999-2001, 2004-05; Externship Committee, 1980-82.

Fulbright Fellowship, University of Athens (Greece), Fall 1991.

University Fellowship, University of Melbourne (Australia), Spring 1988.

Board Member, Waterwatch of Oregon, 1992-1994.

Faculty Enrichment Grant, Canadian Embassy, 1985-86.

Member, Pacific Northwest Power Planning Council Advisory Committee on Fish and Wildlife, 1981-83.

Bronze Medal for Commendable Service, U.S. Environmental Protection Agency, 1978; Certificate of Commendation, Office of Enforcement, U.S. Environmental Protection Agency, 1978.