

Natural Resources Law Institute and
Environmental and Natural Resources Law Program

Annual Report 2010-11



Lewis & Clark Law School
Portland, Oregon

Natural Resources Law Institute and Environmental and Natural Resources Law Program

Annual Report 2010-11

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We're making global strides

In 2010-11 the Environmental and Natural Resources Law Program made global strides, literally and figuratively, while keeping our deep sense of place planted firmly in the Pacific Northwest. Our faculty visited our new partner law schools in India, blogged about environmental issues from Spain and Italy, and launched the world's first Animal Law LL.M. Our students and clinics ensured the closure of a coal plant in Oregon, assisted developing countries with climate change issues in Cancun, Bangkok and Durban, and settled a case that may stem the tide of invasive species brought into U.S. waters from international ships. Our international LL.M. students provided important perspectives on environmental issues from Cameroon, India, France and Peru. It is a small world, after all.

Our visiting speakers series, now in its 23rd year, provided insight into global environmental issues. Our 2010 NRLI Distinguished Visitor, Yale's Douglas Kysar, spoke on *What Climate Change Can Do About Tort Law*. M.C. Mehta, one of the world's most renowned activists and India's "One Man Enviro-legal Brigade," spoke on *Saving the Taj Mahal, and Other Stories from the Frontlines of Indian Environmental Litigation*. Our NRLI Distinguished International Visitor, Dr. Christian Calliess of Freie Universitat in Berlin, spoke on *European Environmental Law: The Principle of Sustainability, Climate Protection and Energy Policy in the European Union*.

Closer to home, our faculty and students



continue to work and learn together in an intellectually demanding, yet collegial atmosphere. A stroll down the north side of Wood Hall allows you to eavesdrop on students in the clinic workroom scrambling to finish a brief, or professors meeting with students who need guidance on their paper topics. If it gets too hectic, a walk through Tryon Creek State Park, which practically surrounds the law school, brings perspective and inspiration. In Fall 2011 we honored the retirement of our amazing colleagues, Professors Jim Huffman and Janet Neuman, and also said goodbye to Lin Harmon, former Assistant Director of the Environmental Law Program. We wish them well as they make strides in their personal lives and careers.

Our global reach will continue in 2011-12. In addition to lectures and events here at the law school we are planning a joint environmental conference in India with the National Law School in Delhi. Join us in Portland or India—whether in person or by podcast. See inside for all the details on our students' and faculty's many accomplishments.

Happening in the 2011-12 Academic Year



24TH ANNUAL NRLI DISTINGUISHED ENVIRONMENTAL LAW SPEAKER AND AWARDS

Professor Jody Freeman, Archibald Cox Professor of Law at Harvard Law School: The President's Role in Environmental Law

Distinguished Environmental Law Graduate Awards: Gary Meyers, '82; Janis Searles Jones, '95; Reuben Plantico, '82

October 4, 2011 • Lewis and Clark Law School



19TH ANNUAL ANIMAL LAW CONFERENCE

Animal Law: Standing Up for Animals: Can a Bad Economy Inspire Greater Goodness?

October 14-16, 2011 • Lewis & Clark Law School



FALL SYMPOSIUM 2011: 21ST CENTURY WATER LAW

To commemorate the retirements of Professor (and former Dean) Jim Huffman and Professor (and former Associate Dean) Janet Neuman, Lewis & Clark Law School and *Environmental Law* held a symposium on water law and its future.

October 7, 2011 • Lewis and Clark Law School



ENVIRONMENTAL LAW CONFERENCE

The Migratory Bird Treaty Act: Reshaping a Powerful Conservation Tool?

October 20-22, 2011 • Lewis and Clark Law School



2012 ENVIRONMENTAL LAW SUMMER PROGRAM

1 week Energy Law intensives

2 week NEPA–Wetlands–Natural Resources–Wildlife Crimes

5 week Environmental Law and Administrative Law

http://law.lclark.edu/programs/summer_session/courses/environmental_law/



2012 SUMMER INTENSIVE ANIMAL LAW PROGRAM

International Wildlife Law

Animal Law Litigation

Animal Rights Law & Jurisprudence

Law of Humane Science

http://law.lclark.edu/programs/summer_session/courses/animal_law

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 to download podcasts of events, please visit our website at lclark.edu/dept/elaw.

Lewis & Clark
Law School

Natural Resources Law Institute and Environmental and Natural Resources Law Program

National Moot Court Competitions

Lewis & Clark law students once again excelled in moot courts testing skills at negotiation, client counseling, trial advocacy, appellate advocacy, and legislative drafting. The 8th annual National Animal Law Competitions, presented by Lewis and Clark's Center for Animal Law Studies, in collaboration with the Animal Legal Defense Fund and hosted at Harvard Law School, were a huge success. All three individual competitions were completely sold out. In all, 27 law schools from around the country participated in one or more of the three competition components (Appellate Moot Court Argument, Closing Argument, Legislative Drafting and Lobbying). Lewis & Clark student Meredith Price took first place in the Legislative Drafting & Lobbying Competition. Tara Gallagher and Ashley MacKenzie took second place in

the Appellate Moot Court Competition, and Jessica Sue Johnson took second place in the Closing Argument Competition.

In the National Environmental Law Moot Court Competition, with 72 other schools competing, Lewis & Clark students Ellie Dawson, John Krallman, and Marla Nelson took second place. Team member John Krallman was also recognized as the co-runner-up for best oralist in the entire competition. Our environmental law moot court program has had a stunning record of success at the national competition held at Pace Law School in New York. This marks the 13th time in the last 20 years that a Lewis & Clark team has made the finals. We have been fortunate enough to win the competition seven times in those 20 years.



National Environmental Law Moot Court Team: Professor Craig Johnston (coach), Ellie Dawson, John Krallman, Marla Nelson



National Animal Law Team: Ashley MacKenzie, Tara Gallagher, Katie Walters, Bobbe Traverso/Estes

Symposium Honoring Retiring Professors and Water Law Scholars Jim Huffman and Janet Neuman

Lewis & Clark Law School and Environmental Law held a symposium on water law and its future in October 2011. Professor Michael Blumm organized the festschrift

for his retiring water law colleagues Jim Huffman (Professor and former Dean), and Janet Neuman (Professor and former Associate Dean). Panelists included nine

distinguished water law scholars from throughout the country. The participants discussed topics as divergent as the convergence of Eastern and Western water law, water rights and changing ecological conditions, takings and riparian water rights, watershed governance and coastal zone management, climate change and water law, and the Oregon public trust doctrine. The results, published in volume 42 of *Environmental Law*, will include Blumm's "The Water Law Scholarship of Jim Huffman and Janet Neuman: Prologue to the Festschrift" (<http://ssrn.com/abstract=1952976>); and "The Oregon Public Trust Doctrine: Public Rights in Waters, Wildlife, and Beaches" (<http://ssrn.com/abstract=1925112>). Podcasts of this event are available at <http://lawlib.lclark.edu/podcast/?p=5703>



Professor Mike Blumm, Professor Jan Neuman, Professor and former Dean Jim Huffman, Dean Robert Klonoff

Faculty Scholarship 2010-11

Professor Michael C. Blumm

ARTICLES: "Reinvigorating the Public Trust Doctrine: Expert Opinion on the Potential of a Public Trust Mandate in U.S. and International Environmental Law," 52 *Environment* 6 (2010) (co-authored with Mary Turnipseed, Raphael Sagarin, Peter Barnes, Patrick Parenteau and Peter Sand)

"The Public Trust Doctrine and Private Property: The Accommodation Principle," 27 *Pace Env'tl. L. Rev.* 649 (2010)

"Present at the Creation: The 1910 Big Burn and the Formative Days of the U.S. Forest Service," 37 *Ecology L. Q.* 1217 (2010) (reviewing Timothy Egan, *The Big Burn: Teddy Roosevelt & the Fire That Saved America* (2009))

"Why Aboriginal Title Is a Fee Simple Absolute," 15 *Lewis and Clark Law Review* ____ (2011) (<http://ssrn.com/abstract=1910876>)

"The Internationalization of the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxion Vision," 44 *U.C. Davis L. Rev.* ____ (2012) (<http://ssrn.com/abstract=1816628>)

"The Columbia River Gorge and the Development of American Natural Resources Law: A Century of Significance," 20 *N.Y.U. Env'tl. L. Rev.* ____ (2012) (<http://ssrn.com/abstract=1881169>)

"The Real Story Behind the Columbia Basin Salmon Debacle: Dam Preservation Under the Endangered Species Act," 41 *Env'tl. L.* 1363 (2011)

"The Florida Beach Case and the Road to Judicial Takings," 35 *Wm. & Mary Env'tl. L. & Pol'y Rev.* 713 (2011) (co-authored with Elizabeth Dawson)



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, staff attorney and clinical professor (PEAC); Tom Buchele, managing attorney and clinical professor (PEAC); Laura Handzel, assistant director (CALS). Second row, from left: Janice Weis, associate dean and program director; Chris Wold '90, professor and clinical director (IELP); Erica Thorson '05, staff attorney and clinical professor (IELP); Dan Rohlf, professor and of counsel (PEAC); Dan Mensher '07, staff attorney and clinical professor (PEAC); Craig Johnston '85, professor and PEAC director; Jan Neuman, professor. Third row, from left: Lin Harmon '91, former associate director; Bill Funk, professor; Kathy Hessler, clinical professor and director Animal Law Clinic; Fourth row, from left: Linda D'Agostino-Long, program assistant; Mike Blumm, professor; Aubrey Baldwin '05, staff attorney and clinical professor (PEAC). Not pictured: Henry Drummonds, professor; Don Large, professor; Karen Smith-Geon, executive director (PEAC); Lucy Brehm '86, assistant director; Kevin Cassidy '02, staff attorney (PEAC).

Professor William Funk

BOOKS: *Administrative Law: Examples & Explanations*, Aspen Publishers (4th ed. 2011) (with Richard Seamon)

Teachers Manual for Legal Protection of the Environment, 3d ed. (with Johnston and Flatt)

Introduction to American Constitutional Structure, Thompson West (2011 Supplement)

CHAPTERS: "Constitutional Law and Separation of Powers," in *Developments in Administrative Law and Regulatory Practice*

"Manning the Gates: Standing as a Barrier to Judicial Policing of Agency Action," in *Global Law and Administrative Law*

ARTICLES: "Electronic Surveillance of Terrorism in the United States," 80 *Miss. L. J.* 1491 (2011)

"Regulation By Litigation: Not so Bad?," *Regulation & Governance* (2010)

"Climate Change and the Puget Sound: Building the Legal Framework for Adaptation," *Center for Progressive Reform* (2011) (co-authored with other C.P.R. Scholars)

Professor Craig Johnston

BOOKS: *Teachers Manual for Legal Protection of the Environment*, 3d ed. (with Funk and Flatt)

AMICUS BRIEF: Brief for Natural Resources Defense Council as Amici Curiae Supporting Respondent, *Monsanto Co. v. Geertson Seed Farms*, No. 09-475 (U.S. Apr. 5, 2010), published in 40 *Env'tl. Law* 687 (2010)

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Lewis & Clark
Law School

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FACULTY SCHOLARSHIP 2010-11 *continued from page 5*

Professor Susan Mandiberg

ARTICLES: "Would Serious Criminal Sanctions Apply if Bhopal Occurred in the United States," *Indian Yearbook of Int'l L. & Pol'y* (forthcoming 2011) (co-authored with Marcel Gesmundo)

Professor Janet Neuman

BOOKS: *Oregon Water Law: A Comprehensive Treatise on the Law of Water and Water Rights in Oregon* (2011)

CHAPTERS: "Oregon" 6 *Waters and Water Rights* (Robert E. Beck and Amy L. Kelley, eds., 3rd ed. 2011)

ARTICLES: "Are We There Yet? Weary Travelers on the Long Road to Water Policy Reform," 50 *Nat. Resources J.* 139 (2010)

"Seeking a Shared Understanding of the Human Right to Water: Collaborative Use Agreements in the Umatilla and Walla Walla Basins of the Pacific Northwest," 47 *Willamette L. Rev.* 361 (2011) (co-authored with Dena Marshall)

Professor James L. Huffman

ARTICLES: "Comprehensive River Basin Management: The Limits of Collaborative, Stakeholder-Based, Water Governance," *Nat. Resources J.* (forthcoming 2011)

Professor Dan Rohlf, *Of Counsel PEAC*

ARTICLES: "Making Good Use of Adaptive Management," *Center for Progressive Reform* (2011) (co-authored with other C.P.R. Scholars)

"Regulatory Blowout: How Regulatory Failures Made the BP Disaster Possible, and How the System Can Be Fixed to Avoid a Recurrence," *Center for Progressive Reform* (2010) (co-authored with other C.P.R. Scholars)

BOOK REVIEW: *Joe Roman: Listed: Dispatches from America's Endangered Species Act*, Harvard Univ. Press (2011) (forthcoming in *J Environ Stud Sci*, 2011)

Clinical Professor Erica Lyman, *IELP Staff Attorney*

ARTICLES: "ABA International Environmental Law: Year in Review 2008," 44 *Intl. Law* 503 (2010)

"ABA International Environmental Law: Year in Review 2010," *Intl. Law.* (2011)

"Back to Basics: An Analysis of the Object and Purpose of CITES and a Blueprint for Implementation," *J. Int'l Wildlife L. & Pol'y* (forthcoming)

Professor Chris Wold, *IELP Director*

BOOKS: *Trade and the Environment: Law and Policy*, Carolina Academic Press, 2nd ed. (2011) (co-authored with Sanford Gaines and Greg Block)

ARTICLES: "Using the Dispute Settlement Provisions of the World Trade Organization to Challenge Fossil Fuel Subsidies that Exacerbate Climate Change," *Georgetown Journal of International Law* (forthcoming)

Assistant Dean Pamela Frasch, *Executive Director of the Center for Animal Law Studies*

BOOKS: *Animal Law: Cases and Materials - Teachers Manual*, Carolina Academic Press 4th ed. (2010) (co-authored with Sonia S. Waisman and Bruce A. Wagman);

Animal Law in a Nutshell, Thomson/West (2011) (co-authored with Katherine M. Hessler, Sarah M. Kutil and Sonia W. Waisman)

ARTICLES: "The Future of Animal Law: Moving Beyond Preaching to the Choir," 60 *J. Legal Ed.* 209 (2010) (co-authored with Megan Senatori)

"Crime Restoration and Responsibility," *Research Project report No. 185*, Chiba University Graduate School of Humanities and Social Sciences (in Japanese) (From the proceedings of the Japanese Association of Legal Philosophy) (I. Shimizu, ed.), p. 45 (2010) (co-authored with Dr. Hollie Lund).

Clinical Professor Kathy Hessler, *Animal Law Clinic Director*

BOOKS: *Animal Law in a Nutshell*, Thomson/West (2011) (co-authored with Pamela D. Frasch, Sarah M. Kutil and Sonia W. Waisman)

ARTICLES: "The Role of the Animal Law Clinic," 60 *J. Legal Ed.* 263 (Number 2/ November 2010)

"Animals in Testing: Concerns and Consequences" published in: *Perspectives Philosophiques Sur la Recherche Animale*, (French translation) 1 *Revue Semestrielle de Droit Animalier – RSDA (Observatoire des Mutations Institutionnelles et Juridiques*, Limoges, Fr.), 327 (2010); *Revista Brasileira de Direito Animal*, (Portuguese translation) (Número 8, 2011); *Perspectives Philosophiques Sur la Recherche Animale, L'Animal Dans la Spirale des Besoins de l'Humain*, (French translation) (M. Lachance, dir.), Cowansville, Yvon Blais, 2010, p. 265.; *Philosophical Foundations and Animals in Testing: Concerns and Consequences*, (Japanese translation), (2010) I. Shimazu ed., *Crime Restoration and Responsibility*, Research Project Report No. 185, Chiba University Graduate School of Humanities and Social Sciences, pp. 36-44. (From proceedings of the Japanese Association of Legal Philosophy.)

"Report and Recommendations on the Status of Clinical Faculty in the Legal Academy," (B.L. Adamson et al., co-authors, 60 *J. Legal Ed.* (2010)



Pacific Environmental Advocacy Center (PEAC)

With seven lawyers and a new office in Boston, Massachusetts, PEAC is expanding its reach and impact. While PEAC will continue to serve the Pacific Northwest, it will also look beyond the region for important environmental issues and to provide students with a wider array of cases on which to work. The Boston office is staffed by Kevin Cassidy ('02). "I've been in touch with many alums," Cassidy says. "Without exception, they are happy to hear PEAC is in the neighborhood, so to speak, and are looking forward to finding ways we can collaborate. They know the value that PEAC brings to a case, because many of them are former PEAC students, too. Each year, some percentage of Lewis and Clark grads will come east, so the opportunities to find partnerships in the future will continue to grow." PEAC is also planning an Appellate Project that will enable our students to play a leadership role in shaping the development of environmental law.

Highlights from 2010-11:

PEAC ensures closing of Boardman coal plant. After years of litigation and hard work by PEAC on behalf of its nonprofit clients, PGE agreed to shut down Oregon's only coal plant. The key aspects of the settlement include closing the Boardman coal plant in 2020, installing interim controls by 2015, and contributing \$2.5 million to "supplemental environmental projects" in lieu of paying penalties. Aubrey Baldwin has been the lead lawyer for PEAC in these very successful negotiations, with strong assistance from Allison LaPlante and innumerable PEAC students. See page 8 for more details.

PEAC forces EPA to properly regulate ballast water discharges from ships.

In 1999 PEAC, on behalf of three environmental organizations, petitioned EPA to repeal a regulatory exemption from the Clean Water Act's National Pollutant



Discharge Elimination System (NPDES) program for vessel discharges. After years of litigation (led by Professor Melissa Powers), PEAC obtained a ruling from the Ninth Circuit ordering EPA to withdraw the exemption. To replace this exemption, EPA issued a general permit that PEAC alleges to be inadequate. PEAC filed another lawsuit; led by Allison LaPlante and Dan Mensher, PEAC was able to negotiate a settlement agreement with EPA in March 2011. The agreement obligates EPA to promulgate a much more substantive permit that will go a long way in addressing invasive species concerns. Despite the settlement, however, the case goes on because the shipping industry also challenged EPA's first general permit. As a result, PEAC intervened on EPA's side to defend its authority to issue the permit and to include within it conditions imposed by states via the Clean Water Act. Oral argument will take place in 2012.

PEAC blocks importation of garbage from Hawaiian Islands. PEAC professor Tom Buchele and summer interns, Amy Van Saun and Sarah Kutil, representing Columbia Riverkeeper, Friends of the Columbia Gorge, and NEDC, convinced a federal court judge in Yakama, Washington that the U.S. Dept. of Agriculture violated NEPA when it authorized a waste hauler to import garbage from the Hawaiian Islands and dispose of it in a landfill in eastern Washington. Because the USDA refused to delay the shipments while PEAC presented its clients' claims to the judge, Tom and his students first had to obtain an emergency Temporary Restraining Order. A month later the Court agreed to convert that TRO into

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Lewis & Clark
Law School

Law Clinic Wins Monumental Victory for Oregon *Law School Clinic Helps Oregon Win its Independence from In-State Coal Power*

By Bobbie Hasselbring

What do you do when the largest utility in Oregon violates environmental laws for years, polluting some of the state's most pristine wild areas? If you're Lewis & Clark Law School's Pacific Environmental Advocacy Center (PEAC), you shut them down.

In a classic David-and-Goliath drama, PEAC recently won a precedent-setting settlement against Portland General Electric (PGE), which will shut down coal burning at the company's Boardman plant by the end of 2020. PGE must also significantly reduce its emissions of sulfur dioxide, the major pollutant in acid rain. Additionally, the company is required to pay \$2.5 million into a charitable fund for air and habitat protection as well as restoration and clean energy projects.

The settlement is significant, both legally and environmentally. "This is huge," says Craig Johnston J.D. '85, PEAC's director and one of its founders. "It sets important legal precedents and is really key for the environment. The fact that PEAC can go up against so many specialized lawyers in a big case like this and produce such fantastic results is amazing."

Just how amazing? Consider that PEAC's entire legal team consisted of two Lewis & Clark Law School attorneys, one outside lawyer, and a cadre of fledgling law students. PEAC's lead attorney, Aubrey Baldwin J.D. '05, had been a lawyer for only a year when she took on the case five years ago.



Brian Pasko

"It was a little intimidating at first," admits Baldwin, "I was a recent grad with one year of experience and had just gotten hired as a staff attorney at PEAC. The other lawyers here asked me to take on this big case that no one else wanted to tackle. It was a great case, but the odds were definitely against us." PEAC won despite having little money. The law school's environmental clinic, which represents nonprofit public interest clients on a pro bono basis, receives some funding from the law school, foundations, and donors, but the majority of its budget is tied to winning cases, which can take years. "This is complex litigation, and we don't get reimbursed unless we win," says Johnston. "We've done well enough that PEAC has been able to grow. However, we invest significant resources—in the Boardman

case five years' worth—and we may still not win."

In contrast, for-profit PGE has millions of dollars and dozens of specialized lawyers at its disposal. The company had also been successfully skirting environmental laws with Boardman for years. According to the lawsuit filed by PEAC in 2008, the Clean Air Act required better pollution controls than PGE installed before Boardman opened in 1977, and it required PGE to improve those controls when the plant was upgraded in subsequent years. But the company didn't make these changes.

The coal-fired Boardman plant produces 15 percent of the power PGE sells. According to studies by the University of Washington, it also generates 50 percent of the pollution that fouls the air in the Columbia Gorge and 14 wilderness areas.

PACIFIC ENVIRONMENTAL ADVOCACY CENTER (PEAC) *continued from page 7*

a preliminary injunction. The injunction prevents the importation of garbage from Hawaiian Islands, which would likely contain many invasive plant and insect

species, until the USDA properly analyzes all of the risks. PEAC partnered in this case with attorneys for the Yakama Nation whose lands surround the proposed disposal site.

PEAC is Lewis & Clark Law School's domestic environment law clinic. For more information about PEAC, visit the website at www.lclark.edu/org/peac.

Baldwin says the Boardman agreement will have long-lasting impacts in Oregon and elsewhere. “The precedents set here will play an important role in other cases involving the move from coal to cleaner energy.”

Over the past five years, the case has also given as many as 25 Lewis & Clark Law School students hands-on experience, a key part of PEAC’s mission. “Our clinic allows students to work as if they’re part of a large law firm,” explains Johnston.

“We plug them in as team members on big cases. Many of them go on to work with the Department of Justice, the Center for Biological Diversity, the U.S. Humane Society, and other prominent employers.

PEAC’s track record of success has also allowed it to grow. In fact, it is now going national, having recently hired Kevin Cassidy J.D. ’02 to open PEAC’s East Coast office in Boston. Baldwin says Lewis & Clark law students got really invested in the Boardman case. “Our students were an integral part of the team,” she says. “They worked as junior attorneys and did everything—met with clients, wrote briefs, attended hearings.” Lauren Goldberg J.D. ’08 worked as a student for a year on the Boardman case. She was hired in 2008 as a staff attorney by Columbia Riverkeeper, one of six nonprofits PEAC represented, and acted as their client representative in the case.

When the Boardman settlement came down, Baldwin and Johnston said they heard from nearly every Lewis & Clark law student who’d worked on the case. The plaintiffs PEAC represented are planning a big party to celebrate the victory—and to honor PEAC’s work.

“One of the great things about PEAC is that our work has a multiplier effect,” says Johnston. “We level the playing field by representing clients who otherwise couldn’t afford legal counsel. And we’re training the next generation of environmental lawyers.”

Award-winning writer Bobbie Hasselbring writes frequently for Lewis & Clark’s Chronicle magazine. (Reprinted with permission.)

International Environmental Law Project (IELP)

As ever, IELP kept Professors Chris Wold ’90 and Erica Lyman ’05, as well as 11 hardworking student clerks, busy during the 2010-2011 academic year. A significant portion of IELP’s work this year related in one way or another to climate change—mostly revolving around IELP’s role as a legal support team for the Pacific Island countries. In addition, IELP continued its longstanding wildlife conservation work. For the upcoming year, IELP looks forward to continuing its work with the Pacific Island countries and expanding its capacity to counsel both governments and non-governmental organizations (NGOs) on technical issues relating to implementation of the Convention on International Trade in Endangered Species (CITES) and other biodiversity-related international treaties.

In addition to traveling to Cancun and Bangkok to provide pro bono legal assistance to Pacific Island countries during climate change negotiations, IELP has been hard at work on a number of distinct but related projects. On behalf of Palau, two IELP student clerks, Amelia Linn ’12 and Danielle

Shaw ’11, outlined the science and the law of including mangrove restoration and conservation into the program for Reducing Emissions from Deforestation and Forest Degradation (or REDD, as it’s widely known). Other students, including Ken Webster (LL.M.), Amanda Caffall ’11, and Karen Barnett (LL.M.) worked to revise and rethink one of the draft protocols submitted in the negotiations in order to reflect the progress made in the negotiations in Cancun.

IELP has also taken its climate change work outside of the climate change negotiations. For example, IELP clerks Rachel Guthrie ’12 and Toby McCartt ’11 explored how Pacific Island nations can use regional fisheries management organizations to maintain control over fisheries resources even as they lose territory—and consequently lose sovereign rights to manage and exploit fisheries resources in adjacent ocean waters—to rising seas. IELP clerks Grant Wilson ’12 and Sara Foroshani ’12 described how rules of the World Trade Organization could be used to challenge

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Natural Resources Law Institute and Environmental and Natural Resources Law Program

Center for Animal Law Studies (CALS) *In Collaboration with the Animal Legal Defense Fund*

New Courses and Developments

The Center for Animal Law Study's faculty and staff worked hard throughout 2010-2011 to further grow Lewis & Clark's premier Animal Law Program. Several courses were added to the curriculum, including first-time niche animal law classes. Some of these include: Law and Policy: Crimes Against Animals; Law & Policy: Farmed Animals; Moot Court: Legislative Drafting & Lobbying; and Moot Court: Closing Argument. In addition, and perhaps most exciting, plans have moved along smoothly and steadily to start the world's first Animal Law LL.M. The Animal Law LL.M. represents another huge stride in the development of the field of animal law. It also represents another historic first continuing Lewis & Clark's long tradition of pioneering animal law education.



The Animal Law LL.M. Program is expected to start in the fall of 2012.

2010 Animal Law Conference

The Center for Animal Law Studies, in collaboration with the Animal Legal Defense Fund and Lewis & Clark's Student Animal Legal Defense Fund, hosted the 19th Annual Animal Law Conference. *Animals*

in Crisis: Using the Laws We Have, Getting the Laws We Need featured two keynote speakers: Dr. Sheri Speede of In Defense of Animals-Africa and Katrina Sharman of Voiceless, the Animal Protection Institute (Australia). In addition, nearly forty speakers from across the nation participated in over twenty unique sessions focused on cutting-edge animal law issues. Attendees included animal law students, practitioners, activists and academics from around the world. For more information, or to keep an eye on developments for the upcoming 20th Anniversary and celebration, please visit ALawConference.org.

Animal Law Clinic

Responding to a petition filed by the Animal Law Clinic last year, the USDA has agreed to implement one of the procedures the Clinic

INTERNATIONAL ENVIRONMENTAL LAW PROJECT (IELP) *continued from page 9*

massive subsidies for fossil fuel production that are inhibiting the transformation to renewable energy sources and contributing to climate change.

IELP also had a full slate of wildlife related projects. McCartt and Emily Stein (LL.M.) prepared a report that comprehensively assessed laws, regulations, and ordinances in California that could contribute to the conservation of monarch butterflies, which winter roost along the



coast. Concerning CITES, Guthrie and Jenny Keatinge '11 have helped brief delegates and NGOs on a number of technical issues, including the newly adopted definition of "hunting trophy" and the effectiveness of the Periodic Review of the Appendices process. Professor Wold traveled to Bergen to negotiate rules for trade in endangered species caught on the high seas, while Professor Lyman traveled to Geneva for negotiations on a wide range of CITES technical issues. Professor Lyman represented IELP at the CITES Animals Committee and Standing Committee meetings in Geneva in July and August 2011, respectively. Jenny Keatinge accompanied Professor Lyman and helped support IELP's work to defeat a proposal for "time-bound" species listings.

Keatinge and Caffall drafted a report and legislation requiring individuals who own tigers to report to the U.S. Fish and Wildlife

Service. The draft legislation attempts to cover a serious gap in U.S. regulations—no federal agency tracks or monitors the private ownership of tigers in the United States. The project was precipitated in part out of concern that these tigers may end up in international or domestic trade for their highly valuable parts and derivatives. Although the legislation has yet to materialize, the Fish and Wildlife Service has sought to revoke its rule that so-called generic tigers are exempt from the Endangered Species Act.

During the 2011-2012 academic year, IELP has continued working with the Pacific Island countries in the climate change negotiations, providing legal support for delegates in Durban, South Africa. IELP has also continued its long-standing CITES work, focusing on advising Parties as to how to incorporate climate change considerations into CITES decision-making.

suggested was necessary and is further considering the additional argument of the Clinic that “downer” protection be extended beyond cattle to include sheep, goats, pigs, and other livestock animals. Students have also been researching and preparing for a presentation relating to animal issues in wills and trusts. Many people do not know that most states now have so called “pet trust statutes” which provide guidelines for individuals (and their attorneys) who wish to address the issue of care of animals after an owner’s death. The students will be preparing a brochure addressing these matters and a presentation which will be available to the Lewis & Clark community as well as to the general public.

The Clinic students have worked in a number of other areas as well. Students provided research and advice related to a pigeon shooting case in Pennsylvania. They drafted a horse licensing ordinance based on their research that county officials needed more assistance in addressing the problem of abused, neglected or abandoned horses. They are also filing comments to proposed regulations regarding guidelines for school lunches which seek: to make sure healthier options, including meat and dairy-free ones, are available to school children; to clarify that the role of government is not to endorse one particular type of food choice, especially in light of medical and scientific evidence that it is risky to children; and to encourage schools to educate children on considering the impact of eating choices on their own health, as well as the health and well-being of animals and the environment.

Summer Intensive Animal Law Program

Each summer the Center offers a variety of two-week intensive animal law courses for law students, lawyers, and other professionals. The 2011 Summer Intensive Animal Law Program offered four courses, including the first-ever Farmed Animals: Law and Policy course, taught



by Joyce Tischler. Other courses included Transactional Approach to Animal Law, taught by Rebecca Huss; Animal Legal Philosophy & Development, taught by Ramona Ilea; and Animal Rights Law & Jurisprudence taught by Steven Wise. All four instructors received excellent student evaluations, and ensured that the program was an overall success. The line-up for summer 2012 is already set and includes:

- Session I: *International Wildlife Law*, David Favre, June 12th–June 25th;
- Session II: *Animal Law Litigation*, Carter Dillard & Matthew Liebman, June 26th–July 9th;

- Session III: *Animal Rights Jurisprudence*, Steven Wise, July 10th–July 23rd; and
- Session IV: *Law of Humane Science*, Paul Locke, July 24th–August 6th.

For more information about the Center for Animal Law Studies, visit our website at CenterForAnimalLawStudies.org

Lewis & Clark
Law School

Natural Resources Law Institute and Environmental and Natural Resources Law Program

Major Events in 2010-11

EUROPEAN LAW: VALUES AND CONSTITUTIONAL PRINCIPLES OF THE EUROPEAN UNION

Prof. Dr. Christian Calliess, Freie Universität
Berlin, September 14, 2010

In this lecture Dr. Calliess spoke on the basic values and principles behind the EU Constitution. Dr. Calliess directs the Institute for Public Law at Freie Universität in Berlin, Germany, where he teaches public and European law, and is a highly-respected legal scholar. His appearance was part of an exchange program between Lewis & Clark and the Freie Universität.

<http://lawlib.lclark.edu/podcast/?p=3791>

EUROPEAN ENVIRONMENTAL LAW: THE PRINCIPLE OF SUSTAINABILITY, CLIMATE PROTECTION AND ENERGY POLICY IN THE EUROPEAN UNION

Prof. Dr. Christian Calliess, Freie Universität
Berlin, September 16, 2010

Dr. Christian Calliess spoke on the basic principles of European Environmental Law.

<http://lawlib.lclark.edu/podcast/?p=3799>

TERRORISM AND LAW OF THE SEA

Professor Bernard Oxman, October 12, 2010

Bernard Oxman, Richard A. Hausler Professor at the University of Miami and a global expert on the Law of the Sea, spoke on terrorism and Law of the Sea. Professor Oxman was recently appointed Judge ad hoc of the International Tribunal for the Law of the Sea in the dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.

<http://lawlib.lclark.edu/podcast/?p=4387>

OREGON TRIAL LAWYERS ASSOCIATION: BIXBY V. KBR

Attorney David Sugerman, October 12, 2010

Mr. Sugerman spoke about his representation of Oregon National Guard veterans suing private contractor Kellogg

Brown and Root (KBR) and its various offshoots for their exposure to sodium dichromate at the Qarmat Ali facility in Iraq.

<http://lawlib.lclark.edu/podcast/?p=4385>

23RD ANNUAL NATURAL RESOURCES LAW INSTITUTE DISTINGUISHED VISITOR LECTURE

WHAT CLIMATE CHANGE CAN DO ABOUT TORT LAW

Yale Law Professor Douglas A. Kysar,
October 14, 2010

Professor Kysar presented a fascinating lecture on the cutting edge of tort law.

Download or view the lecture at <http://lawlib.lclark.edu/podcast/?p=3923>

2010 DISTINGUISHED ENVIRONMENTAL LAW GRADUATE AWARDS PRESENTATIONS

October 14, 2010

The Environmental and Natural Resources Law faculty presented Distinguished Environmental Law Graduate Awards to alumni Phil Schiliro '81, Dennis Treacy '83, and Kate Brown '85, who have provided strong leadership in government and industrial environmental law policy, and presented the Williamson Award to Ben Luckett '10.

Download or view the awards presentations at <http://lawlib.lclark.edu/podcast/?p=4255#more-4255>

2010 ANIMAL LAW CONFERENCE

ANIMALS IN CRISIS: USING THE LAWS WE HAVE, GETTING THE LAWS WE NEED

Center for Animal Law Studies at Lewis & Clark in collaboration with the Animal Legal Defense Fund and the Lewis & Clark Law School Student Animal Legal Defense Fund,
October 15-17, 2010

Once again, a sold-out crowd from around the world convened at Lewis & Clark Law School in October for the

17th Annual Animal Law Conference at Lewis & Clark to explore animal law and its link to other areas of the law and professional disciplines, philosophies, and social movements. Download or view the conference panels at

<http://lawlib.lclark.edu/podcast/?p=4463>

SAVING THE WORLD THROUGH PUBLIC INTEREST LITIGATION

M.C. Mehta, October 18, 2010

One of the world's most renowned and successful activists, Indian environmental lawyer M.C. Mehta recounted stories from his many precedent-setting Supreme Court cases that founded the basis for environmental law in India.

<http://lawlib.lclark.edu/podcast/?p=3910>

26 YEARS AFTER BHOPAL: WHAT REMAINS TO BE DONE

Dr. Sairam Bhat, National Law School of
India at Bangalore, October 19, 2010

Professor Bhat delivered a penetrating lecture on the difficulty of achieving justice and the continuing legal battles in the Union Carbide Bhopal case. The 1984 release of toxic methyl isocyanate gas was one of the world's worst industrial disasters, killing more than 2,000 people immediately and injuring hundreds of thousands.

CLIMATE CHANGE IN CANCUN— REPORT FROM THE FRONT LINES

IELP professors and students,
February 22, 2011

Representatives of the IELP delegation to the climate change talks in Cancun discussed their experiences.

<http://lawlib.lclark.edu/podcast/?p=5087>



NRLI Distinguished Environmental Law Scholars



Our 2010-11 Distinguished Visitor was Professor Douglas A. Kysar, the Joseph M. Field '55 Professor of Law at Yale Law School.

Professor Kysar graduated magna cum laude from Harvard Law School in 1998. His teaching and research focuses on torts, environmental law, and risk regulation. Professor Kysar has published numerous articles on a wide array of environmental law and tort law topics. His recent book, *Regulating from Nowhere: Environmental Law and the Search for Objectivity*, seeks to reinvigorate environmental law and policy by offering novel theoretical insights on

cost-benefit analysis, the precautionary principle, and sustainable developments. Professor Kysar's guest lecture at the law school was entitled *What Climate Change Can Do About Tort Law*, and is available as a podcast at <http://lawlib.lclark.edu/podcast/?p=3923>

Prior to Professor Kysar's lecture, the law school honored three environmental law alumni as Distinguished Environmental Law Graduates. This award, started in 1995 in honor of the environmental law program's 25th anniversary, recognizes two to three alumni each year who have made a significant contribution to the environmental or natural resources law or policy fields. The environmental and natural resources law faculty select the recipients each year. The recipients for 2010 were: Phil Schiliro '81,

who is the current Assistant to the President for Legislative Affairs in Washington, D.C.; Dennis Treacy '83, who is the Executive Vice President and Chief Sustainability Officer at Smithfield Foods in Virginia; and Kate Brown '85, Oregon Secretary of State in Salem, Oregon.

The Williamson Award for 2010 was awarded to Ben Lockett '10 who is working with the Appalachian Center for the Economy and Environment in Lewisburg, West Virginia.

The Williamson Public Interest Environmental Law Award is presented by the Lewis & Clark Law School Environmental Alumni Association to recognize a graduate who has demonstrated commitment, vision, leadership, and creativity in the field of public interest environmental law.

Distinguished Graduates Award Winners



Phil Schiliro '81



Kate Brown '85



Dennis Tracy '83

Lewis & Clark
Law School

Natural Resources Law Institute and Environmental and Natural Resources Law Program

Environmental Law

Volume 40, Issue 4

SYMPOSIUM: THE CLEAN AIR ACT AT A CROSSROADS: TURNING 40, CONFRONTING CLIMATE CHANGE

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Robert L. Gillette II

SYMPOSIUM ARTICLES:

*Staving Off the Climate Crisis: The Sectoral
Approach Under the Clean Air Act*

Teresa B. Clemmer

*Climate Change Adaptation:
A Collective Action Perspective on
Federalism Considerations*

Robert L. Glicksman

*The Enforcement Challenge of
Cap-and-Trade Regulation*

Lesley K. McAllister

Is the Clean Air Act at a Crossroads?

Craig N. Oren

*Federal Control of Greenhouse
Gas Emissions*

Arnold W. Reitze, Jr.

ARTICLES:

*Relational Integrity Regulation: Nudging
Consumers Toward Products Bearing Valid
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Jeffrey J. Minneti

*Ecosystem Services and the Clean Water
Act: Strategies for Fitting New Science into
Old Law*

J.B. Ruhl

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ARTICLES:

*What Climate Change Can Do About
Tort Law*

Douglas A. Kysar

*The Curious Case of Greening in
Carbon Markets*

William Boyd & James Salzman

*Global Climate Governance to Enhance
Biodiversity and Well-Being: Integrating
Non-State Networks and Public
International Law in Tropical Forests*

Andrew Long

*Quantifying, Monitoring, and Tracking
“Take” Under the Endangered Species Act:
The Promise of a More Informed Approach
to Consultation*

Jason Totoiu

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*Reforming a Western Institution: How
Expanding the Productivity of Water Rights
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Leila C. Behnampour

*Scientific Certainty Thresholds in
Fisheries Management: A Response to a
Changing Climate*

Sarah M. Kutil

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ANIMAL MIGRATION CONSERVATION

SYMPOSIUM ESSAY

Migration Conservation: A View From Above

Robert L. Fischman

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SCIENTIFIC RESEARCH AGENDA

*Animal Migration as a Moving Target for
Conservation: Intra-Species Variation
and Responses to Environmental
Change, as Illustrated in a Sometimes
Migratory Songbird*

Jonathan W. Atwell, Dawn M. O’Neal &
Ellen D. Ketterson

*Migratory Connectivity and the
Conservation of Migratory Animals*
Peter P. Marra, David Hunter &
Anne M. Perrault

*Wind Turbines as Landscape Impediments
to the Migratory Connectivity of Bats*

Paul M. Cryan

Migratory Species and Ecological Processes

Heather L. Reynolds & Keith Clay

Climate Change and Animal Migration

Thomas T. Moore

LAW AND POLICY REFORM

*Statutory Reform to Protect Migrations as
Phenomena of Abundance*

Jeffrey B. Hyman, Andrea Need &
W. William Weeks

*Migration and Conservation: Frameworks,
Gaps, and Synergies in Science, Law,
and Management*

Vicky J. Meretsky, Jonathan W. Atwell &
Jeffrey B. Hyman

*Twenty-Five Years Under the Convention on
Migratory Species: Migration Conservation
Lessons from Europe*

Elizabeth A. Baldwin

*Conservation of Migratory Species in a
Changing Climate: Strategic Behavior and
Policy Design*

Kathleen A. Miller

COLLABORATION CASE STUDIES

*Securing the Free Movement of Wildlife:
Lessons from the American West’s Longest
Land Mammal Migration*

David N. Cherney

*Habitat Reserve Problem-
Solving: Desperately Seeking
Sophisticated Intermediaries*

Jamison Colburn

*Collaborative Strategies for Managing
Animal Migrations: Insights From the
History of Ecosystem-Based Management*
Steven L. Yaffee

Animal Law

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Legal Personhood and the Nonhuman Rights Project
Steven M. Wise

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Noneconomic Damage Awards in Veterinary Malpractice: Using the Human Medical Experience as a Model to Predict the Effect of Noneconomic Damage Awards on the Practice of Companion Animal Veterinary Medicine
Steve Barghusen

Liberating Animal Law: Breaking Free From Human-Use Typologies
Jessica Eisen

Companion Animal Capital
Sebastien Gay

Oceans in the Balance: As the Sharks Go, So Go We
Paula Walker

COMMENTS:

Should They Go the Way of the Horse and Buggy? How the New York City Horse-Drawn Carriage Industry Has Survived Thirty Years of Opposition
Katherine Hutchison

On the Lamb: Toward a National Animal Abuser Registry
Stacy A. Nowicki

BOOK REVIEW:

Live Free or Die: On Their Own Terms: Bringing Animal-Rights Philosophy Down to Earth, By Lee Hall
Joel Marks

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The Endangered Species Act V. The United States Department of Justice: How the Department of Justice Derailed Criminal Prosecutions Under the Endangered Species Act
Ed Newcomer, Marie Palladini & Leah Jones

Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us About Justice for Animals
Katie Sykes

COMMENTS:

Animal Violence Court: A Therapeutic Jurisprudence-Based Problem-Solving Court for the Adjudication of Animal Cruelty Cases Involving Juvenile Offenders and Animal Hoarders
Debra L. Muller-Harris

Welfare Improvements for Organic Animals: Closing Loopholes in the Regulation of Organic Animal Husbandry
Aurora Paulsen

BIBLIOGRAPHY:

The Connection Between Animal Abuse and Family Violence: A Selected Annotated Bibliography
Sharon L. Nelson

2010 LEGISLATIVE REVIEW

Jennifer O'Brien, Legislative Review Editor
Jenny Keatinge & Richard Myers, Authors



Environmental Law (established 1969) and *Animal Law* (established 1995) are two of Lewis & Clark's student-run law reviews. Each is the nation's oldest law review in its respective field and each is cited by scholars, practitioners and judges. Both law reviews provide free open access to articles through their websites. *Environmental Law* recently developed a companion online journal, *Environmental Law Online*. For access to all of these resources as well as program podcasts, visit law.lclark.edu/dept/elaw.

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NRLI 2011 Report, Natural Resources Law Institute

Lewis & Clark Law School

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in environmental legal education*

About NRLI at Lewis & Clark Law School...

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:

- **Certificate Program in Environmental and Natural Resources Law**, offering more than 40 foundation and specialized classes in the field as well as two environmental moot court programs
- **LL.M. Programs in Environmental and Natural Resources Law and Animal Law**, offering advanced studies in these fields for lawyers
- **A 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 38th 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**, 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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