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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 (1982-85); 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 Summer Faculty, Vermont Law School (2011, 2014, 2015); 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: (Active) Property, Public Lands and Resources Law, Natural Resources Law, American Legal History, Public Trust Doctrine Seminar, Native American Natural Resources Law. (Inactive) Environmental Law, Pacific Salmon Law Seminar, Constitutional Law, Water Law, Wildlife Law, Northwest Energy Law, Alaskan and Canadian Natural Resources Law Seminar, Ocean and Coastal Law.

1977-78 U.S. Environmental Protection Agency, Water Enforcement, 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 (a Smithsonian Institution affiliate), 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 laudè*). Honors in
American History and Literature. George G. Mead Scholarship. Varsity
Football.

BOOKS

Natural Resources Law: Private Rights and the Public Interest (West Pub. Co., 2015) (co-author), with
teacher's manual.

The Public Trust Doctrine in Environmental and Natural Resources Law (Carolina Academic Press, 1st ed.
2013; 2nd ed. 2015) (co-author), with teacher's manual.

Native American Natural Resources Law: Cases and Materials (Carolina Academic Press, 1st ed. 2002; 2nd ed.
2008; 3rd ed. 2013; 4th ed. 2018) (with teacher's manual and annual teacher's updates) (co-author).

Sacrificing the Salmon: A Legal and Policy History of the Decline of Columbia Basin Salmon (BookWorld
Publications, 2002, republished by Vandepas Publishing, 2013).

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, (1991-2011) Federal Hydroelectric Regulation (1991-2000), and
the Columbia River Basin (1991-2017).

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).

MONOGRAPHS

The Public Trust Doctrine in Forty-Five States (2014 ed.) (edited contributions).

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).

NEWSPAPER OPINION ARTICLES

The Trump administration is redefining 'the public' in 'public lands,' Los Angeles Times (Jan. 12, 2018).

Oregon Monuments Need Protection from Logging, High Country News (May 4, 2017)

A Misguided Attack on the Cascade-Siskiyou National Monument, Oregonian/Oregon Live (April 4, 2017).

Obama's National Monuments Were Lawful, not Land Grabs, Los Angeles Times (Jan. 23, 2017) (with Hillary Hoffman).

Earth on the Docket: Why Obama can't Ignore this Climate-Change Lawsuit by America's Youth, The Conversation (Dec. 15, 2016) (with Mary C. Wood)

The death of a unique Oregon lake, Oregonlive.com (May 2, 2016) (with Viki Nadol).

Oregon standoff: Answers to questions about federal land ownership, Oregonlive.com (Jan. 14, 2016).

Forest bill will allow more clear cuts without benefits, OregonLive.com (Jul. 18, 2015).

Oregon is indifferent to climate change, Oregonlive.com (Jun. 6, 2015).

City Hall, Oswego Lake, and the Politics of Power, Lake Oswego Review (May 28, 2015).

Salmon are flourishing because of judge's orders, OregonLive.com (Nov. 8, 2014).

The Wilderness Act celebrates a half century, Oregonlive.com (Mar. 15, 2014).

Attorney General Must Represent Oregonians, Eugene Register-Guard (Jan. 14, 2014) (with Mary Wood).

Undermining Oregon's Public Trust Doctrine, OregonLive.com (Dec. 5, 2013) (with Mary Wood).

O&C lands bill threatens forest watersheds, OregonLive.com (September 14, 2013).

Governor John Kitzhaber's call for a new salmon plan makes sense, OregonLive.com (October 9, 2012).

DeFazio Bill Slight Water Quality, Recreation, Salmon, OregonLive.com (March 24, 2012).

Public Access Struggle: Citizens have a right to publicly-owned Oswego Lake, The Oregonian (Jan. 21, 2012); also published in the Lake Oswego Review as *End Monopolization of Oswego Lake* (Jan. 19, 2012).

Climate Change Litigation has Sound Footing in Law, Missoulian (June 14, 2011) (with Jack Tuholske).

Forming An Environmental Legacy: For Obama, a mixed record on the environment, The Oregonian (Jan. 19, 2011).

Obama disappoints when it comes to salmon, High Country News (Oct. 13, 2009).

For wild salmon, more business as usual, OregonLive.com (Oct. 9, 2009).

The right way to cap and trade, OregonLive.com (Aug. 17, 2009).

Big guys, little guys and Measure 49, OregonLive.com (Oct. 25, 2007) (with Lydia Loren).

Measure 37 and the Legislature: Inject some clarity in our land-use laws, The Oregonian at B7 (Jan. 23, 2007).

Walden bill hurts endangered species, The Bend Bulletin at C6 (Oct. 21, 2005).

Walden's peer review a smoke screen, The Bend Bulletin (Aug. 2, 2004).

Bush's sweetheart settlement policy bad for the environment, The Bend Bulletin (June 19, 2004).

BPA tally of salmon costs pretty fishy, Seattle Post-Intelligencer (Sept. 26, 2002).

BPA's notion of salmon costs turns word on its head, The Oregonian (March 6, 1993).

BPA plight exaggerated by industry, The Oregonian at B9 (March 6, 1995).

BPA should change salmon-saving plan, The Oregonian (March 6, 1993).

Higher BPA fish flow insufficient for salmon, The Oregonian at B7 (March 14, 1991).

Forest service road-building destroys wildlife habitat, Eugene Register-Guard at 11A (Oct. 7, 1987).

End forest service subsidies for timber roads, The Oregonian (June 10, 1987).

BPA foot-dragging dooms salmon runs, The Oregonian (Jan. 3, 1984).

BPA flouts intent of fishery program, The Oregonian at C7 (Nov. 10, 1982).

LAW REVIEW ARTICLES, BOOK CHAPTERS and BOOK REVIEWS (2010 to present)

[\(SSRN Author Page\)](#)

Indigenous Rights in the U.S. Marine Environment: The Stevens Treaties and Their Effects (May 9, 2018) (with Olivier Jamin '17, LL.M. '18); publication in forthcoming book on indigenous rights in the marine environment throughout the world).

Proprietary and Sovereign Public Trust Duties: From Justinian and Hale to Lamprey and Oswego Lake (with Courtney Engel '19), 43 *Vermont L. Rev.* 1 (forthcoming 2019), <https://ssrn.com/abstract=3136845>.

The Trump Administration's Public Lands Revolution: Redefining "the Public" in Public Lands Law, 48 *Environmental Law* 311 (2018) (part of *Environmental Law's* spring symposium on the Trump Administration, with Olivier Jamin '17, LL.M. '18).

"No Ordinary Lawsuit:" *Climate Change, Due Process, and the Public Trust Doctrine*, 67 *AMERICAN U. LAW REVIEW* 1 (2017) (with Mary C. Wood, Oregon Law School).

"Coordinating" with the Federal Government: *Assessing County Efforts to Control Decisionmaking on Public Lands*, 38 *PUBLIC LAND AND RESOURCES LAW REVIEW* 1 (U. Montana) 1 (2017) (with James Fraser '17).

The Nation's First Forester-In-Chief: The Overlooked Role of FDR and the Environment, 33 *JOURNAL OF LAND USE AND ENVIRONMENTAL LAW* 25 (Florida State) (2017).

Still Crying Out For a "Major Overhaul" After All These Years—Salmon and the Fourth Failed Biological Opinion on Columbia Basin Hydroelectric Operations (with Julianne Fry M.L.S. '16 & Olivier Jamin '17), 47 *ENVIRONMENTAL LAW* 287 (2017).

Indian Treaty Fishing Rights and the Environment: Affirming the Right to Habitat Protection and Restoration, 92 *WASHINGTON LAW REVIEW* 1 (2017).

The Public Trust as an Antimonopoly Doctrine (with Aurora Paulsen, LL.M. '16), 44 *BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW* 1 (2017).

The Property Clause and Its Discontents: Lessons from the Malheur Occupation (with Olivier Jamin '17), 43 *ECOLOGY LAW QUARTERLY* (UC-Berkeley) 781 (2016).

Two Wrongs?: Correcting Professor Lazarus's Erroneous View of the Public Trust Doctrine, 46 *ENVIRONMENTAL LAW* 481 (2016).

Federal Reserved Water Rights as a Rule of Law, 50 *IDAHO LAW REVIEW* 369 (2016) (a critical response to an article co-authored by former student—and Distinguished Environmental Graduate and Law School trustee—Jeff Fereday '80), (article was requested by a former LL.M. student now on the Idaho Law faculty, an advisor to the Idaho Law Review).

Horne v. Department of Agriculture: Expanding Per Se Takings While Endorsing State Sovereign Ownership of Wildlife, 75 *MARYLAND LAW REVIEW* 657 (2016) (co-authored with John Echeverria, Vermont Law School).

Antimonopoly in American Public Land Law, 28 *GEORGETOWN ENVIRONMENTAL LAW REVIEW* 155 (2016) (co-authored with Kara Tebeau '15).

(Ground)Waters of the United States: Unlawfully Excluding Tributary Groundwater from Clean Water Act Jurisdiction, 46 ENVIRONMENTAL LAW 333 (2016) (co-authored with Steven M. Thiel '15) (part of a symposium on Clean Water Act jurisdiction).

Shared Sovereignty: The Role of Expert Agencies in Environmental Law, 42 ECOLOGY LAW QUARTERLY (U.C. Berkeley) 609 (2015) (co-authored with Andrea Lang '15, LL.M. '16).

Defending the Constitutionality of the Endangered Species Act: The Case of the Utah Prairie Dog, ON THE MERITS (Washington Legal Foundation, June 2015), (requested by the Washington Legal Foundation).

The Federal Public Trust Doctrine: Misinterpreting Justice Kennedy and Illinois Central Railroad, 45 ENVIRONMENTAL LAW 399 (2015) (co-authored with Lynn Schaffer LL.M. '15) (part of Environmental Law's symposium on the public trust doctrine).

Vetoing Wetland Permits under Section 404(c) of the Clean Water Act: A History of Inter-Federal Agency Controversy and Reform, 33 U.C.L.A. JOURNAL OF ENVIRONMENTAL LAW & POLICY 215 (2015) (co-authored with Elisabeth Mering '16).

Endangered Species Act Listings and Climate Change: Avoiding the Elephant in the Room, 20 ANIMAL LAW 277 (2014) (co-authored with Kya Marienfeld '14) (for a symposium).

Salmon Hatcheries as Fish Factories: Forgetting the Lessons of Leopold, 4 SEATTLE JOURNAL OF ENVIRONMENTAL LAW 409 (2014) (book review), earlier version at 115 OREGON HISTORICAL QUARTERLY 137 (2013).

The Struggle Over the Columbia River Gorge: Establishing and Governing the First National Scenic Area, 4 WASHINGTON JOURNAL OF ENVIRONMENTAL LAW AND POLICY 287 (2014) (co-authored with Nathan Baker '00) (book review).

The Underappreciated Role of the National Environmental Policy Act in Wilderness Designation and Management, 44 ENVIRONMENTAL LAW 323 (2014) (co-authored with Lorena Wischart '13).

Anti-Monopoly and the Radical Lockean Origins of Western Water Law. 20 HASTINGS WEST-NORTHWEST JOURNAL OF ENVIRONMENTAL LAW AND POLICY 377 (2014) (book review essay).

Federal Wild Lands Policy in the Twenty-First Century: What a Long, Strange Trip It's Been, 25 COLORADO NATURAL RESOURCES, ENERGY AND ENVIRONMENTAL LAW REVIEW 1 (2014) (co-authored with Andrew Erickson '13).

Lands Council, Karuk Tribe, and the Great Environmental Divide in the Ninth Circuit, 54 NATURAL RESOURCES JOURNAL 1 (2014) (co-authored with Maggie Hall '14).

The Past as Prologue to the Present: Managing the Oregon and California Railroad Lands, OREGON BAR BULLETIN (July 2013) (co-authored with Tim Wigington '12).

The Public Trust in Wildlife, 2013 UTAH LAW REVIEW 1437 (2013) (co-authored with Aurora Paulsen '12).

The Oregon and California Railroad Grant Lands' Sordid Past, Contentious Present and Uncertain Future: A Century of Conflict, 40 BOSTON COLLEGE ENVIRONMENTAL AFFAIRS LAW REVIEW 1 (2013), (co-authored with Tim Wigington '12).

Using the Public Trust Doctrine to Achieve Ocean Stewardship, in RULE OF LAW FOR NATURE: NEW DIMENSIONS AND IDEAS IN ENVIRONMENTAL LAW (Christine Voight & Hames Christian Bugge, eds., Cambridge Press, 2013) (co-author).

Dam Removal in the Pacific Northwest: Lessons for the Nation, 42 ENVIRONMENTAL LAW 1043 (2012) (co-authored with Andrew Erickson '13).

Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation, 37 VERMONT LAW REVIEW 5 (2012) (co-authored with Marla Nelson '12).

The Role of the Judge in Endangered Species Act Implementation: District Judge James Redden and the Columbia Basin Salmon Saga, 32 STANFORD ENVIRONMENTAL LAW JOURNAL 87 (2012) (co-authored with Aurora Paulsen '12).

The Overlooked Role of the National Environmental Policy Act in Protecting the Western Environment: NEPA and the Ninth Circuit, 2 WASHINGTON JOURNAL OF ENVIRONMENTAL LAW AND POLICY 193 (2012), (co-authored with Keith Mosman '12).

Internationalizing the Public Trust Doctrine: Natural Law and Constitutional and Statutory Approaches to Fulfilling the Saxton Vision, 45 UNIVERSITY OF CALIFORNIA DAVIS LAW REVIEW 741 (2012) (co-authored with Rachel Guthrie '12).

Oregon's Public Trust Doctrine: Public Rights in Waters, Wildlife, and Beaches, 42 ENVIRONMENTAL LAW 375 (2012) (co-authored with Erika Doot '11) (for a symposium).

The Water Law Scholarship of Jim Huffman and Janet Neuman, 42 ENVIRONMENTAL LAW 1 (2012) (for a symposium).

The Florida Beach Case and the Road to Judicial Takings, 35 WILLIAM & MARY ENVIRONMENTAL LAW AND POLICY REVIEW 713 (2011) (co-authored with Elizabeth Dawson '11).

Why Aboriginal Title is a Fee Simple Absolute, 15 LEWIS AND CLARK LAW REVIEW 975 (2011) (for a symposium).

The Columbia River Gorge and the Development of American Natural Resources Law: A Century of Significance, 20 NEW YORK UNIVERSITY ENVIRONMENTAL LAW REVIEW 1 (2011).

The Real Story Behind the Columbia Basin Salmon Debacle: Dam Preservation under the Endangered Species Act, 42 ENVIRONMENTAL LAW 1363 (2011) (book review essay).

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-authored with several others).

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), reprinted at 32 PUBLIC LAND AND RESOURCES LAW REVIEW (U. Montana) 193 (2011).

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-authored with J.B. Ruhl, Vanderbilt Law School).

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), reprinted at 121 OREGON HISTORICAL QUARTERLY 632 (2009).

OLDER ARTICLES (1976-2009, by subject matter)

A. General Environmental Law

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

Justice Kennedy and the Environment: Property, States-Rights, and a Persistent Search for Nexus, 83 Washington Law Review 665 (2007) (co-authored with Sherry Bosse).

Gonzalez v. Raich, the ‘Comprehensive Scheme’ Principle, and the Constitutionality of the Endangered Species Act, 35 Environmental Law 491 (2005) (co-authored with George Kimbrell).

Flies, Wolves, Spiders, Toads and the Constitutionality of the Endangered Species Act, 34 Environmental Law 309 (2004) (co-authored with George Kimbrell).

Bureaucratic Boundaries vs. Clean Water: A Reply to Cliff Villa, 34 Environmental Law 815 (2004) (co-authored with William Warnock).

Roads Not Taken: EPA vs. Clean Water, 33 Environmental Law 79 (2003) (for a symposium) (co-authored with William Warnock).

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-authored with Stephen Brown), 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 Decision-making, 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-authored with Joel Blumstein).

Evaluating State Coastal Zone Plans: Questions to Ask, in Coastal Zone '78, at 98 (1978) (co-authored with several others).

The Promise of Federal Consistency Under Section 307 of the Coastal Zone Management Act, 6 Environmental Law Reporter (Environmental Law Institute) 50047 (1976) (co-authored with John Noble).

B. Constitutional Takings of Property

Enacting Libertarian Property: Oregon's Measure 37 and Its Implications, 85 Denver University Law Journal 279 (2008) (co-authored with Erik Grafe).

Lucas's Unlikely Legacy: The Rise of Background Principles as Categorical Takings Defenses, 29 Harvard Environmental Law Review 321 (2005) (co-authored with Lucas Ritchie).

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

The End of Environmental Law?: 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 / Natural Resources

Norton v. SUWA and the Unraveling of Federal Public Land Planning, 18 Duke Journal of Environmental Law and Policy 105 (2007) (co-authored with Sherry Bosse).

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-authored with Joshua Smith).

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

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).

Water For National Forests: The Bypass Flow Controversy and The Great Divide in Western Water Law, 18 Stanford Environmental Law Review 3 (1999) (co-authored with Janet Neuman).

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-authored with Jonathan Lovvorn) (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-authored with Harrison Dunning & Scott Reed).

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-authored with Thea Schwartz).

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

Indian Treaty Fishing Rights and Habitat Protection: The Martinez Decision Supplies a Resounding Judicial Reaffirmation, 49 Natural Resources Journal (New Mexico) 653 (2009) (co-authored with Jane Steadman).

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-authored with James Brumberg).

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-authored with David Becker & Joshua Smith) (for a symposium).

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).

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-authored with several others).

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-authored with Brett Swift).

The Indian Court of Appeals: A Modest Proposal to Eliminate Supreme Court Jurisdiction Over Indian Cases, 46 Arkansas Law Review 203 (1993) (co-authored with Michael Cadigan) (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-authored with Justin Malbon).

E. Salmon/Hydropower

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-authored with Hallison Putnam).

Practiced at the Art of Deception: The Failure of Columbia Basin Salmon Recovery Under the Endangered Species Act, 36 Environmental Law 709 (2006) (co-authored with Erica Thorson & Joshua Smith).

Avoiding Dam Breaching Through Off-Site Mitigation: NMFS's 2000 Biological Opinion on Columbia Basin Hydroelectric Operations, 32 Environmental Law 241 (2002) (co-authored with Melissa Powers).

The BPA Power-Salmon Crisis: A Way Out, 31 Environmental Law Reporter 10726 (2001) (co-authored with Dan Rohlf) (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-authored with Vicky Nadol).

Salmon and The Endangered Species Act: Lessons from the Columbia Basin, 74 *Washington Law Review* 519 (1999) (co-authored with Greg Corbin) (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-authored with Michael Schoessler & Christopher Beckwith) (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-authored with Janice Schneider).

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-authored Andy Simrin).

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-authored with Bill Kloos) (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).

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

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G. Wetlands

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

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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 Decision makers* (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, Vermont Law School, 2011; 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, 2015-16; Externship Committee, 1980-82.

Law Review Advisor, *Environmental Law*, *Animal Law*, *Journal of American Indian Law*

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.