

Natural Resources Law Institute and  
Environmental and Natural Resources Law Program

Annual Report 2011-12



Lewis & Clark Law School  
Portland, Oregon

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Annual Report 2011-12

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*Professor Dan Rohlif explaining the impacts of hydro power on salmon in the Columbia River during a field trip to Bonneville Dam in the Columbia Gorge.*

## 2011-12 – A Year of Transitions and Global Connections

Our 2011-2012 year was filled with events, positive transitions, and global connections. In the fall of 2011, we honored retiring faculty Jim Huffman and Janet Neuman with a conference and symposium organized by Mike Blumm that honored their scholarship and contributions to the water law field. Many of our colleagues came to this event and contributed articles to the symposium including Dan Tarlock, Bo Abrams, Jonathan Adler, Robin Craig '96, Keith Hirokawa, LL.M. '01, Buzz Thompson, Barb Cosens, LL.M. '03, Reed Benson, and Sandi Zellmer.

In the fall, we also welcomed new environmental faculty member Erin Ryan, who spent last year in China on a Fulbright at Ocean University in Qingdao teaching U.S. environmental and property law and researching how interjurisdictional governance is negotiated between Chinese local, provincial, and central governments. Professor Ryan has now joined us in

residence here in Portland to teach natural resources, water law, property, and negotiations.

In September, we were honored to host 30 federal judges from across the country to our campus for our annual environmental law judicial seminar taught by an impressive roster of our environmental faculty. In October, we welcomed our 24th annual Distinguished Natural Resources Law Institute Visitor, Professor Jody Freeman of Harvard, who gave a dynamic and fascinating lecture on The President's Role in Environmental Law. Also in October, we hosted more than 100 attendees for an informative conference on the Migratory Bird Treaty Act, organized by Professor Dan Rohlif and alum Bob Sallinger of the Portland Audubon Society.

International visits and visitors were also a consistent theme. We welcomed new

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**2011-12 – A YEAR OF TRANSITIONS  
AND GLOBAL CONNECTIONS**  
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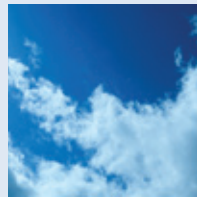
international LL.M. students from Pakistan, Trinidad-Tobago, and Nigeria to join U.S. LL.M. students from around the country. We also continued work on our various projects in India which included trips in March by clinical Professor Aubrey Baldwin and Professor Craig Johnston to explore starting an environmental law clinic and a follow up trip by Dan Rohlf in July. Professor Baldwin was also invited to teach a summer class on environmental law to students at Kangwon University in Chuncheon, Korea, which follows on a visit made by Dean Bob Klonoff the year before. We hope to welcome Kangwon law students and faculty for a visit to the law school in January 2013. Professor Powers also represented Lewis & Clark at the annual IUCN meeting, and taught summer school in Italy at the University of Trento. This year, Lewis & Clark will also co-sponsor a conference in May with the National Law University in Delhi on international water law issues.

Our 2012 fall semester is off to a great start with the addition of LL.M. students from Japan and Chile and our visiting assistant professor, Nick Fromherz, who is teaching international environmental law and a comparative agricultural law seminar after teaching in Bolivia. We just hosted another round of federal judges for our environmental law seminar and look forward to soon welcoming Professor Hope Babcock of Georgetown as our 25th annual Distinguished Natural Resources Law Institute Visitor. On the horizon for spring are visits in March by Professor Bill Rodgers of the University of Washington School of Law, and John G. Roberts, Jr., Chief Justice of the United States in April, who will inaugurate a new environmental moot court competition among the finalists of our national moot court team. We also learned recently that Professor Dan Rohlf was a recipient of the Elizabeth Hurlock Beckman award. Professor Rohlf's former students nominated him for the prestigious award which benefits teachers who have inspired their former students to make a difference in their communities. It doesn't get much better than that.

We hope you enjoy reading more about our year and our upcoming events in this report. You can also follow and comment on our 2012-13 academic year as it unfolds on our Facebook page at [LCEnvironmentalLaw](http://LCEnvironmentalLaw).

—Janice Weis & Lucy Brehm

## Happening in the 2012-13 Academic Year



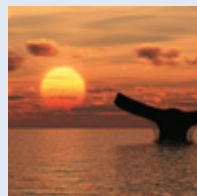
### **FEDERAL JUDICIAL CENTER: JUDGES' SEMINAR ON ENVIRONMENTAL LAW** September 2012

The Environmental Law Program will host approximately 30 federal judges from around the country for a multi-day seminar on environmental and natural resources law. This seminar, which has been held for several years at the law school, provides a critical examination of the key environmental statutes that federal judges frequently encounter on the bench.



### **DISTINGUISHED VISITING ANIMAL ADVOCATE** September 24-28, 2012

Madeline Bernstein is the Center's first Distinguished Visiting Animal Advocate. Madeline is president and CEO of spcaLA, a highly successful animal welfare nonprofit located in Los Angeles. Madeline is a renowned leader, attorney, and advocate in the animal law field. During her visit, she will share her expertise via presentations to our students, faculty, practitioners and other community leaders. Events will take place at Lewis & Clark Law School and in the greater Portland community.



### **25TH ANNUAL NRLI DISTINGUISHED ENVIRONMENTAL LAW SPEAKER AND AWARDS** October 24, 2012

Professor Hope Babcock, Professor of Law and Co-Director, Institute for Public representation at Georgetown Law University: *Putting a Price on Whales to Save them: The Moral Infirmities of a Market-Based Solution to a Regulatory Failure or What Do Morals Have to Do With It?*

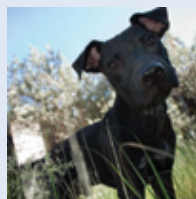
Prior to Professor Babcock's lecture, the law school will honor the 2012 Distinguished Environmental Law Graduates: Barbara Craig ('87), partner at Stoel Rives in Portland, Oregon; Jim Grijalva ('89), Lloyd & Ruth Friedman Professor of Law and director of the Tribal Environmental Law Project at the University of North Dakota; and Eric Lemelson ('92), managing owner of Lemelson Vineyards.

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Lewis & Clark  
Law School

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

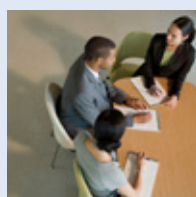
HAPPENING IN THE 2012-13 ACADEMIC YEAR *continued from page 3*



## **20TH ANNUAL ANIMAL LAW CONFERENCE: CELEBRATING 20 YEARS OF ANIMAL LAW: LOOKING BACK AND LOOKING FORWARD** October 19-21, 2012

Featuring Keynote Speakers Carol J. Adams, author, activist and scholar; Congressman

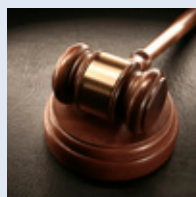
Earl Blumenauer, U.S. Representative, 3rd District of Oregon; Nancy Perry, Senior Vice President of Government Relations for the American Society for The Prevention of Cruelty to Animals (ASPCA); and about forty other panelists from throughout the United States. [ALawConference.org](http://ALawConference.org)



## **WESTERN REGIONAL ENVIRONMENTAL LAW NEGOTIATION COMPETITION** March 16-17, 2013 at Lewis & Clark

This competition is structured to provide students the opportunity to demonstrate teamwork and negotiation skills around relevant

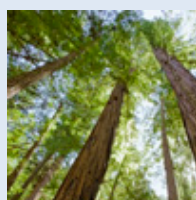
topics in the practice of environmental law. While the competition's focus is on negotiation skills, students will use these skills to address emerging environmental and natural resource issues while representing public and private sector interests at the local, state, and federal levels.



## **LEWIS & CLARK ENVIRONMENTAL MOOT COURT ADVOCATE OF THE YEAR COMPETITION** April, 2013

John G. Roberts, Jr., Chief Justice of the United States, will help us inaugurate the new Lewis

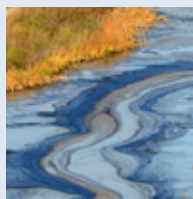
& Clark Environmental Moot Court Advocate of the Year Competition in April 2013. In this competition, the top three advocates from our environmental moot court program will compete against each other to claim the honor of being recognized as the Advocate of the Year. Chief Justice Roberts will serve as one of the three judges for this inaugural competition, together with Judge Diarmuid O'Scannlain, United States Court of Appeals for the Ninth Circuit, and Judge Anna Brown, '80, United States District Court for the District of Oregon.



## **HIGGINS DISTINGUISHED VISITOR, WILLIAM RODGERS, JR.** Spring 2013

Professor William Rodgers, Jr., the Stimson Bullitt Endowed Professor of Environmental Law at the University of Washington School of Law,

is considered one of the founders of environmental law and is deeply respected as one of the nation's foremost experts in the field. He will be in residence at Lewis & Clark for a two week period where he will assist in teaching classes, engage with students and faculty, and deliver a lecture to the law school community on an environmental law topic.



## **INTERNATIONAL WATER CONFERENCE IN DELHI, INDIA** May 2013

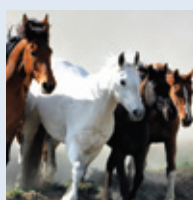
Lewis & Clark and National Law University of Delhi are organizing an international conference on water, including transboundary, pollution and access to water issues. The conference, to be held on the campus of NLUD, will feature speakers from Lewis & Clark law school as well as international speakers from a variety of disciplines.



## **2013 ENVIRONMENTAL LAW SUMMER PROGRAM** May 28 – August 5, 2013

Featuring a wide variety of environmental and natural resources courses (open to visiting students, auditors and attorneys) including:

*Legal Ecology at Malheur Field Station*, Professor Dan Rohlf; *Introduction to Environmental Law and the Military*, Matt Bordelon, USMC; *European Union Environmental Law and Water Law*, Professor Nicola Lugaresi (Univ. of Trento, Italy); *Prosecuting and Defending Environmental Crimes*, Kevin Cassidy (Earthrise, Boston); *Wetlands*, Professor Craig Johnston; *Ownership, Use, and Preservation of Natural Resources*, Professor Mike Blumm, *Environmental Law*, Professor Craig Johnston; and *Administrative Law*, Professor Robert Glicksman (George Washington U.); plus, nine one-week energy law intensives (taught by eight visiting professors).



## **2013 SUMMER INTENSIVE ANIMAL LAW PROGRAM** May 28 – July 22, 2013

Featuring four two-credit courses: *Crimes Against Animals*, Visiting Professor Scott Heiser, J.D.; *Animal Law Litigation*, Visiting Professor

Peter Brandt, J.D.; *Animal Legal Philosophy*, Visiting Professor Dr. Ramona Ilea, Ph.D.; and *Animal Rights Law and Jurisprudence*, Visiting Professor Steven Wise, J.D.

*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](http://lclark.edu/dept/elaw).*

# National Competitions Come to Lewis & Clark

By Melody Finnemore

## THE NATIONAL ANIMAL LAW COMPETITIONS

Traditionally hosted by Harvard University, the National Animal Law Competition moved last year to UCLA's law school due to remodeling. As part of Lewis & Clark's celebration of the 10th anniversary of its Animal Law Program, the law school will host the 2013 national competition. Lewis & Clark hopes to be a venue for the event in future years, as well.

The competition is expected to attract 70 competitors from numerous law schools across the country. Law students will participate in appellate moot court, closing argument, and legislative drafting and lobbying competitions. This last element, for which students must draft a bill that addresses a particular issue and then lobby for it before faux legislators, sets the event apart from similar contests, says Pam Frasch, assistant dean of Lewis & Clark's Animal Law Program and executive director of the Center for Animal Law Studies.

"They have to be really quick on their feet because they don't know what is going to be thrown their way," says Frasch, adding that a team of highly experienced animal law attorneys and educators help compile a list of cases for students to explore. Lobbyists, former and current district attorneys, and other legal professionals from the Portland area volunteer

their time and expertise to serve as judges and help guide the students.

"These are typically very cutting-edge types of problems. Because they're done by professionals who are experts in the field, these problems give the students as close to a real-world experience as they can have," she says.

For the appellate moot court, the opportunity to argue before this year's judges—D. Brooks Smith, U.S. Court of Appeals, Third Circuit; Susan Graber, U.S. Court of Appeals, Ninth Circuit; and Lee Rosenthal, U.S. District Court, Southern District of Texas—enhances the value of the experience the students will gain during the event.

Frasch points out that even law students who aren't necessarily interested in animal law participate. After experiencing this top-tier moot court competition, many come away with knowledge about a different area of law and an array of new perspectives.

## NATIONAL NATIVE AMERICAN LAW STUDENTS ASSOCIATION MOOT COURT COMPETITION

While the National Animal Law Competition is organized by faculty and administrative staff, the National Native American Law Students Association (NALSA) Moot Court Competition is organized primarily by law students. Jessie

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*Lewis & Clark Law School has become a force to be reckoned with on the national moot court scene. For years, its students have performed exceptionally well in a number of prestigious competitions. Now, the law school's strong reputation and welcoming accommodations, along with Portland's growing appeal as a tourist destination, have helped the law school attract some highly visible national competitions to campus.*

*"In the spring of 2013, we will be hosting two of the academy's premier moot court competitions," says Dean Robert Klonoff. "These are the National Animal Law Competition and the National Native American Moot Court Competition." And the law school will launch a new environmental law competition—this one just for Lewis & Clark students. Chief Justice of the United States John G. Roberts, Jr., will be the presiding judge on the panel.*

*Klonoff notes that the remodel of Lewis & Clark's Agnes Flanagan Chapel, which accommodates up to 500 people, makes it possible to host these events.*



Chief Justice John G. Roberts, Jr.



Judge Anna Brown '80



Judge Diarmuid O'Scannlian

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

**NATIONAL COMPETITIONS COME TO LEWIS & CLARK**  
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Young, a third-year law student and president of Lewis & Clark's NALSA chapter, says about 70 teams from throughout the country, their coaches, and Oregon's nine federally recognized tribes are expected to attend the event in 2013, scheduled for February. The distinguished panel includes Diane Wood, U.S. Court of Appeals for the Seventh Circuit; William Canby, Jr., U.S. Court of Appeals for the Ninth Circuit; and Stacy Leeds, Dean of the University of Arkansas at Fayetteville Law School and Chief Justice of the Supreme Courts of the Kaw Nation and the Kickapoo Tribe of Oklahoma.

"Fortunately for the NALSA board at Lewis & Clark, we have a really supportive law school and they are behind us 100 percent in everything that we do," Young says, adding that several of the community's attorneys, judges, and other legal professionals have stepped up to help coach Lewis & Clark's moot court team.

Each student participating in the competition must write a 25- to 30-page

brief based on a particular side of a current issue in Indian law. The teams are made up of two students, and each student writes about a particular issue on one side of the argument. Once the briefs are submitted in January 2013, team members can begin conferring with their coaches and other legal professionals and start practicing their oral arguments. During the oral argument competition, each student is asked to argue both for and against the position he or she wrote about in his or her brief, Young says.

"You have to be very flexible and lay out both sets of arguments for yourself," she says, noting the Lewis & Clark students "suit up" to practice twice a week once the written briefs are submitted.

Young says the competition to host the event was itself fierce. The Lewis & Clark team compiled an admirable bid that highlighted the law school's appeal as well as Portland's tourist attractions. The bid also included a stack of supporting letters from law school leaders, prominent judges and attorneys, and Governor John Kitzhaber, among others.

"I have a lot of pride in my school and I knew we could put on a great event. I think this is a great chance to showcase Oregon, Lewis & Clark, and the Oregon tribes on a national level," Young says. "I'm also hoping we can get all of the tribes more involved in the law school."

## **PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION, NORTHWEST REGIONAL ROUNDS**

The Philip C. Jessup International Law Moot Court Competition's Northwest regional rounds take place in mid-March. Lewis & Clark Law School has hosted the "super regionals" for several years now, with Dagmar Butte '91, a shareholder with Portland firm Parker, Butte & Lane, coordinating the event.

At 53 years old, the Jessup is the oldest moot court competition in the world. It's also the biggest, involving more than 500 law schools from 80 countries. Butte says the legal topics covered in the competition range

from war crimes, criminal matters, and piracy to investment and environmental law.

"I'm eternally grateful that Lewis & Clark's faculty understands the value of the moot court as an educational tool. Some law schools don't get that," Butte says. "We compete against top schools and we almost always break through to the elimination round. That's a testament to the talent of the students. My students work extraordinarily hard. I can't begin to tell you how proud of them I am."

## **...AND ONE OF OUR OWN**

To top off the year, in the spring of 2013 Lewis & Clark Law School will inaugurate a unique environmental law moot court competition that will feature Chief Justice of the United States John G. Roberts, Jr., as one of the judges.

The competition begins when Craig Johnston '85, law professor and clinical director of the Pacific Environmental Advocacy Center (now known as Earthrise Law Center), leads students through a three-part process in preparation for the National Environmental Law Moot Court Competition held at Pace Law School in February 2013. During the fall of 2012, 27 students will participate in an eight-week session where they will analyze a problem written by Johnston, write a brief, and conduct six rounds of arguments. The group will be winnowed down to the top three students, who will participate in the competition held at Pace.

"There are often administrative law and constitutional law issues embedded in these problems. One of the nice things is that they are fairly complicated. And from our perspective, the more complicated the better," Johnston says. "The more complicated problems separate the wheat from the chaff."

To prepare, the trio of students will participate in at least 25 practice rounds before faculty members, local attorneys, and other legal professionals to hone their skills.



*Lewis & Clark Animal Law Moot Court team waiting for final results*

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**NATIONAL COMPETITIONS COME TO LEWIS & CLARK**  
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“Our goal every year is to go to New York and not hear any questions we didn’t anticipate. That has never happened, of course, but the preparation teaches you to think on your feet, prepare well, and talk to the judge who is trying to understand your case,” Johnston says. “Oral argument is really just a conversation between you and a judge, and, frankly, the judges call the tune because they have the questions and know what they need to understand about the problem.”

For the national competition, which draws numerous teams, the students receive an entirely new problem, complete with new issues and corresponding laws. These can range from the clean water and air acts to laws regarding hazardous waste and the Endangered Species Act.

To date, Lewis & Clark Law School has won seven times, shattering the event’s previous record of two consecutive wins. Among 75 competing law schools, Lewis & Clark’s team has reached the finals 14 times in the last 21 years, gone to the finals six years in a row, and won first place three of those six years.

When the Lewis & Clark team returns from Pace this year, it will come back to a unique experience. The three students who competed at Pace will again argue the original problem written by Johnston, this time in a competition designed to determine the law school’s best environmental advocate of the year. The judging panel for this inaugural event includes Chief Justice John G. Roberts, Jr., board of visitors member and adjunct professor Judge Diarmuid O’Scannlian of the U.S. Court of Appeals for the Ninth Circuit, and alumni board member Judge Anna Brown ’80, who serves on the U.S. District Court for the District of Oregon.

“I couldn’t be more thrilled about the year ahead,” says Klonoff. “In addition to the excitement that these programs bring to our community, the competitions also help to prepare our students for rewarding careers.”

*(Reprinted from The Advocate)*

## Around the World and Back Again...



*Above: International LL.M. students Rehan Rauf (Pakistan), Maureen Mobuogwu (Nigeria) and Nandita Rastogi (Trinidad) enjoy a hike in the Columbia Gorge.*



*Right: Professor Aubrey Baldwin picnics with law students in Korea.*

*Below: Professor Dan Rohlf with friends in India.*



*IELP Professor Erica Lyman and IELP clerk Amelia Linn served as legal advisors on Palau’s delegation to the climate change negotiations in Durban, South Africa.*

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## 2012 National Moot Court Competitions Bring Out the Best in Lewis & Clark Students

Lewis & Clark students dominated the 9th Annual National Animal Law Competitions at UCLA Law School. The team of Andrew Erickson (2L) and Maggie Hall (2L) bested Yale in the semi-finals to get to the final round, and then beat out a very tough University of Chicago team to claim the top prize in the appellate moot court component

of the competition. Maggie Hall also claimed the top prize for best overall oralist of the competition, earning an unprecedented perfect score from at least three judges during the course of the competition. In the closing argument component of the competition, both Lora Dunn (2L) and Jaclyn Leeds (2L) beat out an equally tough field

to get into the final round, with Jaclyn coming out as the champion. This is the first time both Lewis & Clark competitors made it into the finals. Also doing outstanding work were Kathryn Walter (3L) and Aurelia Erickson (3L) (appellate moot court), and Nick Stack (3L) (legislative drafting and lobbying). The students benefited from the time and efforts of superb coaches. Professors Kathy Hessler and Aliza Kaplan coached the appellate moot court teams; alumni Jake Bush coached the closing argument competitors with assistance from Professor Hessler; and Mark Cushing coached the competitors in the legislative drafting and lobbying competition. In addition, numerous Lewis & Clark professors and staff judged practice rounds throughout the several weeks leading up to the competition. That investment of time was critical to the students' success and educational experience.

Students Marla Nelson (3L), Meredith Price (2L), and Daniel Timmons (3L) carried Lewis & Clark to the finals of the National Environmental Law Moot Court Competition where they came in second. This marks the 14th time we have made the finals in this national competition, having won the competition seven times. En route to the finals, the team competed and won against many schools, including Columbia, Wisconsin, Maryland, George Washington, and Florida State.

Coached by Professors Craig Johnston and assisted by Professors Allison LaPlante and Dan Mensher, the team also got support from other faculty and from alumni who volunteered to judge the dozens of practice rounds the team held to prepare for the competition. Cheered on by their classmates, professors, family and friends, it was another top flight Lewis & Clark environmental law moot court team.



*Professor Craig Johnston with National Environmental Law Moot Court team: Meredith Price, Marla Nelson and Daniel Timmons*



*NALC 2012, Appellate Moot Court Competition First Place Team (L&C) Maggie Hall and Andrew Erickson with Second Place Team (University of Chicago) and Final Round Judges: Judge Lee H. Rosenthal, Judge D. Brooks Smith and Sonia Waisman*



# Environmental and Natural Resources Law Faculty

## **Aubrey Baldwin**, *Clinical Professor of Law*

**ACADEMIC CREDENTIALS:** B.S.S.W. cum laude 1997 University of Tennessee. J.D. cum laude 2005 Lewis & Clark Law School.

**TEACHING AREA:** Earthrise Law Center clinic, environmental litigation.

## **Michael Blumm**, *Jeffrey Bain Faculty Scholar and Professor of Law*

**ACADEMIC CREDENTIALS:** B.A. cum laude with departmental honors 1972 Williams College. J.D. with honors 1976, LL.M. with highest honors 1979 George Washington University Law School.

**TEACHING AREAS:** Property, public lands law, Native American natural resources, American legal history, public trust seminar.

## **Thomas C. Buchele**, *Clinical Professor of Law*

**ACADEMIC CREDENTIALS:** B.A. 1982 Illinois Wesleyan University. J.D. 1986 University of Illinois.

**TEACHING AREA:** Earthrise Law Center clinic, environmental litigation.

## **Pamela Frasch**, *Assistant Dean and Executive Director of Center for Animal Law Studies at Lewis & Clark in collaboration with the Animal Legal Defense Fund*

**ACADEMIC CREDENTIALS:** B.A. 1980 University of Minnesota. J.D. 1984 William Mitchell College of Law

**TEACHING AREAS:** Animal law, animal law seminar, animal agriculture law and policy.

## **Nicholas A. Fromherz**, *Visiting Assistant Professor in Environmental/Natural Resources Law*

**ACADEMIC CREDENTIALS:** B.A. 2003 University of Oregon. J.D. summa cum laude 2006 University of San Diego School of Law.

**TEACHING AREAS:** International environmental law, comparative agriculture law.



## **William Funk**, *Robert E. Jones Professor of Advocacy and Ethics*

**ACADEMIC CREDENTIALS:** B.A. 1967 Harvard University. J.D., Harlan Fiske Stone Scholar and James Kent Scholar, 1973 Columbia University School of Law. Writing and research editor, Columbia Journal of Environmental Law.

**TEACHING AREAS:** Administrative law, constitutional law I and II, environmental law, legal elements.

## **Katherine Hessler**, *Clinical Professor of Law*

**ACADEMIC CREDENTIALS:** B.A. 1985 George Washington University. J.D. 1987 College of William and Mary, Marshall-Wythe School of Law. LL.M. 1997 Georgetown University Law Center.

**TEACHING AREAS:** Animal law; Animal Law Clinic: Center for Animal Law Studies at Lewis & Clark in collaboration with the Animal Legal Defense Fund; graduate animal law LL.M. seminar; animal law moot court.

## **Craig Johnston**, *Professor of Law and Director of Earthrise Law Center*

**ACADEMIC CREDENTIALS:** B.A. 1978 University of Rochester. J.D. magna cum laude 1985 Lewis & Clark Law School.

**TEACHING AREAS:** Environmental law, hazardous waste, environmental enforcement, environmental law moot court team, environmental and animal law advocacy, clean air act.

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

**ENVIRONMENTAL AND  
NATURAL RESOURCES LAW FACULTY**  
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## **Allison LaPlante, Clinical Professor of Law**

**ACADEMIC CREDENTIALS:** B.S. 1996 Cornell University.

J.D. cum laude 2002 Lewis & Clark Law School.

**TEACHING AREA:** Earthrise Law Center clinic.

## **Erica Lyman, Clinical Professor of Law**

**ACADEMIC CREDENTIALS:** B.A. 2000 Davidson College. J.D. 2005 Lewis & Clark Law School. Member, Phi Beta Kappa.

**TEACHING AREAS:** International Environmental Law Project clinic.

## **Susan Mandiberg, Jeffrey Bain Faculty Scholar and Professor of Law**

**ACADEMIC CREDENTIALS:** B.A. cum laude with departmental honors 1968 Oberlin College. M.A. 1970 University of Illinois. J.D. 1975 University of California at Berkeley (Boalt Hall).

**TEACHING AREAS:** Criminal law, criminal procedure, environmental enforcement.

## **Dan Mensher, Clinical Professor of Law**

**ACADEMIC CREDENTIALS:** B.A. 1998 Wesleyan University. M.S. 2002 University of Wisconsin at Madison. J.D. 2007 Lewis & Clark Law School.

**TEACHING AREA:** Earthrise Law Center clinic.

## **Melissa Powers, Associate Professor of Law**

**ACADEMIC CREDENTIALS:** B.A. 1992 University of California at Berkeley. J.D. magna cum laude 2001 Lewis & Clark Law School.

**TEACHING AREAS:** Energy law, torts, climate change, clean air act, renewable energy law and policy seminar.

## **Dan Rohlf, Professor of Law and Of Counsel, Earthrise Law Center**

**ACADEMIC CREDENTIALS:** B.A. 1984 Colorado College. J.D. 1987 Stanford Law School.

**TEACHING AREAS:** Law, science, and the environment; graduate environmental LL.M. seminar; sustainability in law and business; wildlife law.

## **Erin Ryan, Associate Professor of Law**

**ACADEMIC CREDENTIALS:** B.A. cum laude 1991 Harvard-Radcliffe College. M.A. 1994 Wesleyan University. J.D. cum laude 2001 Harvard Law School.

**TEACHING AREAS:** Negotiations, natural resources law, property, water law and policy seminar.

## **Janice Weis, Associate Dean and Director of Environmental and Natural Resources Law Program and LL.M. Program**

**ACADEMIC CREDENTIALS:** B.S. high honors 1984 University of California at Berkeley. J.D. 1988 University of California Hastings College of Law.

**TEACHING AREA:** Natural resources law and policy seminar, NEPA.

## **Chris Wold, Professor of Law and Director of the International Environmental Law Project**

**ACADEMIC CREDENTIALS:** B.A. cum laude 1986 St. Olaf College. J.D. 1990 Lewis & Clark Law School.

**TEACHING AREAS:** International Environmental Law Project clinic, international environmental law, international trade and environment.

**MELISSA POWERS** ('01) attended law school at Lewis & Clark after spending a number of years leading teenagers in youth conservation corps and other outdoor programs. Melissa began her legal career as an attorney at public interest environmental law firms doing pollution control litigation. From 2003-2008, she was a Clinical Professor at the Pacific Environmental Advocacy Center (PEAC), the environmental law clinic at Lewis & Clark.

In 2008 Melissa joined the tenure-track faculty and began teaching climate change courses, administrative law, renewable energy, and other courses. Her research interests include energy law (with a specific focus on laws designed to promote renewable energy), domestic policies aimed at mitigating climate change, and U.S. pollution control laws. She is also interested in comparative law study in each of these areas. In 2012 she was awarded the Leo Levenson award for excellence in teaching, an award voted on by the graduating class.

Melissa is a co-chair of the Research Committee of the IUCN Academy of Environmental Law, an international organization dedicated to increasing collaboration between environmental law scholars around the globe and in expanding the capacity of environmental law teaching and research in developing countries. Melissa has also taught as a visiting professor at several schools, including the University of Trento, Italy, in 2008, 2011 and 2012, the University of Navarra, Spain, in 2011, and the University of Maine School of Law in 2007.



# New Faces in the Environmental Law Program

**Erin Ryan** joined the Lewis & Clark community as an Associate Professor in fall 2011. She spent her first year abroad at Ocean University in Qingdao, China, on a Fulbright grant. As a Fulbright Scholar, Ryan taught U.S. environmental and property law, and also lectured around the country and conducted research on how interjurisdictional governance is negotiated between Chinese local, provincial, and central governments. “China is key to the future of environmental law worldwide, which is one reason I’m interested in learning as much as I can about Chinese environmental governance,” she says. For Ryan, who studied Chinese language and politics as part of her undergraduate degree at Harvard-Radcliffe, the trip was also her first opportunity to visit the country. “I graduated right after the mainland was closed to foreigners following the Tiananmen incident,” she says. “I’ve been interested in China for some 25 years, and still speak enough Mandarin to get around, but I’ve never had the chance to actually be there.” As part of its global mission Lewis & Clark has worked to increase ties between the Law School and international schools like Ocean University, which is also renowned for its environmental and natural resource programs. “Lewis & Clark is already building bridges there,” Ryan says, “and I’m really looking forward to helping fortify them.”

Ryan comes to Lewis & Clark from the Marshall-Wythe School of Law at the College of William & Mary in Williamsburg, Virginia, where she taught property, natural resource law, and negotiation. “I will miss my wonderful students [at William & Mary],” she says, “but I think the students at Lewis & Clark will quickly make up for that loss.” Ryan says the great students are one of the many reasons she is excited to join the Law School faculty. “I love that Lewis & Clark students go out and really make a difference in the world.” The environmental law program, one of the best in the country, is what initially attracted Ryan to Lewis & Clark, she says, but the welcoming nature



*Visiting Assistant Professor Nick Fromherz, Professor Craig Johnston and Associate Professor Erin Ryan*

of the faculty, staff, and other community members also made a favorable impression. Ryan, who used to perform as a professional musician, says that the chair found and played some of Ryan’s music for the selection committee during her faculty interview. “Lewis & Clark really cares about you as a whole person. At a lot of schools you are your specialty and that’s it.”

Ryan has more than 15 years of experience working in land use, environmental, and natural resources law. Her passion for the law began when she worked as a forest ranger at the Mono Basin National Forest Scenic Area, just east of Yosemite National Park. “I realized that I would never be able to participate in deciding the policy that I had to implement. I would not be able to translate my ground-level experience into policy making, and the more I learned in the field, the more I wanted to be able to do exactly that.” Part of her job was to interpret Mono Basin water issues for the public, which revolved around the intersection of the common law public trust doctrine and western water law. Ryan thought there was more she could do to contribute to land use and other conservation issues, and “the toolbox that was most useful was a legal degree.”

Ryan received her J.D. from Harvard Law School and was a Hewlett Negotiation Research Fellow at the Harvard Program on Negotiation. She went on to clerk for James R. Browning of the U.S. Court of Appeals for the Ninth Circuit and worked as an associate at public-interest

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## NEW FACES IN THE ENVIRONMENTAL LAW PROGRAM

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law firm Shute, Mihaly & Weinberger in San Francisco, which specializes in land use, environmental, and local government law. There she became even more interested in the constitutional dimensions of interjurisdictional environmental governance. “I intended to practice for much longer,” Ryan says, but she was invited to teach negotiation at the University of California’s Hastings College of the Law. Ryan initially taught negotiation part time but fell in love with teaching.

“I love being part of the academic program,” she says. While teaching at Lewis & Clark Ryan hopes “to help prepare a new generation of lawyers to take on the issues of the day,” she says. “What I’ve been working on since becoming a law professor—and what I hope to continue to be able to do at Lewis & Clark—is to help solve pressing problems, especially environmental problems, using the best tools that I have. I do this in my scholarship by proposing new ways of looking at old problems in environmental and interjurisdictional governance, and in seeking to bridge understanding in conflicted legal and policy contexts. I do this in my teaching by helping prepare new generations of lawyers to tackle these problems through legislation, litigation, and wherever possible, negotiation. And I try, as best I can, to live my values, and raise children who will do the same.”

Ryan has published numerous works on environmental law, constitutional law, and negotiation. Her book *Federalism and the Tug of War Within* will be published by Oxford University Press later this year.

Ryan is thrilled to be moving back to the West Coast and to Portland in particular—the first western city she visited after growing up in New York. She spent lots of time hiking, camping, and otherwise exploring the state while a forest ranger. “I love everything about Oregon! It is one of the most beautiful states in the union.”

In 2012 -13, Ryan will teach Property, Natural Resources, Negotiations, and a Water Law and Policy seminar. For more information on Professor Ryan and for a link to her blog entries regarding her experiences in China and thoughts on federalism, visit [http://law.lclark.edu/faculty/erin\\_ryan/](http://law.lclark.edu/faculty/erin_ryan/) (Reprinted from *The Advocate*)

Lewis & Clark Law School sponsors a visiting assistant professor position (VAP) for a two-year term in its environmental and natural resources law program. The position is ideal for those interested in transitioning to a career in academia and who would like an opportunity to focus on scholarly research, writing and teaching in preparation for that transition. The VAP will be able to use the first year of the position to produce scholarship and teach and can then use scholarship, teaching experience, and student evaluations in support of an application for academic positions in the

following year, while continuing to teach and write during the second year. Our VAP for 2012-14 is **Nick Fromherz**.

Fromherz is fluent in Spanish and until August of 2012 he was the Environmental Law and Policy Scholar at Adelante Mujeres, Cochabamba, Bolivia. His research and writing is primarily on topics of environmental law and policy for U.S.-based non-profit organizations. His current work focuses on the need for a global treaty to protect soil resources and to preserve agrarian culture (article to be published in *Ecology Law Quarterly* (UC-Berkeley)). Fromherz also taught public international law as an Adjunct Professor of Law (spring 2012) at the Universidad Central de Bolivia, Cochabamba, Bolivia.

Fromherz received his J.D. from the University of San Diego School of Law in 2006, summa cum laude. He received his B.A. in English from the University of Oregon in 2003. Before moving to Bolivia, Fromherz was an associate at the law firm of Crowell & Moring in Irvine, CA where he was a member of the Employment and Litigation practice groups. He was also a law clerk for the U.S. Court of Appeals for the Seventh Circuit (Judge Terence Evans) for a year and law clerk for 2 years to federal district court judge David M. Lawson (Eastern District of Michigan).

In 2012-13 Fromherz will teach International Environmental law and a Comparative Agricultural Law seminar.

**PROFESSOR CRAIG JOHNSTON** was assistant regional counsel with the U.S. Environmental Protection Agency in Boston, and later the founder of the environmental section of the Perkins Coie law firm in Portland. Craig coaches the law school’s environmental law moot court teams, which have three times won the national competition. Under his leadership, the Lewis & Clark teams consistently make the final rounds. Craig has coauthored casebooks on hazardous waste law and environmental law, and has written articles on these topics. Craig, a 1985 magna cum laude graduate of the law school, was voted outstanding faculty member by the graduating class of 1998. In 2002, he organized and ran in a charity relay from the Oregon coast to Boston.



## Faculty Scholarship 2011-12

### **Professor Michael C. Blumm**

**ARTICLES:** "Dam Removal in the Pacific Northwest: Lessons for the Nation," 42 *Env'tl. L.* \_\_\_\_ (forthcoming 2012), <http://ssrn.com/abstract=2101448> (co-authored with Andrew Erickson '13)

"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* \_\_\_\_ (forthcoming 2013), <http://ssrn.com/abstract=2039155> (co-authored with Tim Wigington '12)

"Pluralism and the Environment Revisited: The Role of Comment Agencies in NEPA Litigation," 37 *Vermont Law Review* \_\_\_\_ (forthcoming 2013), <http://ssrn.com/abstract=2066818> (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* \_\_\_\_ (forthcoming 2012), <http://ssrn.com/abstract=2051638> (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* \_\_\_\_ (forthcoming 2012), <http://ssrn.com/abstract=2070354> (co-authored with Keith Mosman '12)

### **Assistant Dean Pamela Frasch**

*Executive Director of the Center for Animal Law Studies*

**BOOKS:** *FARMED ANIMALS IN LAW AND SOCIETY*, with Kathy Hessler, Sonia Waisman, and Joyce Tischler, Carolina Academic Press (forthcoming 2014)

*ANIMAL LAW: CASES AND MATERIALS*, 5th Edition, with Sonia Waisman and Bruce Wagman, Carolina Academic Press (forthcoming 2014)

**ARTICLES:** "The Future of Animal Law: Moving Beyond Preaching to the Choir," with Megan Senatori, in *ANIMAL LAW ANTHOLOGY*, Margot Michel, Daniela Kühne, And Julia Hänni, Editors, University Of Zurich, Bwv Berliner, Wissenschafts-Verlag Publisher (2012)

### **Visiting Assistant Professor Nick Fromherz**

**ARTICLES:** "The Case for a Global Treaty on Soil Conservation, Sustainable Farming, and the Preservation of Agrarian Culture," 39 *Ecology Law Quarterly* 57 (2012)

"A Call for Stricter Appellate Review of Decisions on Forum Non Conveniens," \_\_\_\_ *Washington University Global Studies Law Review* \_\_\_\_ (forthcoming, 2012)

"In Bolivia's Quest to Regain the Pacific, Political Posturing is More Afterthought than Motivator," *Journal of Foreign Relations* (Jan. 5, 2012)

"Protests Here, Protests There: Mass Demonstrations and the State of Democracy in the U.S. and Bolivia," *International Affairs Forum* (Nov. 7, 2011)

"The Rise and Fall of Bolivia's Evo Morales," *Foreign Affairs* (Oct. 18, 2011)

### **Professor William Funk**

*Robert E. Jones Professor of Advocacy and Ethics*

**CHAPTERS:** "Constitutional Law and Separation of Powers," in *Developments in Administrative Law and Regulatory Practice* (2011)

**ARTICLES:** "Standing Without Injury," *Trial Magazine* Vol. 48, No. 3 (AAJ Mar. 2012)

"Agency Guidance Documents and *NRDC v. EPA*," *Trends Newsletter* Vol. 43, No. 5 (ABA May/June 2012)



**PROFESSOR MIKE BLUMM** is one of the architects of the law school's acclaimed Environmental and Natural Resources Law Program. He is a Jeffrey Bain Faculty Scholar, in recognition of his teaching and scholarship. For over 30 years he has been teaching, writing, and practicing environmental and natural resources law. Ongoing projects include an article on the habitat protection implicit in 19th-century Indian treaties and a coauthored treatise on public trust law. Mike is coauthor of the first casebook on Native American natural resources law, originally published in 2002 and now in its second edition. He works closely with students on writing projects: over a recent two-year period, 12 of his students published articles, many of them as his coauthors.

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program



**FACULTY SCHOLARSHIP 2011-12**  
*continued from page 13*

## **Clinical Professor Kathy Hessler** *Animal Law Clinic Director*

**BOOKS:** FARMED ANIMALS IN LAW AND SOCIETY, with Pamela Frasch, Sonia Waisman, and Joyce Tischler, Carolina Academic Press (forthcoming 2014)

TEACHING ANIMAL LAW ACROSS THE CURRICULUM, with Joyce Tischler and Pamela Hart, Carolina Academic Press (forthcoming 2013)

**CHAPTERS:** "The Role of the Animal Law Clinic," in *Revista Brasileira de Direito Animal* (Portuguese translation) (forthcoming 2013) ANIMAL LAW ANTHOLOGY, University of Zurich (2012)

**ARTICLES:** "Report and Recommendations on the Status of Clinical Faculty in the Legal Academy," with Bryan Adamson, Bradford Colbert, Katherine Kruse, Robert Kuehn, Mary Helen McNeal, Calvin Pang, and David Santacroce, 62 *The Journal of Legal Education* 115 (August 2012), 36 *The Journal of the Legal Profession* 353 (2012)

## **Professor Craig Johnston**

**ARTICLES:** "Sackett: The Road Forward," 42 *Env'tl. Law* \_\_\_ (forthcoming 2012)

## **Clinical Professor Erica Lyman** *IELP Staff Attorney*

**ARTICLES:** "International Environmental Law Committee Report," in *Environment, Energy, and Resource Law: Year in Review 2011*, American Bar Association Press (2012)

"ABA International Environmental Law: Year in Review 2011," *Intl. Law.* (2012)



## **Professor Melissa Powers**

**CHAPTERS:** "United States Municipal Climate Plans: What Role Will Cities Play in Climate Change Mitigation?," in *LOCAL CLIMATE CHANGE LAW: ENVIRONMENTAL REGULATION IN CITIES AND OTHER LOCALITIES (THE IUCN ACADEMY OF ENVIRONMENTAL LAW SERIES)* (ed. Richardson) (2012)

**ARTICLES:** "Small is (Still) Beautiful: Designing U.S. Energy Policies to Increase Localized Renewable Energy Generation," 30 *Wis. Int'l L. J.* (forthcoming 2012).

"Country Report: USA, Climate Change in the Supreme Court," 1 *IUCN Academy of Environmental Law e-Journal* 245 (2012)

## **Professor Erin Ryan**

**BOOKS:** FEDERALISM AND THE TUG OF WAR WITHIN (Oxford University Press, 2012)

**CHAPTERS:** "The Once and Future Challenges of American Federalism," in *The Ways of Federalism in Western Countries and the Horizons of Territorial Autonomy in Spain, Vol. 1*, (Springer 2013)

**ARTICLES:** "In Tribute to Judge James R. Browning: The Center of His Circle," 73 *Montana L. Rev.* 14 (2012)

"Negotiating Federalism Past the Zero-Sum Game," 38 *Admin. & Reg. News* \_\_\_, No. 1 (Fall, 2012)

"Spending Power Bargaining After Sebelius," 38 *Admin. & Reg. News* \_\_\_, No. 1 (Fall, 2012)

## **Professor Chris Wold** *IELP Director*

**ARTICLES:** "Climate Change, Presidential Power, and Leadership: 'We Can't Wait,'" *Case Western Journal of International Law* (forthcoming spring 2013)

"The Durban Package and the Goals of Pacific Small Island Developing States," *ASIL INSIGHTS*, Jan. 6, 2012 (vol. 16, issue 1), <http://www.asil.org/insights120106.cfm>

"Leveraging Climate Change Benefits through the World Trade Organization: Are Fossil Fuel Subsidies Actionable?," 43 *GEORGETOWN J. INT'L L.* 635 (2012) (with Wilson & Foroshani)

# Pacific Environmental Advocacy Center (PEAC)

*Now Known as Earthrise Law Center*

## **'Cool' Victory — A Step in the Right Direction for Oregon's Imperiled Fish**

Over 12,000 miles of rivers and streams in Oregon have become too hot for the long-term survival of threatened and endangered salmon, steelhead, and bull trout. These fish require cold water to survive. The high water temperatures are caused by poor land management practices, dams, pollution, and flow alterations. Under the Clean Water Act, states are required to set water quality standards—or goals—for their waterbodies to protect all of the “uses” of the waterbodies. In Oregon, salmon and bull trout spawning, rearing, and migration are critical uses of many waterbodies.

Unfortunately, the Oregon Department of Environmental Quality (DEQ) and the federal agencies overseeing Oregon's water quality program have hindered the restoration of cool water temperatures by adopting inadequate water quality standards. These standards are far too weak and in significant cases allow water temperatures to rise to a level that is lethal to these now-fragile fish species.

In December 2005, attorneys from Lewis & Clark's Pacific Environmental Advocacy Center (PEAC) filed suit on behalf of Northwest Environmental Advocates, challenging the federal agencies' actions and inactions on Oregon's standards. After many disputes about the completeness of the agencies' administrative records, and after prevailing on several key preliminary issues in the case, PEAC finally filed its arguments on the merits of the case in 2010 and 2011. The briefing involved a massive effort by PEAC attorneys Allison LaPlante '02, Dan Mensher '07, and Dan Rohlf, and by law students who pored over hundreds of thousands of pages of documents. Former PEAC students CJ Eder '10, Tara Gallagher '11, Brett Hartl '10,

Elizabeth Lieberknecht '11, Andy Newkirk '10, Jennifer O'Brien '11, Kieran O'Donnell '11, Ben Shelton '11, and Bryan Telegin '10 helped with the briefing, and many other students worked on the case over the years. Former PEAC attorney Professor Melissa Powers '01 helped develop the case. The summary judgment work culminated in December 2011, when PEAC had a three-hour oral argument before the court.

On February 28, 2012, Judge John Acosta issued a 51-page opinion (available at <http://e2.ma/click/ch31/o6uti/c1mmf>) on the parties' cross motions for summary judgment. The court ruled that the U.S. Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS), and the Fish and Wildlife Service (FWS) violated their duties under the Clean Water Act and Endangered Species Act in approving certain Oregon water quality standards for temperature, and in turning a blind eye to exemptions within Oregon's rules. The ruling is a major victory for water quality in Oregon and the many imperiled species of salmon that depend on healthy rivers. The ruling also has the potential to set significant national precedent regarding these federal agencies' roles in overseeing state water quality programs.

The parties are now conferring about and filing briefs regarding appropriate remedies in the case. PEAC does not yet know whether the government will appeal the court's ruling. Though PEAC did not win on every claim in the case, the court's ruling is nothing short of a resounding victory. We hope the court's ruling will result in improved conditions for imperiled fish in Oregon and set positive legal precedent that will benefit the environment beyond our borders.

### **SOME OF THE COURT'S MOST SIGNIFICANT RULINGS**

The EPA violated its mandatory duty under the Clean Water Act by failing to review

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# Natural Resources Law Institute and Environmental and Natural Resources Law Program

**PACIFIC ENVIRONMENTAL ADVOCACY CENTER (PEAC)** continued from page 15

Oregon's provisions that exempt "nonpoint sources" (logging, grazing, and agriculture) from compliance with temperature water quality standards. The court explained, "Given that many temperature impaired waters in Oregon are impaired in whole or in part by nonpoint sources of pollution, the challenged provisions could present a considerable obstacle to the attainment of water quality standards[.]" The court went on to hold that "[t]he EPA cannot choose to review and approve water quality standards while ignoring separate provisions which have the potential to cripple the application of those standards."

The EPA's approval of Oregon's "Natural Conditions Criterion" was arbitrary and capricious. This provision effectively overrides water quality goals for a waterbody any time the state determines a particular waterbody "naturally" had a higher temperature. This provision is another exemption that swallows the rest of the standards. The court ruled that the Natural Conditions Criterion "attempts to restore one aspect of Oregon's historical water conditions (higher temperatures in some waterbodies) without restoring the other conditions that allowed [salmon] to thrive," and that the EPA should not have approved a criterion like this when the process of estimating historic conditions of a waterbody is "a process rife with uncertainty."

The biological opinions of the expert fish agencies (NMFS and FWS) regarding the effects of the EPA's approvals on threatened and endangered species were arbitrary and capricious. The court ruled that the agencies' analyses were fundamentally flawed because they did not consider that river temperatures may impact certain species (such as those with very small population sizes) more than others. The court also ruled that certain decisions the agencies made appeared to be tainted by consideration of policy and feasibility rather than science.

(Reprinted from *The Advocate*)

## Hello, Earthrise...Farewell, PEAC

Sixteen years ago, Professors Craig Johnston and Dan Rohlf established an environmental legal clinic at Lewis & Clark Law School called the Pacific Environmental Advocacy Center (PEAC) that evolved from their years of experience mentoring law students. Today, with a staff of nine, the clinic provides free and reduced rate legal services for nonprofit conservation organizations, ranging from local grassroots groups such as Neighbors for Clean Air to national groups such as the Sierra Club. Since 1996, we have given hands-on, real world training to more than 200 law students, many of whom have gone on to work for conservation organizations, and assisted nearly 70 non-profit organizations in approximately 200 legal matters.

Over the years, we have been the lead law firm in significant, precedent-setting environmental cases. Our reputation for quality pro bono legal representation has spread beyond the Pacific Northwest; we now have a branch office in Massachusetts and current cases in more than a dozen states across the country. Our combination

of national-level legal work and real-world education is a proven, positive force for environmental protection and preservation. Thanks to our historic successes and new national outlook, we have reached the next stage of evolution. As of September 2012, we have a new name to reflect our growth and reach: Earthrise Law Center.

The clinic's mission remains the same: to protect and preserve the environment by providing expert, free or reduced rate legal services to conservation groups and to train the next generation of environmental advocates.

The first image ever recorded of Earth from space is called "Earthrise." Shot in 1968 from Apollo 8, this photograph of the planet rising from behind the lunar horizon shaped the course of the environmental movement, by revealing Earth as the fragile and finite planet that it is, a home in need of care and worthy of protecting. In Carl Sagan's words, "the Earth is where we make our stand." At Earthrise, we make those ideals a reality through our teaching and advocacy.



Earthrise (photo by NASA)



# For PEAC Summer Law Clerk, It All Comes Together at Trial

By Liv Brumfield '13

This May marked the end of my second year of law school. It also marked the first time I realized clearly why I am in law school, and how this education is actually preparing me to be a lawyer.

My second assignment as a summer law clerk for PEAC was to get on a plane from Portland, Oregon, to Madison, Wisconsin, to support two PEAC attorneys in a weeklong Clean Water Act trial in Wisconsin district court. Surprisingly, this was PEAC's first-ever federal trial. Unsurprisingly, it was also my first trial. Yet despite my rookie status, PEAC scooped me up and threw me into the mix, naming me one of the trial team in its hunt for justice against polluters.

And it was awesome. From the minute I arrived in Madison, I was indeed embraced as one of the team. The action was nonstop: I worked 12- and 14-hour days alongside six experienced attorneys preparing witnesses for trial, thinking about strategy, writing motions, analyzing case law, and conducting last-minute factual and legal research. On the first day, I helped crank out a motion in limine in four hours. The next day, the judge granted the motion—a small victory for a team of experienced lawyers but a huge one in my nascent legal career. As the eve of trial approached, I realized that I was observing six different approaches to questioning witnesses, trial strategy, and legal analysis. I watched and participated as the attorneys each developed ideas, and then tested and refined them. It was incredibly energizing. It was as if we were preparing for a “choose-your-own adventure” game; each attorney generously divulged their secrets about how they planned to use facts and law to win.



And finally, at trial, everything became clear. As I sat behind the bar, taking notes and scrambling with last-minute research, I experienced a sort of amazing synthesis of law school education plus intensive trial prep plus TV-lawyer drama. I saw real-life examples of hearsay, and began to strategize in my head about how the attorneys would lay foundation for the next exhibit they wanted to introduce. I saw the attorneys' questioning strategies play out—or not—and found myself thinking about how I would have done it or noting effective phrases, body language, tone, and progressions. And after a few rounds of particularly effective questioning, I had to keep myself from jumping out of my seat to shout, “And what do you think about that, Judge?!” as if we were in a high-stakes TV trial, complete with music for dramatic effect.

This hands-on, in-the-trenches, one-of-the-team experience is just what PEAC does best. I would have never done this work merely researching for a professor or slogging away at some other research-based job. My attorney-mentors treated me like an equal; they let me in on their strategies, used my ideas and research, and counted on me to write for the team. Working so closely with those attorneys invigorated me to be more effective in my legal career, and gave me hope that there actually may be a place for me in the legal world. In Madison—and at PEAC in general—I helped real attorneys litigating a real case to stop real polluters. I give hearty thanks to my PEAC attorney-mentors for making me part of that team and launching my legal career.

*(Reprinted from [The Advocate](#))*

Lewis & Clark  
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## International Environmental Law Project (IELP)

The International Environmental Law Project (IELP)—Lewis & Clark Law School’s international environmental clinic—continues to work on the global scene on behalf of under-represented or marginalized voices. Over the past year, IELP’s pro bono work, enabled by donations, foundation grants, and partner organization contributions, provided legal advice and support to Pacific Island States during the climate change negotiations and contributed to the protection of endangered species from international trade.

IELP’s mission rests not just on representing the under-represented but also on providing Lewis & Clark Law students with the opportunity to practice “real-life” international environmental law. IELP student law clerks collaborate on the many types of situations in which IELP attorneys participate in international lawmaking. The work varies significantly and includes counseling governments in the middle of climate change negotiations on strategy and legal interpretation; drafting white papers, legal opinions, and treaty documents; training governments and non-governmental organizations on various international legal issues; and participating directly in international negotiations. IELP student Sarah Perelstein, who is working for Nauru’s mission office at the United Nations on climate change during her fall externship, reflects on her IELP experience: “My work as a student has influenced the decisions of governments in ways that have led to positive outcomes in the climate change negotiations and that have led to greater protections for endangered species. I did that, and I did that as a student. My work with IELP could not have better prepared me for my current work at the United Nations or my summer work at NOAA’s Office of General Counsel for International Law.”

Just a few highlights from this year:



*IELP team in Durban, South Africa*

### **IELP helps protect Tuvalu’s Least Developing Country status**

Working under extreme time pressure amidst the climate change negotiations in Durban, South Africa, IELP student law clerks Sarah Jornsay-Silverburg and Georgia Prim coordinated the drafting of Tuvalu’s application for Least Developing Country status. The success of the application ensured Tuvalu’s role in an important United Nations negotiating bloc and the continuation of critical development aid.

### **IELP brings international attention to the unsustainable trade in pangolins**

IELP Professor and attorney Chris Wold, student law clerk Sarah Perelstein, and partner organizations have brought significant international attention to crashing pangolin populations and the increasing threat of trade for traditional Asian medicine purposes. IELP has drafted a number of documents detailing the

trade in pangolin species as traditional Asian medicine and outlining a plan for international pangolin conservation, which is likely to be taken up by the Parties to the Convention on International Trade in Endangered Species in 2013.

### **IELP provides critical assistance at climate change negotiations**

IELP continued to function as a pro bono legal team for Pacific Island States at the climate change negotiations in Durban, South Africa. Seven IELP law clerks spent the two weeks of the negotiations providing ad hoc legal advice on topics such as provisional application of the Kyoto Protocol’s second commitment period—a legal issue that Parties spent a great deal of the negotiations discussing. Additionally, IELP alumna Amelia Linn and IELP Professor Erica Lyman served on Palau’s delegation as legal advisors, working with Palau and the Alliance of Small Island States (AOSIS) on shaping the legal architecture of the future climate change agreement.

## Animal Law Clinic

The Animal Law Clinic (the Clinic) at the Center for Animal Law Studies serves as a resource for students, professors, attorneys, organizations, media, and individual clients. The Clinic assists organizations and attorneys involved in animal protection litigation, legislation, and policy work. It also researches and analyzes developments in animal protection law. Although the Clinic focuses on matters of national and international importance, it maintains close connections with the local community and facilitates animal protection progress in Oregon.

At present, the Clinic has a number of exciting ongoing projects. For instance, the Clinic is working with Farm Sanctuary to petition USDA to address the lack of enforcement of the Poultry Products Inspection Act. This petition will request a rulemaking to address the connection between inhumane handling and adulterated products and will also ask the agency to consider a rulemaking on methods of slaughter necessitated by the exclusion of poultry from the Humane Methods of Slaughter Act. Additionally, students are developing a compilation of letters outlining anti-cruelty laws to help in cases where allegations of animal cruelty exist. The letters will be sent to prosecutors in every state.

The Clinic is also working on research relating to the Oregon Public Records Act and the federal Freedom of Information Act for several clients, including Farm Sanctuary and In Defense of Animals. These organizations assert that requests made under these acts do not receive timely or adequate responses. Moreover, responses often include requests for payment that do not take into account public education exceptions or the financial capacities of the parties.

The Clinic continues to conduct research regarding animals used in testing and for food. Clinic students analyze various

issues, from assessing new guidelines for laboratory animal welfare, to considering the process, implementation and enforcement of regulations allowing state departments of environmental protection or agriculture to enforce provisions of the Clean Water Act as they relate to the disposal of animal waste.

Another project Clinic students are addressing is the need for appropriately nutritious food for vegan prisoners. Such prisoners are routinely denied vegan meals in prisons across the country despite religious and firm ethical beliefs supporting their veganism.

Other Clinic projects have included:

- Advising PETA on its Thirteenth Amendment claim against SeaWorld. Students evaluated PETA's complaint for legal sufficiency and provided research regarding the historical and legal framework for social justice law reform in the U.S.
- Assisting Equal Justice Alliance in its efforts to repeal the Animal Enterprise Terrorism Act (AETA), which Equal Justice Alliance considers an unconstitutional infringement on the First Amendment.

For more information about the Animal Law Clinic, please visit [CenterForAnimalLawStudies.org](http://CenterForAnimalLawStudies.org).



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

The Center for Animal Law Studies at Lewis & Clark, in collaboration with the Animal Legal Defense Fund (the Center) launched the world's first-ever Animal Law LL.M. Degree Program in the fall of 2012. Animal Law LL.M. and J.D. animal law students at Lewis & Clark receive cutting-edge training in both general and specialized animal law topics. Over 35 animal law classes, including several new courses debuting during the 2012-13 academic year, are now available on rotation. In addition, this year the program is featuring two visiting professors. Author, scholar and Our Hen House co-founder Mariann Sullivan is teaching Animal Law Fundamentals and Animals in Agriculture: Law & Policy during the fall semester. During the spring semester, Professor Susan Hankin of the University of Maryland Francis King Carey School of Law will teach Advanced Animal Law Seminar and Emerging Law: Policy & Politics of Companion Animals.

More information is available at [CenterForAnimalLawStudies.org](http://CenterForAnimalLawStudies.org).

Lewis & Clark  
Law School

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Major Events in 2011-12

### **FEDERAL JUDICIAL CENTER: JUDGE'S SEMINAR ON ENVIRONMENTAL LAW**

September 2011

The environmental law program hosted 32 federal judges from around the country for a multi-day seminar on environmental and natural resources law. This seminar provides a critical examination of the central environmental statutes that deferral judges frequently encounter on the bench.

### **24TH ANNUAL NATURAL RESOURCES LAW INSTITUTE DISTINGUISHED VISITOR: JODY FREEMAN**

October 4th, 2011

Jody Freeman, Archibald Cox Professor of Law at Harvard Law School delivered a lecture entitled "The President's Role in Environmental Law."

Podcast is available at <http://lawlib.lclark.edu/podcast/?p=5642>

### **2011 DISTINGUISHED ENVIRONMENTAL LAW GRADUATE AWARDS PRESENTATION**

October 4, 2011

The Environmental and Natural Resources Law faculty presented Distinguished Environmental Law graduate Awards to alumni Janis Searles Jones, Reuben Plantico, and Gary Meyers and the Williamson Award to Amy Van Saun '11.

Podcast is available at <http://lawlib.lclark.edu/podcast/?p=5642>

### **FALL SYMPOSIUM 2011: 21ST CENTURY WATER LAW**

October 7th, 2011

Professor Michael Blumm organized a symposium in honor of the retirements of Jim Huffman and Janet Neuman, which last fall brought ten prominent national water law scholars—many of them their friends and former students—to the law school.

Podcasts are available at <http://lawlib.lclark.edu/podcast/?p=5703>

### **19TH ANNUAL ANIMAL LAW CONFERENCE:**

#### ***STANDING UP FOR ANIMALS: CAN A BAD ECONOMY INSPIRE GREATER GOODNESS?***

October 14-16, 2011

Podcasts are available at <http://lawlib.lclark.edu/podcast/?p=5996>

### **ENVIRONMENTAL LAW CONFERENCE: THE MIGRATORY BIRD TREATY ACT: RESHAPING A POWERFUL CONSERVATION TOOL?**

October 20-22, 2011

National and international experts from government, industry, and environmental organizations convened at the law school to discuss the MBTA and explore how to make it more effective. On Thursday, interested participants had a rare opportunity to visit the Oregon's Zoo's California Condor captive rearing facility. That afternoon, the U.S. Fish and Wildlife Service's national California Condor Recovery Coordinator

discussed ongoing efforts to recover one of the world's rarest birds, as well as the dangers condors still face due to toxic pollution in their environment. The Friday and Saturday sessions focused in on the MBTA, how it works, and how it might be improved. Saturday's presentations included an examination of bird conservation efforts by the United States' treaty partners – Canada, Mexico, Great Britain, and Japan – as well as a roundtable discussion by all participants toward shaping the future of the MBTA and migratory bird protection.

Podcasts of the presentations are available at <http://lawlib.lclark.edu/podcast/?p=6391>

### **SECOND ANNUAL WESTERN REGIONAL ENVIRONMENTAL LAW NEGOTIATION COMPETITION**

March 17-18, 2012

Lewis & Clark Law School hosted its second annual Western Regional Environmental Law Negotiation Competition.



*Dean Klonoff welcomes guests to the 19th annual Animal Law Conference at the law school.*

# NRLI Distinguished Visitor and Distinguished Environmental Law Graduates Awards



On October 3-5, 2011 we welcomed our **24th Annual Natural Resources Law Institute Distinguished Visitor, Jody Freeman, the Archibald Cox Professor of Law at Harvard Law**

**School.** Professor Freeman met with students, guest-lectured in environmental law courses and on October 4th delivered a lecture at the law school entitled: *The President's Role in Environmental Law*.

Professor Freeman is a leading scholar of administrative and environmental law and the founding director of the Harvard Law School Environmental Law and Policy Program. Professor Freeman served in the White House as Counselor for Energy and Climate Change from 2009-2010. In that role, she contributed to a variety of policy initiatives on greenhouse gas regulation, renewable energy, energy efficiency, transmission policy, oil and gas drilling, and comprehensive energy and climate legislation to put a market-based cap on carbon. She played a key role in the President's historic national auto agreement, which set the first-ever greenhouse gas standards and strictest-ever fuel efficiency standards for cars and trucks.

Prior to Professor Freeman's lecture, the law school honored three environmental law alumni as Distinguished 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 development of natural resource law or policy fields. The environmental and natural resources law faculty select the recipients each year. The recipients



*Professor Jody Freeman socializing with LL.M. students after her guest lecture on *The President's Role in Environmental Law*.*

for 2011-12 were: Janis Searles Jones, Reuben Plantico, and Gary Meyers.

In addition to honoring environmental law alumni at this event, the Williamson Award for 2011 was awarded to Amy Van Saun '11. The Williams Public Interest Environmental Law Award is presented by the Lewis & Clark Law School Environmental Alumni Association to recognize a graduate who has demonstrated a commitment, vision, leadership and creativity in the files of public interest environmental law.

Professor Freeman's lecture and the awards ceremonies are available via podcast at: <http://lawlib.lclark.edu/podcast/?p=5642>

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## Environmental Law

### Volume 41, Issue 3

#### ARTICLES

*Unnatural Foundations: Legal Education's Ecologically-Dismissive Subtexts*  
Don Ellinghausen, Jr.

*Transitioning to a Sustainable Energy Economy: The Call for National Cooperative Watershed Planning*  
Ann E. Drobot

*The Clean Development Mechanism and the Poverty Issue*  
Marie Blévin

#### 2010 NINTH CIRCUIT ENVIRONMENTAL REVIEW

##### INTRODUCTION

*Case Summaries*

*Chapters*

*Intervention by Non-Settling PRPs in CERCLA Actions*  
Toby A. McCart

*Taking the Bitter with the Sweet: Wenatchi Fishing Rights*  
Nolan Shutler

### Volume 42, Issue 1

#### TRIBUTE

*The Water Law Scholarship of Jim Huffman and Janet Neuman: Prologue to the Festschrift*  
Michael C. Blumm

*James L. Huffman Scholarship*

*Janet C. Neuman Scholarship*

*Against the Current: Four Decades in Water Law and Policy*  
James L. Huffman

*Going with the Flow: A Water Law Journey*  
Janet C. Neuman

#### ARTICLES

*The Legacy of Schodde v. Twin Falls Land and Water Company: The Evolving Reasonable Appropriation Principle*  
A. Dan Tarlock

*Legal Convergence of East and West in Contemporary American Water Law*  
Robert Haskell Abrams

*Water Rights, Markets, and Changing Ecological Conditions*  
Jonathan H. Adler

*Defining Riparian Rights as "Property" Through Takings Litigation: Is There a Property Right to Environmental Quality?*  
Robin Kundis Craig

*Driving Local Governments to Watershed Governance*  
Keith H. Hirokawa

*A Federal Act to Promote Integrated Water Management: Is the CZMA a Useful Model?*  
Barton H. Thompson, Jr.

*Resilience and Law as a Theoretical Backdrop for Natural Resource Management: Flood Management in the Columbia River Basin*  
Barbara Cosens

*Public Funding Programs for Environmental Water Acquisitions: Origins, Purposes, and Revenue Sources*  
Reed D. Benson

*Wilderness, Water, and Climate Change*  
Sandra Zellmer

*Oregon's Public Trust Doctrine: Public Rights in Waters, Wildlife, and Beaches*  
Michael C. Blumm & Erika Doot

### Volume 42, Issue 2

#### ARTICLES

*A Comprehensive Solution to the Biofouling Problem for the Endangered Florida Manatee and Other Species*  
Kathleen Oppenheimer Berkey, Esq., AICP and Todd K. BenDor

*NEPA, Climate Change, and Public Lands Decision Making*  
Mark Squillace and Alexander Hood

*Does the Federal Government Own the Pore Space Under Private Lands in the West? Implications of the Stock-Raising Homestead Act of 1916 for Geologic Storage of Carbon Dioxide*  
Kevin L. Doran and Angela M. Cifor

#### COMMENT

*Setting the Tone: The Lacey Act's Attempt to Combat the International Trade of Illegally Obtained Plant and Wildlife and Its Effect on Musical Instrument Manufacture*  
Wesley Ryan Shelley

## SYMPOSIUM

### THE MIGRATORY BIRD TREATY ACT: RESHAPING A POWERFUL CONSERVATION TOOL

#### INTRODUCTION

Nolan Shutler

#### SYMPOSIUM ARTICLES

*Paved with Good Intentions: The Fate of Strict Liability Under the Migratory Bird Treaty Act*  
Kalyani Robbins

*Migratory Bird Treaties' Issues and Potentials: Are They Valuable Tools or Just Curios in the Box?*  
Mitsuhiko A. Takahashi

*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](http://law.lclark.edu/dept/elaw).*

# Animal Law

## Volume 17, Issue 2

### ARTICLES

*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 and 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 Keatings & Richard Myers, Authors

## Volume 18, Issue 1

### ARTICLES

*The Statutory Pet Trust: Recommendations For A New Uniform Law Based On The Past Twenty-One Years*

Shidon Aflatooni

*State Animal Use Protection Statutes: An Overview*

Jen Girgen

### ESSAYS

*A "Fisheye" Lens On The Technological Dilemma: The Specter Of Genetically Engineered Animals*

George Kimbrell & Paige Tomaselli

*The Animal Companion Puzzle: A Worth Unknown Though Height Taken*

Ronald B. Lansing

*Who The Judge Ate For Breakfast: On The Limits Of Creativity In Animal Law And The Redeeming Power Of Powerlessness*

Matthew Liebman

### COMMENT

*Confined To A Process: The Preemptive Strike Of Livestock Care Standards Boards In Farm Animal Welfare Regulation*

Lindsay Vick



**PROFESSOR WILLIAM FUNK** teaches in a number of areas. First-year students may have him for constitutional law or legal elements, and upper-division students may have him for administrative law or environmental law. He is the author of *American Constitutional Structure* and a coauthor of one of the leading administrative law casebooks, *Administrative Procedure and Practice: Problems and Cases*, as well as *Administrative Law: Examples & Explanations* and the *Federal Administrative Procedure Sourcebook*. Together with Professor Craig Johnston, Professor Funk is also a coauthor of *Legal Protection of the Environment*, an environmental law casebook. In 2004-05, Funk was a senior Fulbright scholar at the University of Heidelberg, where he taught both American constitutional law and environmental law. Funk has chaired both the Administrative Law and Natural Resources Law sections of the Association of American Law Schools. He is also active in the American Bar Association, including serving on the ABA Council and chairing its Administrative Law and Regulatory Practice Section. He served as cochair of an ABA-wide task force on Preemption of the State Tort Law. Professor Funk is also a Center for Progressive Reform Scholar. He has been admitted to practice in New York, the District of Columbia, and before the U.S. Supreme Court. Professor Funk is the Robert E. Jones Professor of Advocacy and Ethics, and he was named a Jeffrey Bain Faculty Scholar in recognition of his exemplary teaching and scholarship in public law. He is an advisor to the environmental law review, serves on various faculty committees, and often moderates panels on current topics presented to the student body.

# Natural Resources Law Institute and Environmental and Natural Resources Law Program

## About NRLI at Lewis & Clark Law School

Lewis & Clark Law School's Environmental and Natural Resources Law Program, frequently ranked one of the top environmental law programs 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
- **Earthrise Law 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

Visit us at our website:  
[law.lclark.edu/dept/elaw](http://law.lclark.edu/dept/elaw)

## Annual Report 2011-12

### Environmental and Natural Resources Law Program

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