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Spring 2008

### Baselines Newsletter, no. 2, spring 2008

University of Colorado Boulder. Natural Resources Law Center

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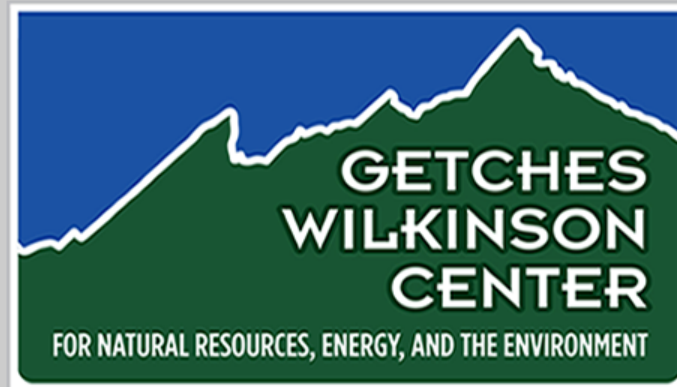
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BASELINES: THE NATURAL RESOURCES LAW CENTER NEWSLETTER,  
no. 2, spring 2008 (Natural Res. Law Ctr., Univ. of  
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# Baselines

Spring 2008 (Issue 2)

THE NATURAL RESOURCES LAW CENTER NEWSLETTER

## The NRLC Launches the WESTERN WATER POLICY PROGRAM (WWPP) under the direction of Senior Research Associate, Doug Kenney

In January, the Center formed the WWPP to promote sustainable, equitable, and practical solutions to the pressing water problems of the region, particularly with respect to the challenges of population growth and climate change (see WWPP website: <http://www.colorado.edu/law/centers/nrlc/programs/wwpp.htm>). The first event organized under this new structure was the Colorado River conference held March 21<sup>st</sup> (see synopsis on page 2).

In addition, the WWPP will consolidate and build upon the Center's quarter-century of work on western water law and policy issues. One of the WWPP's initial activities is the compilation and posting of the many research reports, books, and conference materials produced by or for the Center, beginning with our first water conference in 1981. When the project is completed this summer, approximately 750 documents will be available for download (for free) from the NRLC-WWPP website, which is currently under development as part of the updating of the NRLC website. The WWPP is directed by NRLC Senior Research Associate Doug Kenney, who is profiled on page 4 of this newsletter.



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**WHO WE ARE:** The Natural Resources Law Center (NRLC) was founded in 1982 to inform and influence natural resource law and policy. The NRLC promotes intellectual discourse and identifies practical and effective solutions for issues through legal research, outreach, and education.

### STAFF

Mark Squillace, Professor of Law and  
Director of the NRLC

Heidi Horten, Program Manager and  
Special Assistant to the Director

Douglas Kenney, Sr. Research Associate

Kathryn Mutz, Sr. Research Associate

Lauren Ris, Red Lodge Clearinghouse  
Project Manager

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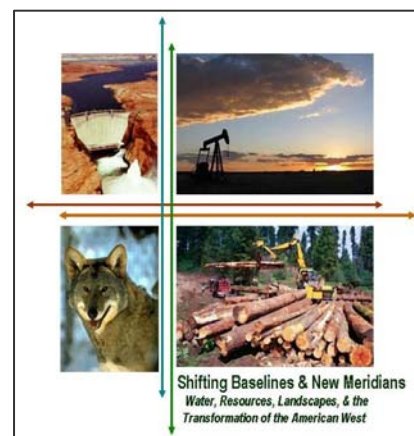
## NRLC's 2008 Summer Conference: **June 4–6** at the University of Colorado Law School

### Shifting Baselines & New Meridians: Water, Resources and the Transition of the American West

The Center's 29<sup>th</sup> annual conference will focus on the changes in the West resulting from rapid population growth, development, disrupted historical weather patterns and the effects of those changes on land, water, and energy resources. Speakers and panelists will address the adaptability of the legal and political institutions and how the transformation of the West may foreshadow fundamental changes to these institutions. We hope you will join us for what promises to be a fascinating event. In conjunction with the NRLC conference, the ELS will host the **National Association of Environmental Law Societies Regional Event** to discuss strategies and approaches for creating more sustainable learning environments with our peers from other law schools.

**For further details and registration information:**

<http://www.colorado.edu/law/centers/nrlc/summerconference/2008/agenda.pdf>



## Recent Events at NRLC

### Colorado River Symposium

On March 21<sup>st</sup>, the Center's Western Water Policy Program brought together four leading Colorado River experts along with an audience of approximately 70 water professionals to discuss "**Securing Environmental Flows on the Colorado River in an Era of Climate Change: Issues, Challenges, and Opportunities.**" Presentations by Brad Udall (Director, NOAA/CU Western Water Assessment), Terry Fulp (Deputy Regional Director U.S. Bureau of Reclamation's Lower Colorado River Basin), Robert Adler (Professor of Law, University of Utah), and Jennifer Pitt (Senior Resource Analyst, Environmental Defense) provided an overview of the complex issues, and set the stage for the follow-up workshop held later that afternoon. The event was part of the Center's long-standing "Hot Topics in Natural Resources" series.



Bob Adler addresses the ~90 attendees.

### SCHULTZ LECTURESHIP SERIES Established at the Law School under NRLC Management

**John H. and Cynthia H. Schultz**, established an endowment to fund a prestigious annual lecture. Speakers selected for this annual event will be accomplished, nationally recognized scholars in the fields of oil and gas, energy, or natural resources law. The purpose of this lectureship is to provide valuable information to policy-makers, practitioners, business executives, and the academic community on emerging issues in the field.

For the inaugural lecture, held on October 29, 2007, **Bruce Kramer**, Maddox Professor of Law at Texas Tech University School of Law, spoke on "*Split Estates: A New Equilibrium Between Surface and Mineral Owners.*"



Bruce Kramer, John & Cynthia Schultz, and David Getches

### NRLC Hosts Visit of the U.S. EPA Chief Enforcement Officer



On March 11<sup>th</sup>, at the Law School, **Grant Nakayama**, U.S. Environmental Protection Agency Assistant Administrator of Enforcement and Compliance Assurance, met with faculty, students and other visitors for an informal brown-bag discussion. He and other EPA staff, including **Mike Gaydosh**,

Assistant Administrator for EPA Region 8, discussed current EPA activities and recent court cases.

As the academic year winds down, I look back on some great strides forward for the Center. Our research program remains as strong as ever, and we are set up for great progress over the summer. I am especially proud of our decision to establish the Western Water Policy Program headed by our Senior Research Associate, Doug

Kenney. New stresses on western water supplies due to climate change, drought, and population growth promise to impose even greater challenges for water policy, especially as we see increasing demand to protect the aesthetic, ecological and recreational values of our water resources. The Center's substantial base of work in this area positions us well to play a prominent role in the development of long-term policies and strategies that will surely be needed to satisfy future water needs.

We have also had a good year with outreach programs. We recently hosted a 4-hour program on recent developments on the Colorado River, and we look forward to another great summer conference – this time focusing on the tremendous changes anticipated for the West, and the consequences of those changes for our future.

On the fundraising front, I am very pleased to report that the Clyde Martz Endowment recently passed the \$500,000 threshold, thanks in no small part to a substantial gift from Clyde Martz himself. We will continue to build on this success in coming years.

Finally, I want to offer my enduring thanks to our wonderful, dedicated staff who are committed to helping me make this Center the best it can be. Our staff is about to be augmented by the influx of as many as 12 student Research Assistants, and I am sure we will have much to report about their work in our next newsletter.

Have a wonderful summer everyone, but don't forget to join us June 4-6 for the NRLC summer conference.

### Director's Corner



### SUPPORT THE



The NRLC is a self-sustaining program within the Colorado Law School. Our work is possible only because of generous grants and support.

### To contribute ...

#### On-line:

<http://www.cufund.org/giveonline/index.php?ID=28#>

Scroll down to "Natural Resources Law Center"

#### By Mail: Make your check payable to the **University of Colorado Foundation**

send to: Natural Resources Law Center  
University of Colorado Law School  
401 UCB – Wolf Law Building  
Boulder, CO 80301-0401

Be sure to indicate that your donation is for the  
**Martz Endowment Fund (Acct #01-54293)**

-or-

**NRLC General Fund (Acct #01-24031)**



## NRLC RESEARCH

### ■ Oil and Gas Best Management Practices Database Launch Expected Summer 2008

The Center continues to gather resources and partners for its free-access, internet-based oil and gas BMP project. NRLC staff are gleaning environmentally responsible management practices from a variety of government, industry and environmental group documents and websites to populate the database. When it "goes live" this summer, users will be able to search for recommended management practices by a variety of criteria, including:

- general resource categories (such as water quality, vegetation, wildlife);
- more specific categories (such as riparian areas, sage grouse);
- location (such as oil/gas field, state recommending the practice, state in which the practice is being used); and
- through a general text search.

The Center continues to seek partners to guide project development and to critique practices being included in the database. For more information or to participate in the project, please contact the project leader, Kathryn Mutz, at [Kathryn.Mutz@colorado.edu](mailto:Kathryn.Mutz@colorado.edu).

### ■ Water Rights and Climate Change

Several ongoing NRLC projects are focused on the nexus of climate change and western water resources, and in most cases are conducted in part through the Center's partnership with the NOAA/CU Western Water Assessment. Current projects include:

- an examination of the influence of earlier snowmelt on the functioning of prior appropriation water rights (which sometimes include specific calendar dates);
- the opportunities for temporary water transfers that are responsive to climate trends; and
- the future of the Colorado River in a future likely to feature significant reductions in streamflows.

The Center is also contributing to the Colorado Foundation for Water Education's *Citizen's Guide to Climate Change*. Also in development is a second phase of research that will focus on the City of Aurora's efforts to cope with drought [see Kenney, D. et al., 2008. "Residential Water Demand Management: Lessons from Aurora, Colorado." *Journal of the American Water Resources Association*, 44(1):192-207, February.]

Contact Doug Kenney ([douglas.kenney@colorado.edu](mailto:douglas.kenney@colorado.edu)) for more information about these projects.)

### ■ Public Interest in Water Allocation

This ongoing project on the public interest in water allocation will get another boost this summer with an influx of new students to help with research. In March, Mark Squillace presented some of the findings from our preliminary research efforts at the *Public Interest Environmental Law Conference* held in Eugene, Oregon, and he and others will be exploring this issue in more depth at the NRLC annual conference in June



RED LODGE CLEARINGHOUSE  
INSPIRING NATURAL RESOURCE COLLABORATION... AND MORE

### Red Lodge Clearinghouse Website Activities

*In May 2007, the Center was awarded the responsibility for the Red Lodge Clearinghouse (RLCH) website by the Liz Claiborne and Art Ortenberg Foundation. In September, Lauren Ris joined the Center as Project Manager for the RLCH.*

The RLCH website serves a broad community concerned with responsible management of western natural resources. The RLCH's services have included highlighting important resource issues and providing a variety of "how to" advice, legal primers, leads on funding sources, and stories from active collaborative groups. Over the course of the past year, the Center has focused on expanding the RLCH to reach a broader community of users affected by the recent expansion and maturation of collaborative resource management.

One of the developments for the website this year has been the launching of **a series on natural resource problem-solving**. While the RLCH has historically provided resources to those addressing resource conflicts through collaboration, this new focus is to explicitly explore the process of collaboration as well as other approaches that may accompany, enhance, or even replace a collaborative process. Each edition of the series highlights a different way to participate in decision-making including the notice and comment process, public meetings, administrative appeals, alternative dispute resolution litigation, and of course collaboration.

To make the RLCH site more interactive, several new features have been incorporated, including:

- **A Discussion Forum** for posting of comments or asking questions.
- **Enhanced Article Sharing** that allows users to directly forward or print articles without having to copy and paste the URL address into emails.
- **Ability to Rate** that allows site users to provide feedback about the usefulness of materials.
- **RSS feeds** which allows site visitors to subscribe to receive new alerts about site postings.
- **Registering** which provides the option to "register" on for submitting news articles, events, and links.

We hope you will take a minute to explore the site ([www.rlch.org](http://www.rlch.org)) and let us know what you think!

### The **LAW Tab** on the Red Lodge Clearinghouse website

Use the LAW tab for:

- **Federal Law** - easy-to-understand summaries and updates of major natural resources legislation, rules and policy.
- **Finding Federal Law** - a guide to finding laws, regulations and other legal resources on the internet.

**Can't find what you need on the site?** Ask us at [contactus@rlch.org](mailto:contactus@rlch.org)

## Recent NRLC Staff Activities

### Mark Squillace:

#### Presentations:

**Developments in Public Land Law.** ALI-ABA Environmental Law Conference, February 2008.

**Water Rights as Public Rights: Prior Appropriation as if People Mattered.** Public Interest Environmental Law Conference, University of Oregon, March 2008.

**Environmental Law.** Fulbright Visiting Scholars Conference, Denver, Colorado, April 2008.

**Climate Change and its Impact on Native American Communities.** Tulane University Conference on Climate Change: In the Community and the Courtroom, New Orleans, LA, April 2008.

**Testimony on the Clean Water Restoration Act of 2007.** Before the U.S. House of Representatives Committee on Transportation, Washington, DC, April 16, 2008.

#### Publications:

**"Rethinking the Great Lakes Compact."** *Michigan State Law Review*, v. 2006, Special Issue 5, pp. 1347-1374. (2006).

**"From 'Navigable Waters' to 'Constitutional Waters': The Future of Federal Wetlands Regulation."** *Univ. of Michigan Journal of Law Reform*, v. 40, Issue 4. (2007).

### Doug Kenney:

#### Presentations:

**Interstate Water Apportionment: An Overview of Options and Examples.** Meeting of the Catawba-Waterree River Basin Commission. Huntersville, NC; Feb. 8, 2008.

**Climate and Management of the Colorado River: What Does the SSD Study Tell Us About Scenario Analysis?** Annual conference of the American Geophysical Union; San Francisco, California; December 11, 2007.

**Climate Change and Water Resources: Trends, Projections, and Implications for the Western USA.** 64<sup>th</sup> Annual Conference of the National Congress of American Indians. Denver, Colorado, November 13, 2007.

**Managing Residential Water Demand During Drought in Aurora** [Poster Presentation]. South Platte Forum; Longmont, Colorado; October 24, 2007.

**Collaboration and Restoration of the Colorado River Delta.** Univ. of Nevada's Boyd School of Law's conference on "Collaboration and the Colorado River"; October 12, 2007.

#### Publications:

**"Residential Water Demand Management: Lessons from Aurora, Colorado."** *Journal of the American Water Resources Assoc.*, 44(1):192-207, Feb. 2008. Kenney, D. et al.

(in press). **"Hard Times on the Colorado River: A Looming Crisis?"** in *The Politics of Water Scarcity: A Survey*. J. Trottier and V. Mioc (eds.), Routledge Publishers..

(in press). **"Colorado River Basin, US"**. in *River Basin Development in Perspective*. F. Molle and P. Wester (eds.), CAB International: Wallingford, England.

(in press). **"History of River Governance in the United States."** in *Governance of River Basins*. A. Dehnhardt and U. Petschow (eds.).

### Lauren Ris

**Western Governor's Association's Oil and Gas Working Group meeting.** Salt Lake City, Utah, September 2007.

**Communities Committee Annual Meeting,** Washington, DC, December 2007.

**Association of Partners for Public Lands Annual Conference and Trade Show.** Denver, CO, February 2008. Lauren hosted a Red Lodge Clearinghouse booth at the trade show to promote the RLCH website project.

## Staff Profile



**Doug Kenney** has been with the NRLC since 1996, and is Senior Research Associate and Director of the Western Water Policy Program. Doug not only leads much of the Center's work on water law and policy, but has been instrumental in linking that research to issues of population growth and climate change, in part through his role as Deputy Director of the CU/NOAA Western Water Assessment. He is also a faculty member within the CU Environmental Studies program, a Research Affiliate in CU's Center for Science and Technology Policy Research, and is a CU delegate to the Universities Council on Water Resources.

Doug has written extensively on several water-related issues, including river basin and watershed-level planning, law and policy reform, the design of institutional arrangements, and alternative strategies for solving complex resource issues. Many of these themes featured prominently in a book Doug edited for the Center entitled *In Search of Sustainable Water Management: International Lessons for the American West and Beyond* (2005, Edward Elgar Publishing).

Much on the speaking circuit; at last count, he has given presentations in 20 states, 5 nations, and on 3 continents, and has served in an advisory capacity to U.S. Dept of Interior agencies, EPA, the US Forest Service, special commissions and to state and national governments and NGOs in Asia, Africa and Latin America. Some career highlights include work to defuse interstate water conflicts [Doug remarks "I'm only batting 2 of 4 so far"], meeting with Maasai tribesmen in villages throughout Kenya to discuss wildlife conservation options, and giving lectures about water management to government officials in Seoul and Hanoi. "The great irony," Doug observes, "is that my opinions seem to carry the most weight the further I travel away from the American West, which I'm hoping is more reflective of the intractability of local water issues than my reputation among my western colleagues."

Doug has a B.A. in biology from the Univ. of Colorado, a M.S. in Natural Resources Policy & Administration from the Univ. of Michigan, and a Ph.D. in Renewable Natural Resource Studies from the Univ. of Arizona.

## Environmental Law Society (ELS) Update

By Alison Flint, ELS Co-President

On January 31, for *Focus the Nation*—the national climate change awareness day in which over 1,900 institutions participated—the ELS hosted **Vickie Patton**, Deputy General Counsel at Environmental Defense. Ms. Patton delivered a fantastic talk on the dynamic legal landscape of climate change. ELS also hosted a Focus the Nation social event where students calculated their ecological footprints and participated in an environmental trivia contest.

In continuing our Climate Change Education Initiative, ELS hosted attorney and Environmental Studies doctoral student **Marilyn Averill** who discussed her recent trip to the United Nations Climate Change Conference in Bali. While in Bali, Marilyn represented the University of Colorado, which has been approved as an observer organization by the Secretariat for the UN's Framework Convention on Climate Change.

The ELS recently secured a \$41,000 grant from *Sustainable CU – The Environmental Improvement Initiative* to install a solar panel array on the roof of the Wolf Law Building. The ELS is also working with the Dean's Office and Facilities Management to implement standards and policies for operations, events, purchasing, communications, transportation, and grounds to achieve long-term goals of zero-waste, carbon-neutrality, and environmental awareness.

