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Fall 2008

Baselines Newsletter, no. 3, fall 2008

University of Colorado Boulder. Natural Resources Law Center

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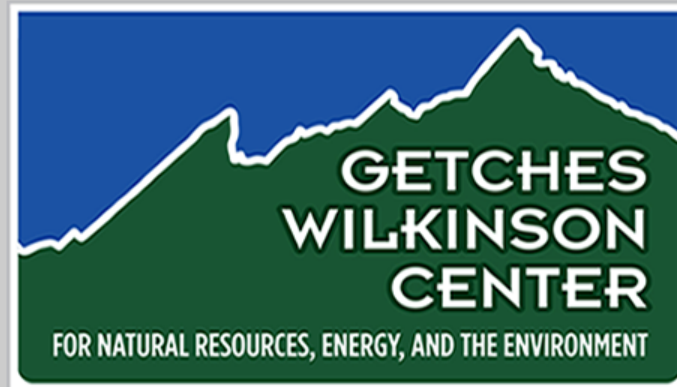
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Citation Information

Baselines: The Natural Resources Law Center Newsletter, no. 3, fall 2008 (Natural Res. Law Ctr., Univ. of Colo. Law Sch.).



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BASELINES: THE NATURAL RESOURCES LAW CENTER NEWSLETTER,
no. 3, fall 2008 (Natural Res. Law Ctr., Univ. of Colo.
Law Sch.).

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Center for Natural Resources, Energy, and the
Environment (formerly the Natural Resources Law
Center) at the University of Colorado Law School.

Baselines

Fall 2008 (Issue 3)

NEWSLETTER OF THE NATURAL RESOURCES LAW CENTER

Save the Date!

Presentation & Workshop on TEMPORARY WATER TRANSFERS

December 11, 2008 (8:30–noon)
University of Colorado Law School

The **NRLC's Red Lodge Clearinghouse** and **Western Water Policy Program** are hosting this event to explore evolving regional temporary transfers of irrigation water to municipal users. Representatives from innovative water transfer programs in three regions — the Lower Arkansas Valley of Colorado, the Palo Verde Irrigation District in Southern California, and the Fremont-Madison Irrigation District in Idaho — will discuss their experiences. Following the presentations, a panel of respondents, led by CU Law School Dean David Getches, will discuss findings and concerns, and will identify lessons and principles useful in guiding further innovation. Presenters confirmed to-date include **Peter Nichols**, Trout, Raley, Montano, Witwer & Freeman (Colorado); **Ed Smith**, Palo Verde Irrigation District (California); and **Jerry Rigby**, Rigby, Thatcher, Andrus, Rigby, & Moeller (Idaho).

To register, contact Heidi.Horten@colorado.edu —Phone: 303-492-1286

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ELS Update.

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

CONTACT US

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NRLC Hot Topic

MANAGING OIL & GAS DEVELOPMENT IN COLORADO: THE NEW OIL AND GAS CONSERVATION COMMISSION (COGCC) RULES

When: **Tuesday, Dec. 16th** from **12:00 noon – 1:30 pm**

Who: **Dave Brown**, Manager - Regulatory Affairs, BP America Production
Mike Freeman, Staff Attorney, Earthjustice
Dave Neslin, Acting Director, COGCC
Howard Boigon, Partner, Hogan and Hartson, LLP

Where: Offices of **Hogan and Hartson**
One Tabor Center: 1200 Seventeenth St., Suite 1300
Denver, CO 80202-4437

How: **Registration fee: \$15** cash or check made
to "Natural Resources Law Center". **No credit cards**

Box Lunch will be provided.

CLEs: 2

Seating is limited, so please RSVP to:

Heidi.Horten@colorado.edu — Phone: 303-492-1286

NEW / UPDATED NRLC Website

After months of development, revisions, meetings, and uploading ... the NRLC gleefully announces that its user-friendly and informative website is near completion and will be functional in November. **Comments welcome!** Please visit us at:

<http://www.colorado.edu/law/nrlc/>

June 3-5, 2009

University of Colorado
Law School
Boulder, Colorado

**2009 Summer Conference:
WESTERN WATER LAW AND POLICY CHALLENGES:
Ripples, Currents, and New Channels for Inquiry**

If you are interested in being a sponsor of this event, please contact us.

FOCUS on NRLC Board of Advisors

NEW MEMBERS to . . .

NRLC BOARD OF ADVISORS:

Britt Banks is Senior Advisor – External Affairs for Newmont Mining Corporation, a leading gold producer with operations on five continents. Britt served as Executive Vice President of Legal & External Affairs at Newmont where he oversaw the legal, land, environmental affairs, communications, government relations, and community relations. He received his JD from the University of Colorado Law School and his BS from the University of Denver.

NRLC FACULTY ADVISORS:



William Boyd joined the Law School faculty this Fall and is teaching *Toxics and Hazardous Waste*. He came to CU-Law from the firm of Covington & Burling LLP (Washington DC) where his practice focused on environmental law, energy law and regulation, and

climate change law and policy. He received his PhD from the Energy & Resources Group at UC-Berkeley and his JD from Stanford Law School. He was Congressional Science Fellow for the American Assoc. for the Advancement of Science and Counsel on the Democratic minority staff of the U.S. Senate Committee on Environment & Public Works.



Joe Feller is a Professor of Law at Arizona State Univ., where he teaches Natural Resources Law, Water Law, and Property. Joe's research is centered on public land law and western river management. He was an author of the American Bar Association's NEPA Litigation Guide. He has been a leading

advocate for reform of livestock grazing on public lands in the western U.S., and has represented environmental interests in litigation before administrative boards, federal district courts and courts of appeal, and the U.S. Supreme Court. Before earning his JD, he obtained a PhD in physics and was an Assistant Professor of Physics at Columbia University. This year, Joe is on leave from ASU and is serving as Senior Counsel for the National Wildlife Federation in Boulder. He is also a Professor Adjunct at CU-Law, where he teaches the Natural Resources Litigation Clinic. This spring, Joe served as a coach for the Brazilian national cross-country ski team.

BOARD MEMBER NEWS . . .

Bill Travis, Associate Professor of Geography, University of Colorado, has been appointed as Director of CIRES Center for Science and Technology Policy Research.

NRLC Advisory Board

Britt Banks, Newmont Mining
Michael Gheleta, Brownstein Hyatt Farber Schreck (Denver)
David Harrison, Moses, Wittemyer, Harrison and Woodruff (Boulder)
Ken Hubbard, Fognani Guibord Homsy & Roberts
Larry MacDonnell
Guy Martin, Perkins Coie (Washington, DC)
Ann Morgan, The Wilderness Society (Denver)
Clay Parr, Parr Waddoups Brown Gee & Loveless (Salt Lake City)
David Phillips, Rocky Mountain Mineral Law Foundation
Karin Sheldon, Western Resource Advocates
Jan Steiert, Electrum USA Ltd.
Marvin Wolf
Ruth Wright
Emeritus:
James Corbridge
Clyde Martz
John Sayre

Faculty Advisors:

David Getches, Dean, University of Colorado Law School
Maxine Burkett
William Boyd
Nester Davidson
Joe Feller, National Wildlife Federation and Professor Adjunct
Lakshman Guruswamy
Sarah Krakoff
Charles Wilkinson
William Travis, Dept. of Geography, University of Colorado

Board Member Profile

Chairman of the Board . . .

Mike Gheleta is Senior Counsel in the Denver office of Brownstein Hyatt Farber Schreck. His practice focuses on natural resources litigation associated with water rights, federal reclamation law, public land management, and environmental law. Prior to joining the firm, Mike served for nearly 15 years as a trial attorney in the U.S. Dept. of Justice's Environment and Natural Resources Division in Denver and Sacramento. While with the Justice Dept, Mike served as litigation counsel to bureaus within the Dept of the Interior, the Forest Service, the Army Corps of Engineers, the military, as well as federal officials at all levels. He represented Presidents Clinton and Bush for 7 years in multiple courts while defending challenges to presidential creation of national monuments throughout the West under the Antiquities Act.

Mike's personal interests encompass all kinds of outdoor activities, in particular whitewater rafting. He has guided trips since working as a commercial guide in college, seeing much of the West accessible only by river. Over the past decade, he has three times traveled to China, where he was part of rafting expeditions involving descents of the Salween, Pearl and Mekong Rivers, as well as discussions with Chinese officials, citizens and NGO's regarding river use and preservation.

Mike is a 1988 graduate of the CU Law School, where he was a staff editor on the law review. He was part of the NRLC team during 1995-96, serving as Associate Director. The Center is pleased to have Mike back to serve on its Board.



One of the enduring strengths of the Natural Resources Law Center has been its longstanding commitment to advancing the public's understanding of water resources law and policy. From its seminal study on water transfers in the late 1980s, to its more recent publications on instream flow protection and Western water policy, and its myriad water conferences, the NRLC has built a reputation as a leading voice on water resource issues – especially here in the West. But as this edition of our newsletter suggests, our work is far from over. This past spring, the Center announced the establishment of the Western Water Policy Program under the direction of Senior Research Associate, **Dr. Douglas Kenney**. This program is now taking shape with a series of projects that will help flesh out the issues and promote new thinking about water resources policy. Many of these ideas and concepts that we are exploring are discussed in my forthcoming editorial in the *Denver Post* — **Rethinking Western Water Law**. I welcome your comments and feedback on this editorial (which you will find on our website at <http://www.colorado.edu/law/nrlc/>)

Director's Corner



Even as we promote our work on water resources, we have not forgotten our important projects in other areas. Senior Research Associate **Kathryn Mutz** has developed a new publicly-accessible database of best management practices for assisting oil and gas development. Details of this project are described immediately following this. **Lauren Ris**, our Red Lodge Clearinghouse coordinator is doing a superb job integrating that project into the NRLC's other work. If you have not yet had the chance to review the Red Lodge Clearinghouse site, I encourage you to visit <http://rlch.org/>. It is a storehouse of information about natural resources law and policy, and it currently features a useful series on problem-solving tools.

Before closing, I want to thank the outstanding group of students — **Evan Apel, Liz Cross, Erin Eastvedt, Shannon Fritts-Penniman, Bob Gregory, Josh Neely, Alan Obye, Jay Perry, Joe Reiter, Kathryn Urbanowicz, Veronique Van Gheem, Jon White, and Bill Wombacher** — who devoted much of their time this past summer to help make the NRLC a vibrant part of the natural resources program at the CU Law School.

Please support the NRLC's work



The NRLC is a self-sustaining program within the University of Colorado Law School. Our work is made possible from grant funding and the generous support of friends of the NRLC.

NRLC Research Updates

Database of BMPs for Oil and Gas Development — soon to be on-line !

This ongoing project to develop a free-access, searchable, web-based BMP database will be on-line this fall. The database includes both mandatory and voluntary best practices currently in use and/or recommended for responsible oil & gas resource management. For a preview of the website, go to <http://www.colorado.edu/law/centers/nrlc/projects/bmpDemo/index.htm>

The structure and content of the database has been developed with project partners and advisors from government, industry, the conservation community, academia, and landowners. The BMP website will highlight examples of best practices with short case studies. So, if you are implementing a practice worthy of special note, please let us know. Also if you are interested in participating as an advisor or wish to submit or critique BMPs, contact Kathryn Mutz at:

Kathryn.mutz@colorado.edu; 303-492-1293

Wattenburg Field Trip — In August, DCP Midstream and Nobel Energy graciously sponsored a fieldtrip to drilling and production facilities in the D-J Basin's Wattenburg Field and the nearby Platteville gas processing plant. Upstream and midstream stages of oil and gas production were presented to NRLC student research assistants working on the BMP project as well as other NRLC guests. Special thanks to J.R. McPherson of DCP for making all the arrangements.

The NRLC plans to sponsor a public tour of D-J Basin facilities in conjunction with a workshop on oil and gas BMPs this winter or early spring. For more information, contact Kathryn Mutz.



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

The Red Lodge Clearinghouse has presented five of the seven-part series on natural resource problem-solving tools. Since the inception of RLCH, the Clearinghouse has provided information to individuals and groups in their efforts to address their resource conflict challenges through collaboration. Now the Clearinghouse has explicitly explored the process of collaboration in its many applications and forms—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 hearings and meetings, administrative appeals, litigation, alternative dispute resolution, legislation, and collaboration.

The RLCH renewed grant from the Liz Claiborne & Art Ortenberg Foundation was increased to support a water-transfers workshop that will occur on Dec. 17 (see [page 1](#) of this newsletter).

Recent NRLC Staff Activities

Mark Squillace:

Advised:

The Pew Campaign for Responsible Mining on a strategy to protect public lands around the Grand Canyon from new mining claims under the Mining Law. Squillace's advice led to an Emergency Resolution seeking to force U.S. Dept of Interior Secretary Dirk Kempthorne to withdraw public land around the Grand Canyon from new uranium mining claim locations.

Presentations:

Testimony before the U.S. House of Representatives Subcommittee on Energy and Mineral Resources of the House Committee on Natural Resources to address the question: "How Should the Federal Government Address the Health and Environmental Risks of Coal Combustion Waste?" [cited in *Environment & Energy Daily*, June 12, 2008]

Earth Week Sustainability discussion on Boulder PBS station KGNU, April 22, 2008. Show is available at <http://www.kgnu.org/ht/listings.html?show+Hemisps Hers> (Select April 22nd)

Doug Kenney:

Presentations:

"Success Stories in Urban Demand Management during Drought." (Colorado) Governor Ritter's Conference on Managing Drought and Climate Risk, October 8-10, 2008, Denver, CO.

"Analyzing Impacts to Water Rights." WSWC/ WGA/ CDWR Climate Change Adaptation Policy Workshop, Irvine, CA, September 24-26, 2008.

"Statutory and Institutional Challenges to Climate Change Adaptation." New Mexico Convening of Carpe Diem: Western Water and Climate Change. Albuquerque, NM; May 29, 2008.

Publications:

"History of River Governance in the United States." *in: Sustainability in River Basins*, Alexandra Dehnhardt and Ulrich Petschow (eds). Munich: Oekom, pp. 109-134 (2008)

Representation:

Delegate for University of Colorado at the Universities' Council on Water Resources, Durham NC, July 22-24, 2008.

Kathryn Mutz

Conferences:

Research Partnership to Secure Energy for America, Technologies Forum, Colorado School of Mines. May 12, 2008.

Sportsmen for Responsible Energy Development Conference. Jackson Lake Lodge, WY, May 21-24, 2008.

Independent Petroleum Association of the Mountain States, Rocky Mountain Energy Technology Conference. September 4 -5, 2008.

Lauren Ris

Conferences:

U.S. Institute for Environmental Conflict Resolution Annual Conference, Tucson, AZ May 2008: a forum for exchanging ideas and mutual learning about the field of environmental conflict resolution

Western Stewardship Summit: Restoring Community and the Land, Sept. 24-26, 2008: focus on creating strategic connections among dispersed rural leaders in the West and between urban-based interest groups

Mark Squillace named to prestigious CU-Boulder Energy Initiative (EI) LEADERSHIP COUNCIL

The CU Energy Initiative, created in 2006 to help meet the world's sustainable and renewable energy needs, has announced a group of corporate leaders, entrepreneurs, investors, advisors, scientists, policy makers and academics as members of its newly formed EI Leadership Council.

The council currently is made up of 13 private sector seats and includes chief or senior executives of top global and United States energy companies as well as top executives in the fields of finance, investment, transportation, information technology, law and energy utilization. Squillace was invited to serve as one of the 10 honorary seats to be held by prominent policy-makers and academics (now including former Colorado Gov. Dick Lamm and former U.S. Secretary of the Interior Gale Norton).

Each of the 13 private sector seat will make at least a \$50,000 annual contribution to CU-Boulder's EI and a minimum two-year commitment to the council. The planned cap for the EI private sector seats is 20, which would generate \$1 million annually for novel energy research on campus by funding seed grants in partnership with national laboratories.

The council will meet in Boulder three times each year to provide strategic insight aimed at transforming CU-Boulder's EI into an international powerhouse and stimulating economic development associated with clean energy in the region.

The complete press release is available on the NRLC website: <http://www.colorado.edu/law/nrlc/>

Environmental Law Society (ELS) UPDATE

By Kathryn Urbanowicz , ELS Co-President

The Environmental Law Society (ELS) is a multifaceted organization that engages law students in everything from networking and community service to outdoor activities and developing green standards for our law building and campus. This year, our primary focus will be on creating opportunities for students to become involved in the political process, and working with the NRLC to plan student-gear events for the annual summer conference. Our plans so far include canvassing days, and participating in a conservation lobby event. We also hope to develop a public comment project. For the summer conference, we are exploring ways to reach out to students around the country to increase their attendance at the event, and we are considering hosting a student poster session. If you have any suggestions, please contact me at kathryn.urbanowicz@colorado.edu.