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Spring 2009

Baselines Newsletter, no. 4, spring 2009

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BASELINES: THE NATURAL RESOURCES LAW CENTER NEWSLETTER,
no. 4, spring 2009 (Natural Res. Law Ctr., Univ. of
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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

Spring 2009 (Issue 4)

Newsletter of the NATURAL RESOURCES LAW CENTER

Now available on-line!

BMP Website and Database for Oil and Gas Development in the Intermountain West

Recommended Best Management Practices (BMPs) for oil and gas surface use can be found in federal and state laws, agency documents, local government ordinances, on websites, and in libraries across the country. In addition, countless land managers and researchers have decades of experience working to understand and implement surface-use BMPs in the field. Yet, land owners, agency professionals, government planners, conservationists, the interested public, and even oil and gas operators themselves have great difficulty identifying and accessing this information. From that realization came the NRLC's focus on developing this database and website.

The Natural Resources Law Center and partners have developed a comprehensive, free-access, searchable, web-based oil and gas BMP database for the Intermountain West. The database is designed to address resources affected by oil and gas surface use — *air and water quality, visual aesthetics, tranquility, health and safety, wildlife and other resources*. The database includes many practices currently in use, required, and/or recommended for responsible resource management. The website and searchable database went on-line in early March 2009. The site is accessible at:

<http://www.oilandgasbmps.org>

The NRLC's 30th annual summer conference . . .
now the Martz Conference on Natural Resources Law & Policy:

WESTERN WATER LAW AND POLICY CHALLENGES: Ripples, Currents, and New Channels for Inquiry

June 3-5, 2008, University of Colorado Law School, Boulder

KEYNOTE SPEAKER: **Robert Glennon** (Univ. of Arizona Rogers College of Law) on *America's Water Crisis and What To Do About It*.

Stresses and demands on water resources are overwhelming our capacity to effectively manage change and accommodate the diversity of interests and values associated with our limited water resources. This event will offer an opportunity for lawyers, policymakers, and water professionals to engage the experts on the challenges and emerging solutions to the most pressing water policy and management issues of the day.

CLE credits: **18**

For information: <http://www.colorado.edu/law/centers/nrlc/>

To register:

<http://www.regonline.com/Checkin.asp?EventId=696429>

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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

Judson Brehmer, Red Lodge Clearinghouse Project Manager

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Schultz Distinguished Lecturer

Postponed until September 10, 2009

April 13, 2009 at CU Law

James E. Rogers

Duke Energy
President, CEO, and
Chairman of the Board

**"A NATIONAL
ENERGY POLICY
FOR THE 21st
CENTURY"**



Jim Rogers of Duke Energy—the 3rd largest electric utility holding company in the nation and the 3rd largest emitter of carbon dioxide — will discuss how a comprehensive energy policy could help solve our major energy, economic and environmental challenges.

New Members to the NRLC Board of Advisors



David Bailey is a partner with Carver Schwarz McNab & Bailey in Denver. Dave's practice focuses on water rights, water quality, public lands and mining, environmental regulatory matters and natural resources litigation. He has advised clients and worked on cases arising under state water law, state water quality regulations, and numerous federal statutes such as the Clean Water Act, NEPA, ESA, FLPMA, and CERCLA. Dave has a bachelor's degree from Arizona State University, a master's degree in natural resources policy from Michigan and a law degree from CU (1983). Dave has written and spoken on various water law topics, the ESA, wetland issues, public lands and mining.



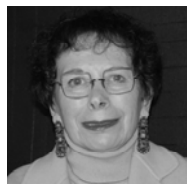
Justice Greg Hobbs has served on the Colorado Supreme Court since 1996. He practiced environmental, water, transportation, and land use law for 23 years before becoming a member of the CO Supreme Court. During his legal career, he worked as a law clerk at the U.S. Court of Appeals for the

Tenth Circuit, an enforcement attorney for the Environmental Protection Agency, a Colorado First Assistant Attorney General for Natural Resources, and a partner with the law firms of Davis, Graham & Stubbs and Hobbs, Trout & Raley. He is Vice-President of the Colorado Foundation for Water Education and a co-convenor of the western water judges' educational program, *Dividing the Waters*. He has served in the Peace Corps in South America and was a sixth grade teacher. He earned his J.D. from Boalt Hall, Univ of California at Berkeley, and has an A.B. in History from the Univ of Notre Dame.



James B. Martin is Executive Director of the Colorado Dept of Public Health & Environment for which he is responsible for programs, ranging from bioterrorism to disease prevention. Environmental responsibilities include air & water quality protection, hazardous and solid waste management, pollution protection and environmental leadership. He manages 1100 staff with

a budget of over \$280 million. Prior to joining the Department, Jim was Executive Director of Western Resource Advocates and was Director of the Natural Resources Law Center of CU-Law. He was senior attorney and director of the energy program for Environmental Defense and for 6 years worked for form U.S. Representative and Senator Tim Wirth. Jim has a BS in biology from Knox College in Illinois and JD from Northwestern School of Law, Lewis and Clark College in Oregon.



Margot Zallen is a Senior Attorney with the Department of the Interior Regional Solicitor's Rocky Mountain Office and has worked for Interior for 31 years with her first two years with the U.S. Fish and Wildlife Service. She specializes in wildlife and water law with an emphasis on Endangered Species Act issues. The intersection of water and wildlife law is exemplified by her work on the Upper Colorado, Platte, Missouri, Virgin and San Juan Rivers Recovery Implementation Programs; on the Federal Energy Commission's proposed licensing to remove water from Lake Powell for use in St. George, Utah; on the U.S. Supreme Court's North Platte Decree case among Nebraska, Colorado and Wyoming; on Shell Oil's proposal to remove water from the Yampa River for oil shale production, and in the recently concluded negotiations for the reserved water rights for the Black Canyon of the Gunnison National Park. She has been Interior's lead attorney on all Rocky Mountain gray wolf issues since wolves moved down from Canada in the mid 1980's and on grizzly bear cases including those relating to the delisting of the grizzlies' population in the Yellowstone Ecosystem. She was also the lead Interior attorney working on the controversial Two Forks Dam 404 permit which was eventually vetoed by EPA. Legal issues relating to black-tailed prairie dogs, greater sage-grouse, black-footed ferrets, Salt Creek tiger beetles, whooping cranes and many other plant, animal and insect species are also part of her work for the Dept of the Interior.

Ms. Zallen is a graduate of the University of Denver College of Law and a magna cum laude graduate of Syracuse Univ. She is a founder and for over 20 years, chairperson of Plan Jeffco, the citizen watch-dog and advocacy group that in 1972 initiated the nationally acclaimed Jefferson County Open Space Program.

Board Member Profile

Ann Morgan is the Vice President for the Public Lands Campaign at The Wilderness Society where she advocates for wise stewardship of the nation's federal



public lands with a focus on the Bureau of Land Management's Conservation System, energy development, land use planning and sustainable recreation use on all public lands. Ann served as a BLM State Director for over eight years managing millions of acres of federal lands and resources in Colorado and Nevada. Ann was appointed by the

Washington State Commissioner of Public Lands to manage the State's aquatic lands and resources working with Indian tribes, local communities, industries and ports throughout the state. She previously served at the University of Colorado Natural Resources Law Center as an adjunct professor researching and teaching public land law. Ann started her career in private industry in engineering and construction project management for the nation's largest private utility company. She has a Bachelors of Science from the University of California Berkeley and a Masters in Business Administration from Golden Gate University in San Francisco.

Ann sits on the board of the University of Colorado Law School's NATURAL RESOURCES LAW CENTER and has served on the boards of the Colorado Mountain Club and Forest Heights Lodge. In addition to her passion for the outdoors, Ann collects western landscape paintings from the early 1900's and enjoys travel and photography.

Director's Corner



With the coming of spring, it's hard not to feel optimistic about the future. Our current snowpack levels portend a continuing drought for much of the West, and winter here in Boulder was at times frighteningly warm. But the longer days remind us that with change comes hope for a new beginning.

And change seems on the horizon for natural resources policy too. President Obama's appointment of Colorado Senator Ken Salazar as Interior Secretary positions the Natural Resources Law Center to play a more prominent role in natural resources policy. So too does Salazar's choice of several other prominent Coloradans for high-level positions at the Department, including CU-Law alumnus Mike Connor as the Director of the Bureau of Reclamation. We wish them all great success, and we look forward to working with them on the many important issues facing the agency.

As described in the lead story here, *The BMP Website for Oil & Gas Development in the Intermountain West*, under the supervision of Senior Research Associate **Kathryn Mutz**, is on-line at <http://www.oilandgasbmeps.org/>. It is our hope that the BMP project will be a useful tool in providing a comprehensive and transparent source of information about environmentally sensitive development practices.

Likewise, we are nearing completion of a new edition of *The Strip Mining Handbook*, which for two decades has proved a valuable resource for coal-field citizens nationwide. We have received numerous requests over the years for an updated *Handbook* that will continue to explain the law and how to protect communities from the adverse impacts from coal mining. A complete draft of *The Strip Mining Handbook* will be posted on the Red Lodge Clearinghouse website soon, and we look forward to feedback about how to improve this resource before the *Handbook* is sent to press.

New Red Lodge Clearinghouse (RLCH) Project Manager, **Judson Brehmer**, has in just a short time become a valued member of the NRLC's research team. In his discussion of the RLCH on page 4 of this newsletter, Judson describes one of the important new initiatives for the Red Lodge site – *Open for Comment* – which encourages and promotes civic engagement on resource policy issues.

The NRLC, of course, is still very much engaged in research on water policy under the direction of Senior Research Associate **Doug Kenney and the Western Water Policy Program**. We expect an especially productive summer for our water research program, which will include continuing work on temporary water transfers to solve urban water supply needs and on a project addressing water resources and the public interest. This latter project has already examined the laws of 15 Western states and found that every State except Colorado, employs some form of public interest standard in weighing water resource allocations. The next phase of the study will involve the time-consuming but rewarding empirical work that will help in understanding the extent to which these States are effectively using their public interest standards to protect public values.

Coal Matters — Much of my time recently has been focused on coal issues, including advising a range of parties on legal issues arising with coal leasing, engaging in the policy and media discussions of coal ash regulation, and tackling a thorny problem of capturing methane emissions from underground coal mines. Because methane is a potent greenhouse gas (as well as a valuable natural resource), the normal practice of venting methane at mines is controversial, and I have been engaged in the legal and policy debates about how best to respond to this problem. I hope to have more to report on this matter in future newsletters.

Summer Conference — Finally, I would be remiss if I did not highlight the naming of our summer conference for our dear friend and supporter, **Clyde Martz**. Many of you know Clyde as a renowned teacher and scholar, an outstanding lawyer, and a great public servant. Clyde was also a mentor for many of us, and we celebrate his contribution to the Center and to natural resources law more generally by naming our signature event – the Natural Resources Law Center Summer Conference in his honor. This year – **the first Martz Conference, and the 30th annual natural resources summer conference** at the law school – returns the Center to its roots in water resources policy. **Please be sure to join us for the opening session at which we honor Clyde Martz. That session is free and open to the public.**

Mark Squillace

New Red Lodge Clearinghouse WEBSITE MANAGER



Judson Brehmer joined the NRLC staff in January. Judson has a J.D. in Environmental and Natural Resources Law from the University of Oregon and a BS from the University of South Carolina. Judson has worked for local government, in academia, and as a legal intern for Trout Unlimited's Colorado Water Project

as well as a host of other non-profit conservation organizations. His previous work involved coalition building, fundraising, advocacy, and research and writing on environmental law and policy issues. For three years prior to entering law school, Judson served as the Special Needs Executive for the Boy Scouts in Denver. In his free time, Judson and his dog Max enjoy all the outdoors that the Rocky Mountains have to offer including backcountry skiing, hiking, mountain biking, and fly-fishing.

Other Events Planned for 2009/10

September 2009 — **The Promise & Peril of Oil Shale Development:** This day-long event will be designed to engage various stakeholders and interested parties in discussion of the issues surrounding oil shale development, including water, development technologies, economics, politics, and environmental impacts.

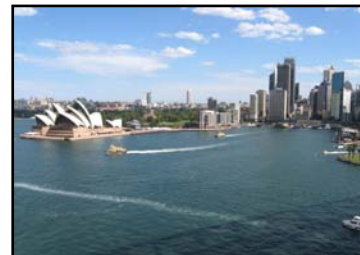
June 2010 Conference — a revisit of the **Report of the Public Land Law Review Commission (1/3 of the Nation's Land) on the occasion of its 40th Anniversary**. Our hope is to partner with the U.S. Forest Service and BLM on a program that looks to the future of public land management, perhaps with an eye toward establishing a new Commission to help chart the course. **We welcome feedback on this concept.**

NRLC Research Updates

The Strip Mining Handbook — The *Handbook* is a guide for citizens interested in using the federal Surface Mining Control and Reclamation Act to protect the land, air, and water resources impacted by coal mining. The original book, written by Mark Squillace, was published in 1990 and is still used by coal-field citizens throughout the country. With the able assistance of 2L students Shannon Fritts-Penniman and Alan Obye, and Red Lodge Project manager, Judson Brehmer, Professor Squillace is developing a new edition of the book that should be ready for publication later this year.

Public Interest & Water Rights — This ongoing project is investigating the extent to which 15 Western states have established public interest standards in their water allocation laws. The NRLC has completed summaries of the laws in each state and has now embarked on a program to determine whether and how the states are implementing their legal requirements.

Western Water Policy Program — One consistent theme for the WWPP is **water scarcity on the Colorado River**. In November 2008, WWPP Director Doug Kenney traveled to Australia to learn about innovative drought-coping programs on the Murray-Darling River, and to deliver two speeches comparing those efforts to related efforts on the Colorado River system. Dealing with drought and climate change in the West were also subjects of meetings that Doug attended in Tucson, Las Vegas and soon in Santa Barbara.



The use of water transfers as a coping mechanism is another consistent (and related) theme and was the subject of the December 11th event: “*Evolving Regional Frameworks for Ag-to-Urban Water Transfers*.” The focus was on three regions in the West where water transfers are increasingly being designed, in part, to assist rural communities in better planning for and management of the potentially negative impacts of such transfers. Presenters included Ed Smith (*General Manager of the Palo Verde Irrigation District in California*); Jerry Rigby (*Rigby, Thatcher, Andrus, Rigby & Moeller*), counsel for the Fremont Madison Irrigation District in Idaho; and Peter Nichols (*Trout, Raley, Montano, Witwer & Freeman* and, general counsel of the Lower Arkansas Valley “Super Ditch” Company in Colorado).



The Red Lodge Clearinghouse, under the direction of new Project Manager Judson Brehmer, has experienced another period of growth — in both content and constituency. In December, the RLCH partnered with the NRLC's Western Water Policy Program, in hosting a workshop entitled “*Evolving Regional Frameworks for Ag-to-Urban Water Transfers*.”

Other new additions to the website include:

- **Open for Public Comment**, a new page that highlights proposed rules, regulations, reports, etc., that are currently open for comment. When fully developed, this section will also include links to agency-specific announcements and guides to submitting public comments.
- **Recommended Reading from NRLC**, another new section of the website that will help to integrate more of the Center's research into the Clearinghouse and facilitate broader dissemination of useful information and insightful commentary.
- **Hardrock mining law summaries**, outlining the legal framework for the development of “locatable” minerals on federal lands, added to the LAW section under Federal Laws.
- **A guide to state water law**, including an overview of key concepts and links to state specific resources, also added to the LAW section under State Water Law.

Please visit the Clearinghouse at www.rlch.org and share your comments or suggestions as to how we can more effectively meet your natural resources problem-solving needs.

Recent NRLC Staff Activities

Mark Squillace:

Presentations:

Public Interest and Water Rights at the Lewis and Clark College Water Conference, Jan. 30-31, 2009.]

Panelist at the **ABA Environmental Law Conference: Supreme Court Update**, in Keystone, Colorado, March

Kathryn Mutz

Named to the Board of Directors for CDR Associates, an organization of professionals having over 25 years experience in providing conflict resolution services domestically and internationally.

Judson Brehmer

Conferences: **Public Interest Environmental Law Conference (PIELC)** in Eugene, Oregon, Feb. 26–Mar. 1. PIELC is the largest environmental law conference in the world, historically bringing together more than 3,000 attorneys, students, scientists, activists, and concerned citizens from over 50 countries to share their experience and expertise.

