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Resource Law Notes: The Newsletter of the  
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Newsletters

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Fall 2000

### Resource Law Notes Newsletter, no. 50, fall 2000

University of Colorado Boulder. Natural Resources Law Center

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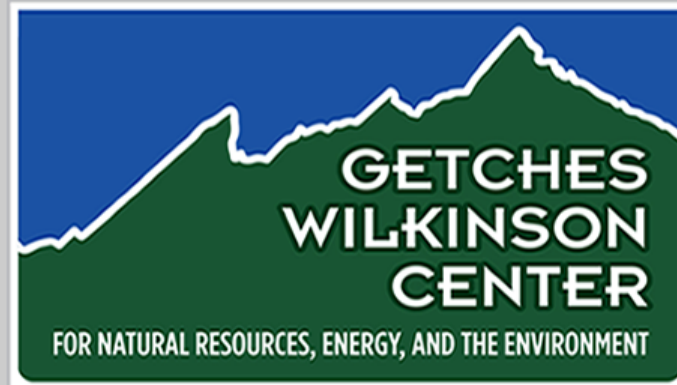
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# RESOURCE LAW NOTES

Natural Resources Law Center

School of Law

University of Colorado at Boulder



Number 50

Fall 2000

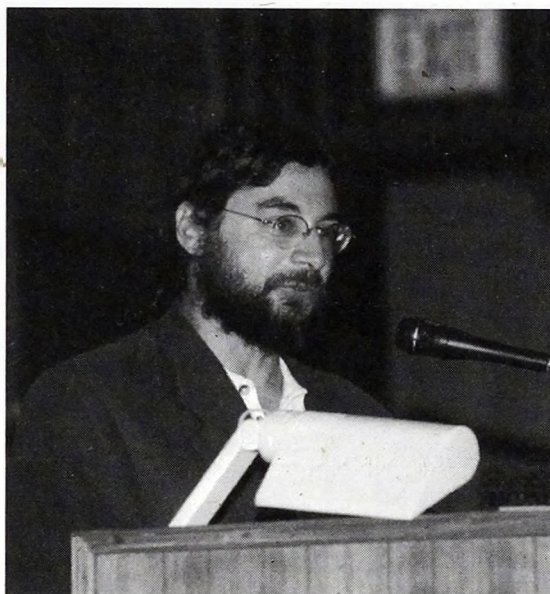
## WATER AND GROWTH IN THE WEST: NRLC Conference Explores Problems and Solutions

In June, the Center hosted its twenty-first summer conference, *Water and Growth in the West*. Conference participants included scientists, planners, attorneys, and policy makers who posed (and tried to answer) the questions: "how bad are the problems?" and "where do we go from here?"

On Tuesday evening, early arrivals to Boulder were treated to a book reading and signing and wine reception featuring newly released books by NRLC associated authors: Jim Corbridge and Teresa Rice, *Colorado Water Law*; Bob Frodeman, *Earth Matters*; Larry MacDonnell, *From Reclamation to Sustainability*; and Charles Wilkinson, *Fire on the Plateau*.

Wednesday morning the Conference officially began with a welcome from Harold Bruff, the Dean of the University of Colorado School of Law. On Wednesday and Thursday conference speakers addressed trends in growth and its impact on water use; legislative roles in managing water use; impacts of use on minority and Native American communities; and case studies. Friday, speakers focused on growth and water in Colorado as a window on the West. While the program format emphasized prepared presentations – supplemented by materials in the conference notebook – the conference was not all speeches. Lively audience participation punctuated the courtroom sessions.

Several speakers discussed past and future trends of growth and water use. William Riebsame, Professor of Geography University of Colorado, presented a broad picture of demographic, economic, and cultural trends in



*David Benavides shares his perspective on New Mexico acequias.*

the West. He concluded that the West would continue to rapidly grow as people spread to new areas, embracing spacious lifestyles. Gary Weatherford, attorney with Weatherford & Taaffe, discussed planning for hydrocommons units, composed of a river basin and dependent communities, and creating an extensive water market. David Davis, Deputy Director of Office of Wetlands, Oceans, and Watersheds for the EPA, identified

the problem of unplanned urban sprawl leading to non-point source runoff. He suggested adopting a smart growth watershed approach and using TMDLs to budget pollution for the watershed. Dan Tarlock, Professor at Chicago-Kent School of Law, argued that groundwater shortages do not limit growth, but may help distribute it. He stressed the need for a reliable source of future water. Finally, Roger Pulwarty, Program Manager for National Oceanic and Atmospheric Administration's Office of Global Programs, explained climate variability with clarity and humor. Pulwarty cautioned that a climatic shift could produce water quantity patterns not contemplated in water plans.

Larry Morandi, Director of the Environment, Energy and Transportation Program at the National Conference of State Legislatures, and Holly Doremus, Professor at University of California-Davis School of Law, explored how legislation relates to water management in the West. Morandi categorized new state smart growth legislation as: 1) Requiring local governments to consider

Conference, Continued on page 3

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*El Paso Energy Corporation Law Fellowship announcement inside. See page 5.*



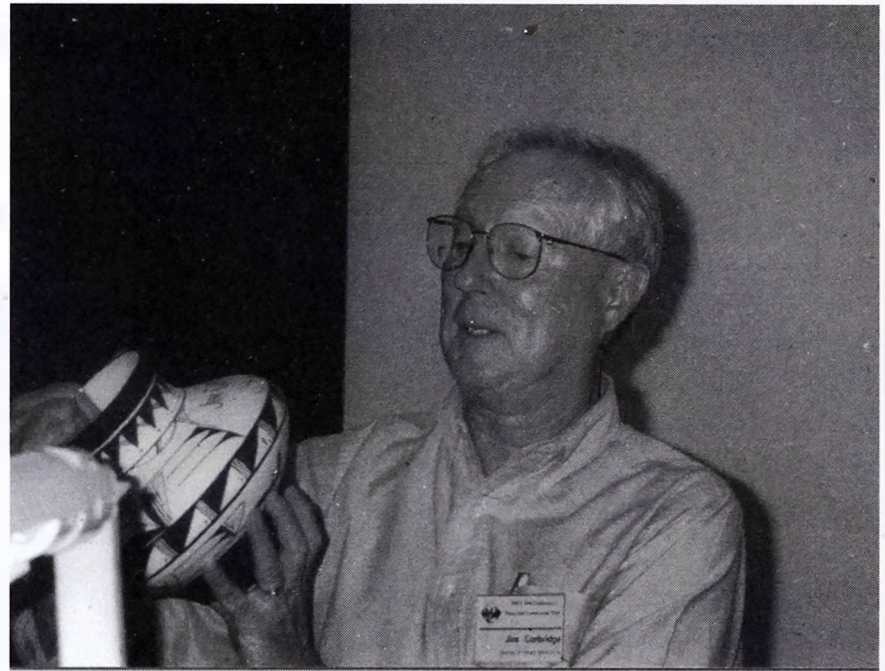
## JIM CORBRIDGE: RETIRES FROM CU SCHOOL OF LAW

Gentleman, Citizen, Scholar, Friend. With these words, David Getches began a tribute to Jim Corbridge at the June Water and Growth Conference.

David's words – along with colleague Charles Wilkinson and colleague and former student David Harrison — recognized Jim's 35 years of service to the University of Colorado, to the community, to the law school and to his family. Jim has been on the School of Law faculty since 1965 and has served in a variety of administrative roles from Vice President for Student and Minority Affairs (1970-74) to Vice-Chancellor for Academic Affairs (1974-77), Interim Vice Chancellor for Academic Services (1979-81), and finally as Chancellor — the CEO of the flagship Boulder campus—from 1986 to 1994. As head of CU he sought out and recognized great ideas and gave them key support when it was most needed. The NRLC benefited from this leadership as did the Colorado Journal of International Environmental Law and Policy and the Center for the American West. His sincerity and unflappability got him and the university through crises like a takeover protest of a dorm that students discovered had been named for leader of an Indian massacre, and a months-long demonstration against South African investments, complete with a shantytown erected on the campus. He defused these matters and set the university on a course of soundly resolving these and many other issues.

Rather than coasting from Chancellor to retirement, Jim returned to teaching and scholarship. His excellence in the classroom earned him the University's Teaching Excellence Award. Most recently he has published an article on vested water rights, and completed, along with Teresa Rice, revision of Vranesh's monumental treatise on *Colorado Water Law*. As he settles into his retirement home in Oklahoma, he will, along with Dan Tarlock and David Getches, be working on a new edition of *Water Resource Management*.

We, of course, are especially appreciative of Jim's contributions to the Center. Jim was prominent in a meeting in late 1981 when the School of Law's Natural Resources Law Advisory Committee met with the Dean to propose establishment of a "Natural Resources Law Center." Jim championed the Center which was to carry on with the summer institutes started by Corbridge and Getches two years earlier and to develop a scholarly research agenda. As Chancellor, several years later, Jim secured permanent University funding for the position of Center director. Through the years, Jim has been a faculty advisor to the Center and has developed and participated in innumerable summer conferences and other programs. With his retirement from the faculty, he will continue to advise us as one of the newest members of the NRLC Advisory Board.



*Jim Corbridge admires "thank you" from the NRLC.*

We wish Jim well in his retirement and look forward to tapping into his expertise, energy and retirement hours for many years to come.

.....

*"I presume to speak for a whole generation of students — a good many of whom now are water resource professionals — in thanking Jim for his contribution. ...I don't remember his teaching just as a learning experience, but as a conversation — one which for many of us continues today. Our thanks to Jim for initiating and engaging us in the conversation that is water law."*

*David Harrison*

.....

*"What is most impressive about Jim's leadership is his easy, collegial style. He leads as a peer."*

*David Getches*

.....

*"Thank you for loving your profession so much. Thank you for serving it so well. Thank you for reminding us, through your words and deeds over the course of two generations, of what a university is for and what it can offer to society."*

*Charles Wilkinson*

.....



water in planning; 2) Requiring subdivisions applicants to prove there is sufficient water; or 3) Leveraging state financial assistance to hold local governments accountable for planning.

Doremus explained that local governments might be hampered in efforts to manage development by liability under the Endangered Species Act.

Jerilyn DeCoteau, Director of the Indian Law Clinic University of Colorado, and David Benavides, Community and Indian Legal Services of Northern New Mexico, addressed the effects of development on Indian and Hispanic water control. DeCoteau argued that states over-developed their resources and now look to Indian tribes to protect remaining resources, preventing tribes from developing and achieving financial security. Benavides explained that communal water control is an important aspect of Pueblo and Hispanic culture, but noted that New Mexico law has privatized rights of Hispanic acequias. While Hispanic communities built acequias to provide water in common to local residents, the law has weakened community control by allowing the water rights to be severed from the land without concurrence of the community.

Several other speakers presented lessons learned from specific case studies. Janet Neuman, Professor at Northwestern School of Law at Lewis and Clark College, discussed the difficulties faced by the Oregon Water Trust in purchasing senior water rights for in-stream flow protection. She simply captured sentiments of several speakers, concluding that, "not connecting land use planning and water planning is just plain dumb." Rita Pearson, Director of Arizona Department of Water Resources, described groundwater protection efforts in five diverse Active Management Areas that give Arizona the flexibility to address different problems and local water practices. Bruce Driver, Director of the Land and Water Fund of the Rockies, analyzed environmental ethics in the context of urban centers, concluding that cities can be good environmental stewards by mitigating past damage and curtailing sprawl even if they do not limit growth. Greg Thomas, President of Natural Heritage Institute, warned that California has depression islands from

## "Fish need water everyday"

Taylor Hawes quoting Melinda Kassen

groundwater mining and proposed importing water to refill aquifers and to store for dry years. Ed Harvey, Managing Director of BBC Research and Consulting, evaluated several case studies, concluding that communities can have both water supply planning and growth management and that rural areas need more than water supplies to financially develop. Finally, Jerome Muys, attorney with Muys & Associates, commented on Lower Colorado River Basin municipal responses to water allocations based on overestimated future supplies.

Friday brought another warm summer day, new attendees, and a focus on water and growth in Colorado. Jim Corbridge, Professor at University of Colorado School of Law, kicked off the day with the keynote address *Growth in Colorado and the West: Trends and Issues*. Corbridge focused his presentation on three general lessons: 1) water



Sunshine, warm weather and good barbeque greet conference participants on Flagstaff Mountain.

management does not work as a tool to restrict growth; 2) water distribution organizations see their role as providing water, not controlling distribution; and 3) coordinated solutions are needed. Corbridge also addressed a variety of possible new sources of water, existing laws and agreements, lifestyles and cultures, and drought and climate change. Following his speech, friends and colleagues honored retiring Professor Corbridge with stories and praise. (See story page 2.)

The discussion of Colorado growth and water continued with Jim Lochhead, attorney with Brownstein Hyatt & Farber.

Lochhead examined water in the South Platte/Front Range corridor, calling for conjunctive use, an open process, and new dialogues. Next, Taylor Hawes, Co-Director of the Northwest Colorado Council of Government's Water Quality and Quantity Committee, presented a view of growing demands placed on the Colorado Headwaters largely from external visitors, especially tourists from the Front Range. She praised the problem solving skills of the Upper Colorado River Project. Eric Kuhn, General Manager of the Colorado River Water Conservation District, followed with an examination of development and water transfers on the West Slope, recommending conjunctive uses. Next, John Hill, attorney with Bratton and McClow LLC of Gunnison, provided an admittedly biased perspective on the Union Park project, soon to receive a Colorado Supreme Court ruling. As a local resident, Hill reported that citizens largely oppose the project, concluding that Union Park will not be built until it is absolutely necessary. Don Ament, Colorado Commissioner of Agriculture, stressed the value of agriculture to Colorado's economy and standard of living – "you eat everyday." He argued that long term agriculture in Colorado is threatened by many factors including the need of aging farmers to sell water rights to fund their retirement.

The afternoon session on Friday continued the dialogue. Ken Salazar, Colorado Attorney General, began by discussing the state's role in water resource planning. Salazar warned that costs are extremely high in terms of time and money, but cooperation is the key to achieving future water goals. Next, Doug Kemper, Manager of Water Resources for the City of Aurora, discussed the Eagle River Assembly, a group of major water rights holders who are collaborating to resolve transbasin transfer conflicts. Subsequently, Peter Binney, Study Manager for the South Metro Water Supply Study Board, encouraged cooperative regional planning in the Denver basin to meet long term water demands without depleting groundwater. He cited a three way agreement among the South Metro Water Supply Study Board, the Denver Water Board and the Colorado



River Water Conservation District as an example of effective cooperation. Next, Marc Waage, Manager of Raw Water Supply for Denver West, analyzed a series of Cooperative Operating Agreements along the Northern Front Range. He questioned Denver's ability to distribute water in dry years and emphasized the need for new facilities. Finally, Lori Potter, attorney with Kelly Haglund Garnsey & Kahn L.L.C., and Michael Freeman, attorney for Earthjustice Legal Defense Fund, examined environmental consequences of water management in the context of the City of Denver's Diligence/Augmentation case and the Arapahoe Basin ski area snowmaking litigation. They predicted a shift in emphasis from water quantity to water quality issues.

Between sessions, attendees also had a chance to debate contentious issues, exchange business cards, and enjoy beautiful Boulder summer weather. Wednesday evening, the Center hosted a barbecue on Flagstaff Mountain. Everyone enjoyed great food while watching the sunset over the city. Thursday

evening, Hydrosphere Resource Consultants, Ltd. sponsored a reception that provided another opportunity for sharing ideas and meeting new people. Overall, the conference was a great success. We appreciate the generous support of the William and Flora Hewlett Foundation.

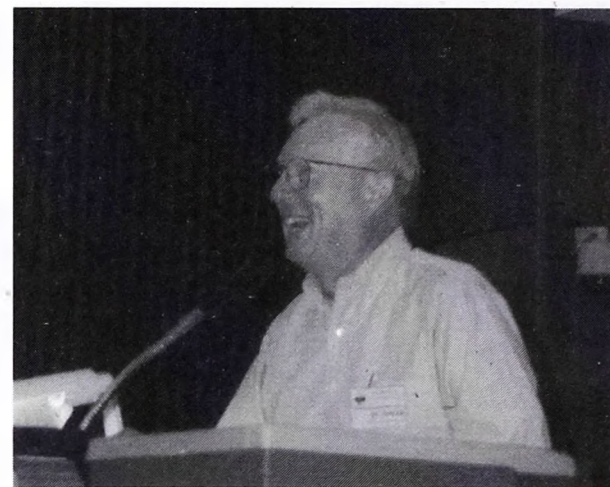
### Colorado Water Law Haiku

Western Slope Water  
Flows under the snowy crest.  
To take is to own.

*Harold Bruff*



*207 registrants from 16 states attend Growth and Water conference sessions.*



*Consulting firms, federal government, university and non-profit group reps confer at the June conference.*

## Comings and Goings

### Advisory Board Changes

Three members of the NRLC Advisory Board, **Rosalind McClelland**, **Lori Potter**, and **Eleanor Towns**, are leaving the board. Each of them has been a valued member of our board and we regret that other responsibilities and demands on their time have made them unavailable to continue their work with us. We thank them for their service, acknowledge all they have contributed to the Center, and wish them well in all they do.

We are pleased to announce that the following people have joined the board, and thank them for their interest in the Center and their willingness to be of service:

**Patricia Beneke**, Van Ness Feldman, Washington, DC

**Jim Corbridge**, University of Colorado School of Law/Grove, Oklahoma

**Larry MacDonnell**, Stewardship Initiatives, Boulder, Colorado

**James F. Cress**, Holme Roberts & Owen, Denver, Colorado

**Guy Martin**, Perkins Coie, Washington, DC

### New Administrative Assistant

#### Karyn Brinson

I came to NRLC from the CU Athletic Department in April as a part-time Administrative Assistant. I have been living in Boulder for about three years. Before that I lived in Pueblo, Colorado and Mesa, Arizona and Prescott, Arizona. My three 3 sons and I love this area and all it has to offer. We have spent many afternoons this summer splashing around in the creek. We also

try to escape the heat by driving up to some of the fun little mountain towns around here. Gold Hill and Ward are two of our favorites. Boulder is a nice, friendly town and we hope to be here for many years to come.

### New Research Assistants

#### Al Stemp

I came to Colorado in 1996 after spending most of my life in Western Pennsylvania. I graduated from Penn State University in 1995 with a degree in international politics and philosophy and came to Boulder to attend graduate school. Camping and hiking have been a significant part of my life for as long as I can remember, and the Front Range immediately felt like home. In my Master's program I studied political theory and political ecology. At the same





## El Paso Energy Corporation Law Fellowship

**Spring Semester 2001 • Fellowship Award: \$25,000**

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The Natural Resources Law Center invites applications for the El Paso Energy Corporation Law Fellowship for the spring semester (January-May) 2001. The Fellowship is funded by the El Paso Energy Foundation.

The **El Paso Corporation Law Fellow** will spend the spring 2001 semester in residence at the University of Colorado School of Law working on a research project on **oil and gas, mineral, energy, public lands, or other areas of natural resource law and policy**. The emphasis is on legal research, but applicants from law-related disciplines, such as economics, engineering, and the natural and social sciences, as well as lawyers, are invited to apply. Candidates may come from business, government, legal practice, or universities.

While in residence, the Fellow will have opportunities to exchange ideas with faculty and students at the Law School, as well as the broader university and legal and policy making community in the Denver-Boulder area. The fellowship includes a stipend of \$25,000, administrative and part-time research assistance, office space in the Law School, and use of University libraries and other facilities. Fellows are expected to produce a written project suitable for publication in a professional journal, present at least two lectures or seminars on their research, and participate with Center staff on projects and activities at the Center relevant to their research.

Candidates should submit a proposal in the form of a letter or statement describing the candidate's proposed research project, along with a resume. Candidates should arrange for two or three letters of support to be sent directly to the Center on their behalf. Applications and letters should be submitted to: Gary Bryner, Director, Natural Resources Law Center, Campus Box 401, Boulder CO 80309-0401. Review of applications will begin **October 1, 2000**

Criteria for evaluation of proposals include the applicant's professional and educational qualifications, demonstrated research and writing ability, importance and relevance of the proposed project, and the likelihood the project will result in publishable research that will contribute to better understanding of issues and improved policy making.

In addition to the El Paso Energy Corporation Law Fellowship, the Center invites, on an ongoing basis, applications for fellowships without stipends in all areas of natural resource law and policy. The application process is the same for the El Paso Fellowship.



# WATER AND GROWTH IN COLORADO

The Center is currently working on a report describing water issues associated with Colorado's recent (and projected) population growth and economic expansion. While this growth does not necessarily result in greater consumptive use demands overall, many Colorado communities are, or soon will be, actively searching for new supplies.

Finding additional water supplies is likely to be a difficult challenge. Proposed large water supply development projects are generally not viable at the current time. Small projects, such as conjunctive utilization of groundwater and surface water resources or the continued use of groundwater resources, appear to be more viable alternatives. Reusing water and using water more efficiently may stretch existing supplies to serve a larger population delaying the need to develop new supplies. However, savings from efficiency and reuse alone are not expected to be sufficient to meet the demands of the projected population growth. These strategies may also unwittingly decrease the drought cushion inherent to inefficient water systems. The most likely source of additional water for growing urban populations is water transfers, primarily from the agricultural sector.

Water providers must face several challenges before they can fully utilize these strategies. These challenges touch all facets of the water and growth question, including concerns relating to the environment, trans-basin diversions, and interstate obligations. Among the most daunting of the environmental constraints are those imposed by the Endangered Species Act (ESA). ESA limits may preclude the development of new water supplies or constrain the use of previously constructed projects. The requirements of the Clean Water Act can also be formidable, as evidenced by the demise of the proposed Two Forks project. Also significant are legal and political issues associated with trans-basin diversions from the West Slope to the East Slope. While additional large-scale diversions seem unlikely, several small joint East Slope-West Slope projects have recently succeeded and may pave the way for future trans-basin diversions. Such diversions may actually appease many in-state interests concerned about Colorado's current inability to use its full Colorado River entitlement. From a legal standpoint, the concern that downstream states could prevent upstream states from fully utilizing their compact apportioned water may be unfounded; however, the concern has increased the desire to fully utilize all of Colorado's apportioned water while the opportunity exists.

One of the major costs of Colorado water development stems from the water court process. Leading water providers are beginning to focus on methods that circumvent or minimize judicial transaction costs. For example, by choosing to purchase water shares from existing projects, such as the Colorado-Big Thompson or Twin Lakes, water providers are able completely avoid court proceedings. Cooperative ventures are also increasingly common. Despite these tactics, all signs suggest that the state's water attorneys will remain busy for the foreseeable future.

Expect *Water and Growth in Colorado* to be published this fall.

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## Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy

Nearly everyone — including the Forest Service — thinks that the agency could do a better job managing the national forests. Unfortunately there is a wide divergence of views on what constitutes good policy and how and by whom it might be attained. As one step toward that end, a variety of groups and individuals have identified problems and recommended solutions which would change the way the agency functions and our national forest lands are managed.

In June, the Center completed research on current proposals for improving National Forest policy. We have collected and described the proposals in our newest report: *Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy*. Recommendations include proposals to divest public lands; new planning approaches being proposed by the Committee of Scientists; pilot projects testing changes in Forest Service financing, governance, and planning being proposed by "think tanks" such as the Forest Options Group; congressionally approved pilot projects testing forest stewardship innovations initiated by the Forest Service; and changes in the financial relationships between the Forest Service and forest dependent communities. This report (RR25) can be purchased from NRLC for \$12 plus shipping.

## The New Watershed Source Book

The Center has recently completed a two-year project leading to a directory and review of watershed initiatives (a.k.a., watershed partnerships, councils, or groups) in the western United States. Building on the success of the Center's 1996 publication, *The New Watershed Source Book* features concise case studies of 117 watershed groups, one detailed case study (of the Animas River Stakeholders Group), seven short case studies of forestry partnerships, and a directory (i.e., a phone book) listing 346 western watershed initiatives. This new report also features a wealth of statistical information and analysis, based largely on surveys of the 118 featured groups as well as 276 participants active in watershed initiatives in Oregon. This information provides a snapshot of western watershed initiatives, including topics such as the resource issues of interest to these groups, the breadth of participation, specific goals and activities, funding and related resources, and accomplishments. Other topics covered include the historical and sociopolitical context of the western watersheds movement, and a review of laws associated with community-based conservation. The report (RR24) can be purchased in hardcopy for \$17 or on CD for \$10 (plus shipping costs).

Both reports can also be viewed at the Recent Publications link of the Center's website ([www.colorado.edu/Law/NRLC/](http://www.colorado.edu/Law/NRLC/)). To order contact the Center at: (303) 492-1272 or [nrlc@spot.colorado.edu](mailto:nrlc@spot.colorado.edu).



# Environmental Justice in Natural Resources Workshop

On April 14 and 15, 2000, the Natural Resource Law Center, Region 8 of EPA, and the Colorado Environmental and Economic Network (COPEEN) co-sponsored a two-day workshop on Environmental Justice in Natural Resources at the Tattered Cover Bookstore in Denver.

The workshop focused on a series of essays on environmental justice (EJ) in natural resources commissioned by the Center in late 1999. These papers and the workshop reflected topics – from tribal sovereignty and northern New Mexico forestry issues to mineral development and flood control impacts – exploring the contours of environmental justice. The workshop had three goals: (1) to give the invited authors an opportunity to present and discuss their work; (2) to start to make this initial work accessible to a broader audience and to begin to learn from that audience about these and other EJ issues; and (3) to discuss the future of the Center's EJ project – its topics, format, and participants. Through the discussion of the papers, the participants – about 80 community organizers, environmentalists, state, federal and local government representatives, and academics – grappled with the issue of inequity in natural resource preservation, development, and use. The workshop itself did not develop solutions to any of the EJ problems discussed. But participants agreed that helping to find solutions to existing injustices and to prevent new injustices should be the ultimate goal of any future EJ program.

After an introduction and welcome by Kathryn Mutz of the Center and Melissa Muñoz of COPEEN on Friday morning, the workshop began with papers that explored the meaning of EJ in the natural resources realm. University of Colorado (CU) Departments of Ethnic Studies and Sociology professor David Pellow introduced his work with coauthor David Getches, CU School of Law, discussing how racism and equity can be understood in a natural resource context and surveying the potential boundaries of the term "environmental justice." Gary Bryner, Center Director, examined and



*CU Geography Professor Jim Wescoat presents his paper on poverty and water in Colorado at the Environmental Justice Workshop.*

compared the different expectations people have for environmental policy and EJ, ranging from traditional notions of discrimination, fair procedures, and distributive justice, to ecological sustainability and cultural diversity.

The second series of papers, by Sarah Krakoff, professor at the CU School of Law, Luke Cole Director of California Rural Legal Assistance Foundation's Center on Race, Poverty & the Environment, and Dean Suagee, Director of the First Nations Environmental Law Program at the University of Vermont School of Law looked at EJ in Indian country. Krakoff attempted to develop a definition for EJ in the tribal context. Cole argued for defining the impacts of Title VI of the Civil Rights Act of 1964 broadly, to include social, cultural and religious impacts on natural resources. Suagee offered suggestions for making NEPA more effective in Indian country and for promoting community involvement in environmental assessments.

At lunch, Liz Evans, Director of EJ for Region 8 of the Environmental Protection Agency (EPA), added her welcome, described Region 8's EJ program and introduced Barry Hill, Director of EPA's Office of Environmental Justice. Hill presented his work with Nicholas Targ, also of the EPA's EJ office, which uses three case studies to

explore how existing environmental law can be used to address EJ concerns.

In the afternoon, Sheila Foster, Rutgers University School of Law, discussed how the trend toward community-based environmental policy and decision-making still fails historically disenfranchised communities, by ignoring the underlying social relationships of the various participants. Rebecca McLain, Co-director of the Institute for Culture and Ecology, and Kim McDonald, University of Washington, College of Forest Resources, presented their paper, which seeks to expand our definition of those who suffer environmental injustices to include people whose identities and livelihoods are derived from the land yet who are excluded from natural resource policy making. Finally, Ryan Temple of Forest Trust presented Henry's Carey's paper on EJ issues related to development and protection of forest resources in northern New Mexico.

The second afternoon session began with James Wescoat, Department of Geography at CU, presenting his work with Sarah Halvorson, Lisa Headington and Jill Replogle, on developing a geographic framework for understanding the interaction of water, poverty, and sustainable livelihoods, with a focus on Colorado. Then, Jan



# NRLC Growth Project

The American West is currently undergoing tremendous demographic changes that are having a profound impact on federal public lands (and waters) and the agencies entrusted to manage these resources. In many pockets of the "New West," resource managers are besieged by conflicting demands of two types. The first is the longstanding conflict between extractive uses and non-extractive uses, a familiar point of debate that becomes more salient as "New Westerners" populate regions with strong ties to traditional natural resource economies. The second is more recent and, arguably, even more complex than the first. It involves the growing and largely unanticipated conflict between proponents of outdoor recreation-especially those forms that are motorized or are otherwise high-impact-and proponents of environmental preservation. The resolution of these conflicts can be extremely difficult, in part due to the competing value structures articulated by the contestants and by the relevant management statutes.

The Natural Resources Law Center is currently exploring the nexus between the federal public lands, population growth and demographic change in the West, and the challenge of making policy decisions involving resource outputs that

are difficult to compare (or "value") using similar criteria or processes. One component of this research agenda is a study examining recent cases in natural resources management in which resource management agencies have struggled to find mechanisms for reconciling competing demands. Case studies include the development of the Northwest Forest Plan, which involved balancing demands (and statutory requirements) for biodiversity protection against the desire to maintain the Pacific Northwest's traditional timber economy. Also under investigation is the case of the Grand Staircase-Escalante National Monument in Utah, where the Bureau of Land Management is charged with protecting the ecological integrity of an area with considerable extractive and recreational values. A third case is examining development of a management plan in the White River National Forest (Colorado), where recreationists and environmental protection advocates are engaged in what figures to be a precedent-setting case in recreation management. Other ongoing investigations are examining wilderness areas, water resources management, and demands on the National Park system.

One of the reasons these cases are so difficult is the lack of effective processes, methodologies, evaluation

criteria, and conceptual frameworks for measuring and comparing different types of resource values. Approaches such as benefit-cost analysis can potentially have real utility, but are ultimately limited by their inability to include concerns rooted in questions of rights or ethics, and are always vulnerable to political and judicial processes that use a different calculus to make difficult trade-offs. As a result, many of the federal natural resource agencies-including the Forest Service, Bureau of Land Management, National Park Service, and the Bureau of Reclamation-struggle to keep pace with the larger demographic forces that are reshaping the context in which these agencies operate.

The Center believes that there is much to be learned from the recent and ongoing controversies described above, and that a focused analytical inquiry has the potential to identify new and practical advice for policy-makers and managers eager to improve public resource management in the New West. This line of thinking can perhaps be best explored through the production of a book that draws upon the many investigations, events, and outreach activities that are already integral components of the Center's agenda of research, education and problem-solving.

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EJ, Continued from page 7

Burhmann, of EPA Region 8, discussed her study of benefits and burdens of flood control efforts at Devil Lake, North Dakota. Jeffrey Romm, University of California at Berkeley Forestry Department contended that our established natural resource institutions are racially discriminatory by virtue of how and whom they exclude, where and in whom they derive and locate authority, and how and to whom they actually distribute opportunities, using public land and water reservations in California as an example. And finally, Kathryn Mutz explored whether environmental degradation at mine sites can be considered an EJ issue and suggested how existing mining, public land management, and environmental statutes can be used to prevent

disproportionate impacts. Tseming Yang from the University of Vermont School of Law was unable to attend the workshop but his paper looks at the EJ issue from a global perspective, drawing parallels between domestic EJ problems and solutions and the difficulties managing the international environment. After dinner, workshop participants gathered for a "Talking Circle," sharing their background and interests in EJ issues and an international array of sweets.

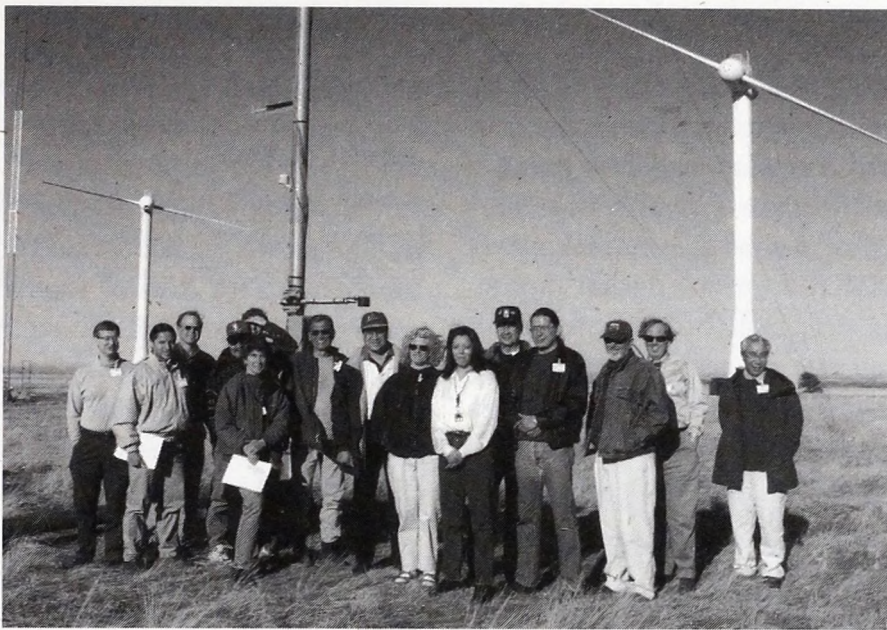
Presentations during Saturday's sessions were brief, with most time reserved for an all-participant discussion of the issues. The participants discussed expanding the EJ scholarship and focus from the siting of polluting facilities in poor and minority neighborhoods to the

disproportionate benefits and burdens of natural resource extraction and preservation. The second half of the morning focused on the intersection between environmental issues and tribal sovereignty, with some discussion of the status of federally non-recognized tribes. After lunch, participants debated the forestry and water issues, with a special focus on community participation problems. The group sought to distinguish between environmental policy issues and EJ issues and how important race and class are to defining EJ. The workshop ended Saturday night with a reception and the keynote address entitled "Worlds of Possibility: Exploring Ethnicity in Environmental Thought" by Patricia

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EJ, Continued on page 9





*Center staff and Intertribal Council on Utility Policy enjoy a tour of the National Wind Technology Center near Boulder arranged by Bob Gough.*

## Prairie Wind Power for the 21st Century: Renewable Energy Development on Indian Reservations

American Indians reservations in the Northern Great Plains are strategically located with respect to a number of key factors favorable for the development of significant wind generation capacity. Indian Tribes are particularly well positioned to build upon the federal-tribal partnerships established by treaties for developing large-scale, distributed wind generation, as part of an overall strategy for sustainable homeland economies for local use, and for significant energy export throughout and beyond the region.

The addition of wind power into the energy mix on the federal grid can also help to relieve current water management pressures on the mainstem of the Missouri, as well as provide future assistance, as water flows may be affected by continued climatic changes. Several legislative and policy changes, however, may be necessary for the development and interconnection of large-scale renewable generation and for the blending of dispersed intermittent wind with existing firm federal hydro-power.

Center research assistants have aided Bob Gough, our Spring 2000 El Paso Fellow in research on this timely

topic. Their research has included investigating the organization and responsibilities of the various federal (WAPA, DOE, DOI, DOD, FERC) and local (REA Coops, IOUs and G&Ts) agencies involved in energy generation, transmission and distribution. They have also examined the social, economic and legal status of Great Plains Indian Reservations and the possible role of joint ventures to the federal production tax credit recently extended for renewable energy generation. Bob has taken full advantage of the many local resources dealing with wind power including the Land and Water Fund of the Rockies, the Department of Energy, the Western Area Power Administration, and most importantly, the National Renewable Energy Laboratory (NREL), in Golden, with the National Wind Technology Center (NWTC), just south of Boulder. Bob has continued to travel weekly to meetings throughout the country on wind power issues most recently he participated in the Native American Environmental Justice Roundtable in Albuquerque when he brought the issue of renewable energy development on Native American reservations to the table.

## Other Conferences & Workshops

In addition to the annual June conference, the Center joins with others to host conferences, workshops, and other meetings. Supervisors from national parks throughout the nation met at the law school for a conference in June organized by the National Park Service, to examine some of the challenges confronting park managers, such as how to balance preservation of park resources with providing access to visitors.

The Center is a co-sponsor of the National Wilderness Conference, September 7-10, 2000, at the Hyatt Regency Hotel in Denver. Speakers will address the history of wilderness protection in the United States, protecting roadless areas in national forests, managing wilderness areas, wilderness education, and wilderness values. For more information, see the Wilderness Society's conference webpage at <http://wilderness.org.wild2000>.

## Congratulations

Betsy Beaver, Courtney Hill, Ian Kalmanowitz, Ann Livingston, Jason Peckham, Tara Ohler, Mary Elizabeth Murphy, and Park Godar. Former NREL Research Assistants who graduated from CU Law School in May.

*EJ, Continued from page 8*

Limerick, chair and co-founder of the Center of the American West.

Both days included valuable discussions of the future of the Center's EJ project. Based on these discussions, the Center hopes to expand the EJ project with a series of community forums; work groups and workshops; a book and easy-to-read pamphlets based on the papers; a website devoted to EJ in natural resource issues; and a visiting scholar program. The Center is currently seeking funding to pursue these projects.





time, I got involved with a variety of local and national efforts to protect wilderness areas and advance environmental interests. I became interested in the legal aspect of environmental issues and CU Law seemed the ideal setting in which to pursue those interests. My work with the NRLC has provided a nice bridge between my activist and academic experiences. Immediately following law school I plan to litigate environmental cases for a non-profit organization or government agency. Ultimately, though, I hope to return to academia and teach environmental law and policy.

### Carolyn Herb

After 23 years of life in Wisconsin, I decided to expand my horizons last August and move West to Colorado. In May 1999, I graduated from the University of Wisconsin with a BS in International Relations: Managing the Global Commons. Along with my classwork there, I spent a summer in Costa Rica catching butterflies and bats, spotting birds, and gathering plant specimens. Additionally, I have worked on land preservation and brownfield remediation for Wisconsin Representative Spencer Black, the Wisconsin Department of Natural Resources, and as a policy analyst for the City of Milwaukee Budget Department. Law School will serve as a bridge from my focus on International and Latin American environmental issues to domestic natural resource issues. This summer I am working with the Center researching forest policy and agency management of public lands in the face of

western growth. I am also active with the Women's Law Caucus and Colorado Women's Bar Association public policy committee. After law school, I hope to work for a government agency making policy for land use. In the distant future, I plan to run for public office or teach University classes on environmental law. In the meantime, I'm loving my first year in Colorado: skiing, snowshoeing, climbing mountains (and attending the occasional law school class).

### Heather Corson

I am originally from Montana, which I anxiously left to attend school at Tufts University in Massachusetts, majoring in English and American Studies. Living in the Boston area helped me realize that I love Montana and the West. But for some reason, since graduating from college I have had trouble staying in Montana, moving to Honolulu, San Francisco, and now Colorado to attend law school at CU. I have finished my first year and plan on focusing on Native American and environmental law. This summer I am working at the NRLC on environmental justice projects. My interest in EJ issues formalized in college when I took an EJ class and interned at the NPR environmental magazine program *Living on Earth*. Both experiences showed me how my interests in social justice and environmental issues overlapped. Eventually, I hope to move back to Montana to work on EJ issues or for Native American causes, possibly for my tribe (Crow) and to make sure my young

son learns to love Montana too.

### Alicia Gibson

I was born and raised in Norman, Oklahoma where I cultivated a profound appreciation for Sooner football. For undergraduate study I moved to Washington, DC and attended American University, where I cultivated a profound appreciation for Ethiopian cuisine and the end of a Congressional session. I fled the Clinton-Lewinsky scandal and found myself in Cape Town, South Africa in the fall of 1998. My semester of study there culminated in a field-study project, analyzing the relationship between a Zulu village and the national park that bordered their lands. I was inducted as a member of the *Phi Beta Kappa* honors fraternity and graduated *summa cum laude* in May of 1999, with a B.A. in International Studies and a minor in Literature. I have just completed my first year of law school at the University of Colorado, and still have enough self-confidence to continue on to the second year. This summer at the Center I am helping with the beginning of a new growth and public lands project. I will be developing case studies on the controversies surrounding the new management plan for the White River National Forest and proposals for dam removal on the lower Snake River and Glen Canyon. Interests/plans for the future include natural resource law, alternative dispute resolution, fiction writing, and perhaps a masters degree in psychology. When I am not tucked away in the library doing research for the Center I enjoy swimming, reading, and writing.

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