

University of Colorado Law School

Colorado Law Scholarly Commons

Resource Law Notes: The Newsletter of the
Natural Resources Law Center (1984-2002)

Newsletters

Summer 2001

Resource Law Notes Newsletter, no. 52, summer 2001

University of Colorado Boulder. Natural Resources Law Center

Follow this and additional works at: https://scholar.law.colorado.edu/resource_law_notes



Part of the [Energy and Utilities Law Commons](#), [Energy Policy Commons](#), [Environmental Law Commons](#), [Environmental Policy Commons](#), [Indigenous, Indian, and Aboriginal Law Commons](#), [Natural Resources and Conservation Commons](#), [Natural Resources Law Commons](#), [Natural Resources Management and Policy Commons](#), [Oil, Gas, and Energy Commons](#), [Oil, Gas, and Mineral Law Commons](#), [Public Policy Commons](#), [Water Law Commons](#), and the [Water Resource Management Commons](#)

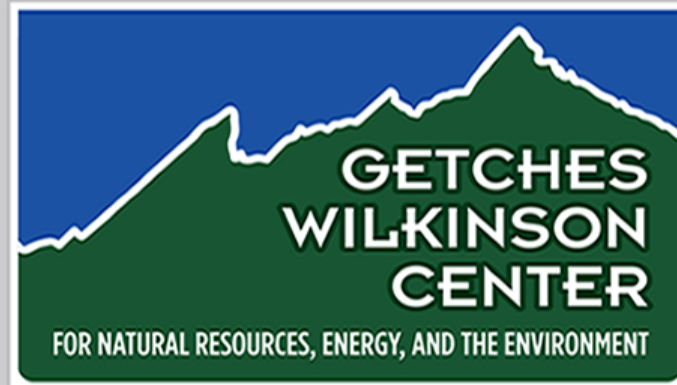
Citation Information

Resource Law Notes: The Newsletter of the Natural Resources Law Center, no. 52, summer 2001 (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law).



William A. Wise Law Library
COLORADO **LAW**

UNIVERSITY OF COLORADO **BOULDER**



Getches-Wilkinson Center Collection

RESOURCE LAW NOTES, no. 52, summer 2001 (Natural Res. Law Ctr., Univ. of Colo. Sch. of Law).

Reproduced with permission of the Getches-Wilkinson Center for Natural Resources, Energy, and the Environment (formerly the Natural Resources Law Center) at the University of Colorado Law School.

RESOURCE LAW NOTES

Natural Resources Law Center

School of Law

University of Colorado at Boulder



KF
5505
.A15
R47
no. 52

Number 52

Summer 2001

Upcoming Events

October 3-5, 2001: Colorado Riparian Association 14th Annual Conference, p. 7

October 9, 2001: Film Screening, discussion and reception, "In Light of Reverence," p. 4

Muenzinger E050, CU - Boulder

October 9, 2001: Water Resources Seminar Presentation by Doug Kenney, p. 8

October 30, 2001: Water Resources Seminar, Presentation by NRLC Advisory Board Member Dan Luecke, p. 8

December 2001: Book Release

Justice and Natural Resources

June 11-14, 2002: Annual Conference "Allocating and Managing Water for a Sustainable Future: Lessons from Around the World," p. 6

In This Issue

- 2001 Conference Overview 1
- Message from the Director 2
- Native American Events 4
- El Paso Energy Fellowship Announcement 5
- 2002 Conference Announcement & Call for Papers 6
- New Book & Report 7 & 8
- Glenwood Springs Fire Program 9
- Comings and Goings 10

June Conference a Rousing Success



Ken Strzepek, of Civil, Environmental & Architectural Engineering at CU.

Two Decades of Water Law and Policy Reform: A Retrospective and Agenda for the Future was held June 13-15, 2001, on the University of Colorado campus. This conference was not a debate on the need for reform, nor was it an effort to explicitly redefine the existing reform agenda. Rather, the event was motivated by the observation that the last two decades have featured a wealth of thinking

and experimentation in this policy area. With the arrival of a new century and new federal administration, the 2001 conference was an appropriate time to take stock of the many reform proposals that have been discussed and, in some cases, crafted at our annual event. The event was an opportunity to contemplate the ground that has been covered and to speculate on what this means for future efforts aimed at reconciling traditional water laws and institutions with the changing landscape of the American West.

In his opening presentation reviewing the relevant literature, attorney and former NRLC director Larry MacDonnell identified three primary reform perspectives: economic, environmental, and equity. Advocates of the economic perspective generally argue for the treatment of water as an economic commodity, subject to largely unconstrained market exchanges driven by private decisions. The environmental perspective features a call for resource preservation (often manifest by instream flow and anti-dam proposals) as well as a concern for pollution. The equity perspective, meanwhile, urges greater protections for excluded values and/or interests (e.g., non-rightsholders, tribes and public interests) in traditional water laws and decision-making processes. As noted by former Interior Solicitor John Leshy, "We have not lacked for good advice."



Continued on page 3

Director, Natural Resources Law Center

The University of Colorado School of Law is seeking candidates for the position of Director of the Natural Resources Law Center.

In the twenty years since the Center was established, it has produced numerous books, monographs, research reports, and articles, held over thirty national conferences and symposia, and hosted visiting scholars and policy-makers from all over the world. The Center has gained a distinguished record and reputation for applied interdisciplinary research, publication, and education in the field of natural resources law and policy. Projects are carried out by a small professional staff and an extensive network of experts from around the country. The Director's position is supported by the University, while Center projects are primarily funded by contracts and grants from foundations and government agencies. For more information on the Center see: <http://www.colorado.edu/Law/NRLC>

The Director has responsibility for directing the Center's research agenda and educational activities; securing grants and contracts (with a \$1 million annual goal); maintaining relations with the Law School community, the University, a network of scholars, an advisory board, funders, and the public; and managing the Center's staff. He or she will be expected to direct the Center's research agenda by formulating and participating in research projects that advance the interdisciplinary objectives of the Center, and will have opportunities to teach occasional classes in the School of Law. Candidates for the position should have a law degree or equivalent advanced degree in a related discipline, and experience that demonstrates:

- scholarly interest and achievement in natural resources and environmental law and policy,
- creativity in conceiving significant research and educational projects,
- entrepreneurial ability to pursue and obtain grants and contracts,
- administrative skills in managing programs and organizing conferences and events, and
- vision and leadership skills that can move the Center into its next phase of growth and accomplishment.

Applicants should submit a current resume and any supporting materials to: Professor Hiroshi Motomura, Chair, NRLC Director Search Committee, 401 UCB, Boulder, CO 80309-0401

The position will remain open until filled. Interviews will begin immediately.

The University of Colorado is committed to diversity and equality of opportunity in education and employment.

A Message from the Director

In September 2000, the Natural Resources Law Center staff and Advisory Board engaged in a strategic planning effort to give direction to the Center. The strategic plan calls for a doubling of the Center's budget within five years and a corresponding expansion of activity. The Center will continue to build on its strengths and remain committed to serving as a forum for discussions and analyses of water law and policy as well as pursuing other issues within its mission of promoting the sustainability of the American West. The expansion of the Center involves broadening its audience of decision makers in public, nonprofit, and private organizations, serving as a bridge between academic research and public policy making, and between national, state, local, and community decision makers, and expanding its network of partners and collaborators, including faculty members at the Law School, across campus and throughout the Colorado system, leaders of advocacy groups, and private citizens.

It has been a great privilege for me to be part of the Center during the past few years and to work closely with the Center staff, the Law School's natural resource faculty, and the Center's advisory board, and with all those who have participated in conferences, workshops, Hot Topics presentations, and other events. I have become convinced that a new director is needed with entrepreneurial, administrative, and institution-building skills to lead the Center as it expands. I plan to stay involved with the Center in a research capacity, and look forward to working with the next director and others during this next exciting phase in its history. Thanks again to all of you who have given presentations at Center-sponsored events, reviewed drafts of reports, provided advice and suggestions, attended conferences, given donations to the endowment fund, and contributed in many other ways to the work of the Center.

Gary Bryner

2001 Conference Statistics

The event was attended by 133 registrants representing 15 states (Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, New Mexico, North Carolina, Tennessee, Texas, Utah, Vermont, Washington and Wyoming), and the District of Columbia. Three Indian tribes were represented (Pueblo of Jemez, Hualapai Nation of the Grand Canyon, and the Confederated Salish and Kootenai) and one foreign nation (India). The most common affiliations were (in order): federal agencies, non-profit organizations, universities, state and local governments, law firms, and tribes.

There were 25 speakers and panelists.

Continued from page 1

Perhaps the greatest progress in implementing this agenda has occurred in those situations where the economic and environmental perspectives have been joined in reforms promising to reduce or eliminate environmental abuses through the exercise of economic instruments. Tom Graff of Environmental Defense and Dick Daniel of CH2MHILL both provided several examples of this phenomenon in California, including the celebrated MWD-IID canal-lining arrangement and the Central Valley Project Improvement Act of 1992. Focusing on the West as a whole, MacDonnell describes the track record of reform as featuring "incremental rather than fundamental" change, utilizing "accommodation rather than revolution."

Several presenters focused on the major tools and strategies of reform. Stanford Law Professor Barton "Buzz" Thompson, for example, reviewed the tools of conservation and efficiency, including voluntary appeals to conscience, price signals, technology, and governmental mandates. While all these tools can be effective, he identifies "price reforms and markets" as a particularly promising means for overcoming the entrenched inefficiencies in western water law and policy. Economic instruments were also the focus of remarks by University of Arizona Professor Bonnie Colby, who concluded that economic disparities associated with different types of water use suggest both a need and an opportunity for reallocating water in the West.

One barrier to water marketing, and to improved water management in general, is the extent of unquantified or disputed water rights in the West. One area where this issue arises is tribal water rights. Tribal attorney Sue Williams reported that the pace of settlements has dropped dramatically from the Reagan-Bush era to the Clinton and current Bush administrations, in part due to federal budgetary constraints and to the increasingly complex challenge of finding water supplies within already overappropriated systems. Recent progress has also been slow regarding stream adjudications, another prominent tool for better quantifying existing water rights. John Thorson, attorney and former Special Master of the Arizona General Stream Adjudication, provided conference attendees with a status report on these efforts, noting that adjudications are normally difficult, lengthy, and expensive processes, and are often flawed by omitting concerns such as groundwater resources and water quality constraints. Their chief benefit, according to Thorson, appears to be in "forcing resolution of tribal and federal water rights."

Environmental litigation also remains an important tool for reform. At the heart of litigation-inspired reforms is the Endangered Species Act, described by Leshy as the "uninvited guest at every western water dinner party." University of Colorado Law Professor David Getches, among others, however, observed that the use of litigation appears to be declining, and that the value of litigation is increasingly viewed as a stimulus, rather than a vehicle, for reform and problem-solving. Along similar lines, collaborative problem-solving was among the leading governance reforms identified by University of New Mexico Law Professor Denise Fort, who also emphasized the still unmet need for basin-



Session moderator, Sarah Krakoff and speaker Tracy Labin of NARF.

Free Publications Available

- OP38 "New Tools for Improving Government Regulation: An Assessment of Emissions Trading and Other Market-Based Tools," 1999.
- RR26 "Laws Influencing Community-Based Conservation in Colorado and the American West: A Primer," 2000, \$4 for postage only.
- RR22 "Innovations in Forestry: Funding Forest Plans," 1999, 10 copies free, additional copies at 5 for \$1, including postage.
- RR20 "Innovations in Forestry: Stewardship," 1998 10 copies free, additional copies at 5 for \$1, including postage.
- RR19 "Innovations in Forestry: Sustainable Forestry and Certification," 1998, 10 copies free, additional copies at 5 for \$1, including postage.
- RR17 "Innovations in Forestry: Public Participation in Forest Planning," 1997, 10 copies free, additional copies at 5 for \$1, including postage.
- RR16 "Restoring the Waters," 1997.

See page 11 for ordering information.

Continued on page 4

level management, agency restructuring or dismantling (with an eye toward the Corps of Engineers), and disassembling the "iron triangles" associated with federal subsidies and congressional involvement in western water development decisions.

Conference participants also received an update on scientific and technological advances pertaining to water management and reform. Science, increasingly, challenges water managers to think in a more holistic and comprehensive manner than is typical of western water institutions. One prominent example is the recent emergence of the so-called "natural flow" paradigm, described by Brian Richter of The Nature Conservancy. This paradigm suggests that protecting ecological resources should not merely be defined in terms of minimum instream flows, but rather as devising hydrologic management regimes that mimic natural variabilities (both high and low flows) and that pay attention to concerns such as sediment transfer and stream temperature.

The review of reform efforts identified a variety of problems with the existing tools, as well as conflicts among the three general reform objectives (economic, environmental, and equity). For example, improving the economic efficiency of water allocation may leave little for non-market public goods (such as endangered species), impoverished tribes, or rural communities brought into existence by past water law and policy decisions emphasizing low-value agriculture. Managing for environmental protection will undoubtedly constrain some economic activity, and block some parties—such as tribes—from enjoying the benefits of new water development. Similarly, a management scheme emphasizing equal treatment of all users and values is likely to run afoul of any notion of economic efficiency, and offers little help for ecosystems in need of restoration. It also can lead to situations of "competing equity," where the remedy for a past injustice may entail imposing a new burden on another party. Additionally, reform tools that operate by exploiting the "slop" in inefficient water systems do not provide a long-term answer to western growth and increasing public expectations regarding water. To the contrary, many uses and values are increasingly vulnerable, suggesting that the future reform agenda will need to evolve to better incorporate notions of sustainability.

Conference participants generally concluded that western water management was not currently funded at a level reflecting its importance, and that an increased federal investment in state water law and policy reforms may be overdue. In lieu of a renewed federal investment in western water of this type, the short-term strategy of the reformers will likely emphasize the better use of existing tools. A variety of opportunities exist to better use price signals and markets in water management. Water freed up through conservation can more aggressively be targeted to resolve environmental and equity problems, rather than merely feeding new growth. Tribal water settlements can be given a higher priority among policy-makers, and results improved by excluding non-water issues from these discussions. Stream adjudications can perhaps be streamlined by relying more heavily on administrative (rather than judicial) processes, and can yield more useful outcomes if a broader range of hydrologic connections and relationships are acknowledged. Litigation can be used selectively to set agendas, but perhaps more importantly, to nudge voluntary negotiations toward resolution. Scientific learning can better shape how we define problems and possible solutions, with technological advances used to realize tangible gains. All this is possible and, perhaps, essential, if water law and policy reform is to continue its march forward.

This article was distilled from a more detailed "Conference Report" available soon from the Center. Please see page 11 for ordering information.

Native American Events



Tom Goldtooth shakes hands with John Echohawk of NARF and Native American law student Anetra Parks.

Tom Goldtooth Visit

In March of this year, the Center hosted a visit by Tom Goldtooth, Director of the **Indigenous Environmental Network**. The visit was co-sponsored through an IMPART (Implementation of Multicultural Perspectives and Approaches in Research and Training) grant to the School of Law's Indian Law Clinic, the Native American Law Student Associations (NALSA), the U.S. Environmental Protection Agency, and the American Advocacy Committee. During his visit, Tom met with and addressed students, faculty and public audiences in both Boulder and Denver addressing environmental issues of both national and international concern. The highlight of his visit was a dinner, accompanied by a drum group, at the Boulder office of the Native American Rights Fund with food prepared by NALSA volunteers.



Taco dinner at NARF.

Screenings of *In the Light of Reverence*

The award-winning documentary *In the Light of Reverence* will be shown on the Boulder CU campus (Muenzinger Auditorium room E050) on Tuesday evening October 9 beginning at 7:00 p.m. and at the EPA conference center in downtown Denver at 11:30 a.m. on Wednesday, October 10. Both screenings will be followed by discussions with the filmmaker, Toby McLeod. Terry Tempest-Williams, Charles Wilkinson and Vernon Masayesva will be featured at the Boulder campus discussion on Tuesday night.

In the Light of Reverence was recently honored with the Best Feature Documentary award after a "special advance screening" at the American Indian Film Festival in San Francisco.

Narrated by Peter Coyote and Tantoo Cardinal, *In the Light of Reverence* is a 72-minute documentary on Native American struggles to protect landscapes of spiritual significance. The film tells the stories of three communities and places they care for: the Lakota at Devils Tower in Wyoming, the Hopi in the Four Corners area of the Southwest, and the Wintu at Mt. Shasta in California. The film documents obstacles to religious freedom for land-based practitioners, and impacts on sacred sites that range from mining and ski resorts to New Age practices and rock-climbing.

For more information, contact the Center at 303-492-1272.

Fellowship Opportunity

El Paso Energy Corporation Law Fellowship Spring Semester 2002 Fellowship Award: \$25,000

The Natural Resources Law Center invites applications for the **El Paso Energy Corporation Law Fellowship** for the spring semester (January–May), 2002. The fellowship is funded by a grant from the El Paso Energy Foundation.

The **El Paso Energy Corporation Law Fellow** will spend the spring 2002 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 or 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 cover letter and a statement describing the candidate's proposed research project, along with a resume. Candidates should also provide complete contact information for at least three references. Applications should be submitted to:

Gary Bryner
Natural Resources Law Center
Campus Box 401
Boulder, CO 80309-0401
Telephone: (303) 492-1287
Fax: (303) 492-1297
e-mail: Gary.Bryner@colorado.edu

Review of applications will begin on **August 31, 2001**.

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 resources law and policy. The application process is the same as for the El Paso Fellowship.

Allocating and Managing Water for a Sustainable Future: Lessons from Around the World

Natural Resources Law Center
University of Colorado School of Law

June 11-14, 2002

This conference will examine innovative water allocation laws, policies and institutions from around the world that provide lessons for sustainable water management. In keeping with the Center's focus on natural resources issues of the western United States, the conference will focus its attention on problems applicable to the American West. Sessions will focus on innovative legal and institutional developments and lessons that can be transferred across different regions, countries, cultures, economies, and water systems. The lessons will provide examples from a variety of geographic scales, ranging from international rivers to irrigation system and watershed management. International speakers and case studies will be drawn from world regions that share the American West's challenges of managing uncertain and variable water supplies.

The theme of the conference is adapting for sustainability--how the design of western water law and policy and the management of water resources can be ecologically and economically sustainable. By sustainable water management, we mean the extent to which policy makers and managers are able to:

- Accommodate demands for human use and consumption with environmental values such as preserving biodiversity,
- Integrate cultural and environmental values,
- Adapt successfully to uncertainties such as climate change,
- Revise laws and policies to allow for human needs while preserving natural systems, and
- Develop new institutions of governance that successfully solve problems and generate support for the effective implementation of practical solutions.

Conference Program

The program on June 12-14, 2002 will include keynote presentations and invited papers providing an overview of global water issues and focusing on three major themes:

- **The role of markets and policy: lessons in water allocation and use.** This session focuses on the interaction of market-based approaches to allocating water, such as water transfers, banks, and other market instruments, planning approaches such as watershed and river governance, and other ways of allocating water.
- **Integrating environmental, cultural, and other values.** This session examines how water law and policy integrate other values and interests. It gives particular emphasis to environmental protection and the treatment of indigenous peoples, but also considers the balancing of local/national and public/private interests.
- **Transboundary water conflicts and cooperation.** This session addresses not only international boundary issues but also transboundary conflicts and allocation issues within national borders.

Call for Papers

Allocating and Managing Water for a Sustainable Future: Lessons from Around the World

June 11, 2002

The first day of the conference, June 11, will feature concurrent sessions of contributed papers focusing on the three major themes of the conference. If you would like to present a paper, please send a brief one-page abstract, along with a brief biographical note and information on your current affiliation to: nrlc@spot.colorado.edu or

Natural Resources Law Center
401 UCB
University of Colorado School of Law
Boulder CO 80309-0401

Deadline for abstracts is November 30. Invitations for contributed papers will be made by January 1, 2002. For more information contact Kathryn Mutz at Kathryn.Mutz@colorado.edu.

To be placed on the mailing list for advance information about the conference, please contact us at (303) 492-1272 or send your request by e-mail to nrlc@spot.colorado.edu. You may also submit your contact information from our website at <http://www.colorado.edu/Law/NRLC>

The Impact of Growth and Development on Riparian Areas

The Colorado Riparian Association will be holding their 14th Annual Conference in Glenwood Springs on October 3-5, 2001. The conference will include field trips to sites along the Roaring Fork Valley to view first-hand how development can impact riparian areas. Field sessions will also include visits to sites that have been restored following development as well as sites that have been protected from development. Speakers at the conference will address growth and development from a range of perspectives including: county commissioner, ski company, rancher, regulatory agency, municipal, public education, and threatened and endangered species.

The keynote address will be given by NRLC Advisory Board member, Bill Travis.

For a conference agenda and registration materials (\$75 - \$90 before September 8) please contact Jay Thompson at (303) 239-3784 or Alan Carpenter at (303) 443-8094.



RECYCLE ME!

New book from Island Press in Fall 2001

JUSTICE and NATURAL RESOURCES

Just over two decades ago, the environmental justice movement emerged after troubling research found that environmentally hazardous facilities were predominantly sited near poor and minority communities. This inequitable distribution of the burdens of industrial facilities and pollution persists today, yet is only half of the problem. Poor and minority communities are also often denied the benefits of our lands' resources and can suffer disproportionate harm from decisions about their management and use.



JUSTICE and NATURAL RESOURCES

Concepts, Strategies, and Applications

Edited by
Kathryn M. Mutz, Gary C. Bryner,
and Douglas S. Kenney

Foreword by
Gerald Torres

Justice and Natural Resources, a collection of essays edited by the staff of the Natural Resources Law Center, is the first book to focus on the concept of environmental justice in the realm of natural resources. Contributors explore how decisions about the management, use and protection of resources can exacerbate social injustice and the problems of disadvantaged communities. They approach this more expansive view of environmental justice examining issues that are predominantly rural and western - many of

them involving Indian reservations, public lands, and resource development activities.

The book describes concepts, identifies a range of strategies, and examines efforts to devise solutions. Contributing authors propose ideas that others can test, assess, and refine by focusing on three integrating questions:

- What claims are (and should be) the concerns of environmental justice?
- What communities should have their interests championed under the banner of environmental justice?
- How do we remedy existing injustices and prevent future ones?

Pre-Publication Orders Now Being Accepted

Pre-publication orders of *JUSTICE and NATURAL RESOURCES* may be made for the price of \$20 for paper or \$40 for cloth (approximately 30% discount off the retail price and includes shipping and handling). Payment may be by check or credit card (Visa or MasterCard). Send check by mail to Natural Resources Law Center, University of Colorado School of Law, 401 UCB, Boulder CO 80309-0401. Credit card orders are accepted by phone (303) 492-1272 or fax (303) 492-1297.

For this discount, orders must be placed by November 1. Copies are scheduled to be mailed in early December. Contact the NRLC Publication Desk at (303) 492-1272 or Project Manager Kathryn Mutz at (303) 492-1293 for additional information.

WATER AND GROWTH IN COLORADO

A REVIEW OF LEGAL AND POLICY ISSUES FACING THE WATER MANAGEMENT COMMUNITY

by Peter D. Nichols, Megan K. Murphy and Douglas S. Kenney

The Center is nearing completion of a report examining legal and policy challenges facing Colorado's water managers during this period of unprecedented growth. Based on approximately 50 interviews with a "who's who" of Colorado water leaders as well as a review of recent water studies in the state, *Water and Growth in Colorado* describes existing water problems as well as potential solutions. The rapid increase in municipal water demands has brought a greater sense of urgency to almost all facets of Colorado water development and management.

Recent census figures rank Colorado as the nation's third fastest growing state by percent, trailing only Nevada and Arizona. Eight of the nation's eighteen fastest growing counties are in Colorado, led by national leader Douglas County. State population projections suggest an additional 1.7 million residents (approximately a 41 percent increase) can be expected over the next two decades. Most of these new residents will locate along the Front Range, a region with limited and already overburdened natural water supplies. Population growth on the West Slope is also expected to rise sharply, actually surpassing the growth rate of the Front Range.

In many locales, the result of fast growth is increased competition for limited water supplies among the municipal, agricultural, and environmental sectors, and between the East and West Slopes. Among Front Range municipal water providers, the nature and intensity of this competition varies greatly from city to city due to different water rights portfolios and infrastructures. Many of the associated legal and policy issues involve trans-basin diversions, environmental protection, water quality management, and interstate obligations. Coping strategies generally focus on new development of surface and groundwater, reallocating supplies from agricultural to municipal use, and conservation and efficiency. Each type of solution, however, raises new problems and concerns, as new management strategies must be reconciled with existing water use regimes.

The issues and questions raised in *Water and Growth in Colorado* should be of interest to all Coloradans concerned about the future of the state, its resources and its people. The findings will likely generate more focused attention from legal scholars, public policy analysts, researchers, journalists, water managers, and elected officials in Colorado and other western states facing similar challenges.

Expected publication date of this report (RR-27) is Fall 2001. Please see page 11 for ordering information.



Announcement

GS 592

WATER RESOURCES SEMINAR

Tuesdays, 4:10 p.m.

August 21 to December 4, 2001

C-142 Clark Building

Colorado State University

Fort Collins

The Fall 2001 Colorado State University offering of the Water Resources Seminar will define, and examine issues surrounding, use of the Prior Appropriation Doctrine to allocate water in Colorado during rapidly changing times.

The Prior Appropriation Doctrine governs water allocation in Colorado. The doctrine evolved in mid-1800s Colorado to insure that economic development occurred in arid settings in an orderly manner. As Colorado moves into the 21st century, rapid population growth, new recreation uses of water, and emerging ecosystem water needs are causing a renewed interest in the ability of the Prior Appropriation Doctrine to meet new societal needs.

The Colorado Legislature has modified the Prior Appropriation Doctrine over the years to adapt it to new knowledge of hydrology and ecosystem needs. As the needs continue to change, what future changes may be necessary to keep the Prior Appropriation Doctrine viable in meeting Colorado's need to fairly allocate its limited water resources?

NRLC researcher, **Doug Kenney** will be speaking on October 9, 2001 and NRLC Advisory Board Member **Dan Luecke** will present on October 30, 2001. For additional information contact Robert Ward or Shirley Miller at the Water Institute, (970) 491-6308.

Glenwood Springs Fire Forum

Working Towards a Common Goal

After a devastating fire season last summer, the Secretaries of Agriculture and Interior prepared a report, "Managing the Impacts of Wildfires on Communities and the Environment," providing the overall framework for fire management and forest health programs, and Congress appropriated more than \$1.6 billion for managing wildfires, reducing risks to communities in the wildland-urban interface, and forest restoration. Together, this National Fire Plan is helping to reshape fire management in the West.

On July 13, the Center, along with Congressman Scott McInnis, the Colorado State Forest Service and the White River National Forest co-sponsored a public forum entitled "Fire in the Urban-Wildland Interface" to discuss issues of forest health and fire management. Featured speakers were Josh Penry, Chief-of-Staff of the House Subcommittee on Forests and Forest Health which is chaired by Congressman Scott McInnis, Jim Hubbard, Colorado State Forester, Bill Wallis, BLM's State Fire Management Officer, Pete Blume, the Fire Management Officer for the Upper Colorado River Inter-agency Fire Management Unit, and Sloan Shoemaker, Conservation Director of the Aspen Wilderness Workshop.

Wallis began the discussion with an introduction to the National Fire Plan emphasizing its focus on fires suppression, dealing with hazardous fuels buildup, and increasing community participation in planning for and dealing with wildfires. Penry provided a brief history on the origin of fire suppression policy and concluded

that the policy has proven ineffective. According to Penry, two-thirds of forest land is in poor health with sick and dying trees. He noted that because of fire suppression, the number of trees per acre has jumped from 50 to almost 500.

In his presentation, Jim Hubbard focused on the role of the state in firefighting, fire prevention and mitigation, including its work with local communities in training, planning and infrastructure development. Pete Blume provided an update on the Fire Plan and its implementation in the Upper Colorado River area. Sloan Shoemaker cautioned that management for healthy ecosystems requires that each forest type must be considered individually when designing a fire management policy. He emphasized the need to spend more resources on treatment to avoid fires in the urban-wildland interface (and less on more costly fire suppression) and for landowners to take personal responsibility in reducing fire risk.

Though there was disagreement on the details of the fire program and its implementation, all of the speakers stressed the need for participation by all levels of government and citizens. "Community participation is important," said Wallis. Hubbard agreed, saying that if fire management is not locally led, "we're putting a Band-Aid on a problem instead of solving a problem." Hubbard cautioned that management must be locally led in order to be sustainable and long-term.

The state is encouraging community participation through the development of county fire management plans. These plans are important because they cross jurisdictions, are long term, and involve full local participation. In Colorado, Hubbard noted, we have not seen much county regulation up until this point. The state is not known for discouraging development, and most people heavily favor property rights, including their right to build homes away from adequate fire protection areas.

Following short presentations by the panelists, local fire fighters, county planners and commissioners, homeowners and conservationists weighed in with their views of the fire management plan and the way in which fire plan funds were being allocated. Several participants emphasized the need for more homeowner education, more funding to treat private lands to reduce fire risk, longer-term funding, and more work at the local level. While participants disagreed on the particulars of fire management in wildland areas –

"A lot of people are putting themselves in the way of fire, the cost of fighting fires is seven times that of fire prevention. Property rights are important, but personal responsibility is also important."

Sloan Shoemaker

particularly on whether or not there was a need for mechanical thinning to include cutting trees of all sizes – participants agreed that work in the urban-wildland interface should be

the focus. Working in the "red zone" (urban wildland interface) and avoiding work in the "red-button" areas (wilderness areas, proposed wilderness and roadless areas) will accomplish more for forest health and citizen safety with less controversy.

RECENT PUBLICATIONS

To order or for more information, please call, write, fax or email the Center. Checks should be made payable to the University of Colorado.

Postage and handling charges:

- \$4 for orders \$20 and under
- \$6 for orders \$21-\$50
- \$8 for orders \$51-\$100
- \$10 for orders over \$100

International, rush, or especially large orders may require additional handling costs.

Sales tax (only within Colorado):

Tax, City of Boulder: 7.36%

NATURAL RESOURCES LAW CENTER

University of Colorado School of Law
401 UCB
Boulder, CO 80309-0401
Order Desk Phone: (303)492-1272
Fax: (303)492-1297
e-mail: nrlc@spot.colorado.edu

Books:

- BK06 *Controlling Water Use: The Unfinished Business of Water Quality Protection*, David H. Getches, et al., 1991, \$25.
- BK03 *Water and the American West: Essays in Honor of Raphael J. Moses*, David H. Getches, ed., 1988, \$15.

Western States Policy Discussion Papers:

- DP10 "Implementing Winters Doctrine Indian Reserved Water Rights," Reid Chambers and John Echohawk, 1991, \$10.
- DP08 "The Changing Scene in the American West: Water Policy Implications," Theodore M. Schad, 1991, \$10.
- DP07 "Water Law and Institutions in the Western United States: Early Developments in California and Australia," Arthur Maass, 1990, \$10.
- DP06 "Water, the Community, and Markets in the West," Helen Ingram and Cy R. Oggins, 1990, \$10.
- DP04 "Water Rights Decisions in the Western States: Upgrading the System for 21st Century," Steve Shupe, 1990, \$10.
- DP02 "The Constitution, Property Rights and the Future of Water Law," Joseph L. Sax, 1990, \$10.
- DP01 "Values and Western Water: A History of the Dominant Ideas," Charles F. Wilkinson, 1990, \$10.

Public Land Policy Discussion Papers:

- PL05 "Public Land: How Much is Enough?" Dale Oesterle, 1996, \$10.
- PL04 "Issues Raised in Economic Definitions of Sustainability," Richard W. Wahl, 1996, \$10.
- PL03 "Conservation Biology and U.S. Forest Service Views of Ecosystem Management and What They Imply About Policies Needed to Achieve Sustainability of Biodiversity," David W. Crumpacker, 1996, \$10.
- PL02 "Sustainability and Beyond," Dale Jamieson, 1996, \$10.
- PL01 "People as Part of Ecosystems: The Case of Rangeland Reform," William E. Riebsame, 1996, \$10.

Occasional Papers:

- OP38 "New Tools for Improving Government Regulation: An Assessment of Emissions Trading and Other Market-Based Regulatory Tools," Gary C. Bryner, 1999, free.
- OP37 "The Bay Delta Accord: A Stride Toward Sustainability," Betsy Rieke, 1996, \$5.
- OP36 "New Options for the Lower Colorado River Basin," Lawrence J. MacDonnell, 1996, \$10.
- OP35 "The Law of the Colorado River: Coping with Severe Sustained Drought," Lawrence J. MacDonnell, et al., 1995, \$10.
- OP34 "Deregulation of the Energy Industry," Elizabeth Pendley, 1995, \$10.
- OP33 "Comparison of Coalbed Methane Statutes in the Federal, Virginia and West Virginia Jurisdictions," Elizabeth McClanahan, 1994, \$10.

Western Lands Reports:

- WL07 "Values of the Federal Public Lands," Douglas Kenney, et al., 1998, \$20.
- WL06 "State and Local Public Lands," Teresa Rice, 1993, \$10.
- WL05 "Public Lands Communities," Sarah Bates, 1993, \$10.
- WL04 "Managing for Ecosystems on the Public Lands," Sarah Bates, 1993, \$10.
- WL03 "The Changing Management Philosophies of the Public Lands," Sarah Bates, 1993, \$10.
- WL02 "The Changing Economics of the Public Lands," Lawrence J. MacDonnell, 1993, \$10.

Research Reports:

- RR27 "Water and Growth in Colorado: A Review of Legal and Policy Issues Facing the Water Management Community," 2001, \$20.
- RR26 "Laws Influencing Community-Based Conservation in Colorado and the American West: A Primer," 2000, \$4 for postage only.
- RR25 "Seeing the Forest Service for the Trees: A Survey of Proposals for Changing National Forest Policy," 2000, \$12.
- RR24 "The New Watershed Source Book: A Directory and Review of Watershed Initiative in the Western United States," 2000, \$17, CD-ROM \$10.
- RR23 "Arguing about Consensus: Examining the Case Against Western Watershed Initiatives and Other Collaborative Groups in Natural Resources Management," 2000; .pdf download at www.colorado.edu/Law/NRLC/recentpubs.html.
- RR22 "Innovations in Forestry: Funding Forest Plans," 1999, 10 copies free, additional copies at 5 for \$1 including postage.
- RR21 "Analysis of Institutional Innovation in the Natural Resources and Environmental Realm: The Emergence of Alternative Problem-Solving Strategies in the American West," 1999; .pdf download at www.colorado.edu/Law/NRLC/recentpubs.html.
- RR20 "Innovations in Forestry: Stewardship," 1998 10 copies free, additional copies at 5 for \$1, including postage.
- RR19 "Innovations in Forestry: Sustainable Forestry and Certification," 1998, 10 copies free, additional copies at 5 for \$1, including postage.

- RR18 "The State Role in Western Watershed Initiatives," Major contributors Gregg, Kenney, Mutz, Rice, 1998, \$15.
- RR17 "Innovations in Forestry: Public Participation in Forest Planning," 1997, 10 copies free, additional copies at 5 for \$1, including postage.
- RR16 "Restoring the Waters," 1997, free.
- RR15 "Resource Management at the Watershed Level: An Assessment of the Changing Federal Role in the Emerging Era of Community-Based Watershed Management," Douglas Kenney, 1997, \$15.

Conference Materials:

These materials are certified for Home Study CLE credit by the Colorado Board of Continuing Legal and Judicial Education.

- CF26 "Two Decades of Water Law & Policy Reform: A Retrospective and Agenda for the Future," June 13-15, 2001, **Notebook** \$75, **CD-ROM** \$10, Conference report free.
- CF25 "Water and Growth in the West," June 7-9, 2000, **CD-ROM** \$10.
- CF24 "Strategies in Western Water Law and Policy: Courts, Coercion and Collaboration," June 9-11, 1999, **CD-ROM** \$10.
- CF23 "Outdoor Recreation: Promise and Peril in the New West," June 8-10, 1998, **notebook** \$75; **audiotapes** \$150.
- CF21 "The National Forest Management Act in a Changing Society 1976-1996," September 16-18, 1996, **notebook** \$75; **audiotapes** \$150.
- CF20 "Biodiversity Protection: Implementation and Reform of the Endangered Species Act," June 8-12, 1996, **notebook** \$75; **audiotapes** \$150.

Special Order Through Island Press:

Dept. RLN. Phone (800) 828-1302

- Justice and Natural Resources*, Natural Resources Law Center, Fall 2001, see page 7.
- Fire on the Plateau: Conflict and Endurance in the American Southwest*, Charles F. Wilkinson, 1999, Dept. 2AU, \$24.95.
- Searching Out the Head Waters: Change and Rediscover in Western Water Policy*, Sarah Bates, et al., 1993.
- Natural Resources Policy and Law: Trends and Directions*, Lawrence J. MacDonnell and Sarah Bates eds. 1993.

Available through University Press of Colorado:

Phone (800) 627-7377

- Vranesh's Colorado Water Law, Revised Edition*, eds. James N. Corbridge, Jr. and Teresa A. Rice, 1999, \$65.00.
- From Reclamation to Sustainability: Water, Agriculture, and the Environment in the American West*, Lawrence J. MacDonnell, 1999, \$34.95.

Available through University of Washington Press: Phone: (800) 441-4115

- Messages from Frank's Landing, A Story of Salmon, Treaties and the Indian Way*, Charles F. Wilkinson, 2000, \$22.50.

NATURAL RESOURCES LAW CENTER ADVISORY BOARD

Don Ament

Commissioner of Agriculture
Ilf, Colorado

Patricia Beneke

Van Ness Feldman
Washington DC

James N. Corbridge, Jr.

School of Law
University of Colorado

John W. Firor

National Center for Atmospheric Research
Boulder, Colorado

David L. Harrison

Moses, Wittemyer, Harrison & Woodruff
Boulder, Colorado

Richard L. Knight

Department of Fishery & Wildlife Biology
Colorado State University
Ft. Collins, Colorado

Tracy Labin

Native American Rights Fund
Boulder, Colorado

Daniel F. Luecke

Environmental Defense
Boulder, Colorado

Guy Martin

Perkins Coie
Washington, D.C.

Clyde O. Martz

Davis Graham & Stubbs
Boulder, Colorado

Larry MacDonnell

Lawrence J. MacDonnell, P.C.
Boulder, Colorado

Ann Morgan

Colorado Bureau of Land Management
Denver, Colorado

Clayton J. Parr

Parr, Waldoups, Brown, Gee & Loveless
Salt Lake City, Utah

David P. Phillips

Rocky Mountain Mineral Law Foundation
Denver, Colorado

Lee Rozaklis

Hydrosphere Resource Consultants
Boulder, Colorado

John M. Sayre

Davis, Graham & Stubbs
Denver, Colorado

William Travis

Department of Geography
University of Colorado
Boulder, Colorado

Britton White, Jr.

El Paso Energy Corporation
Houston, Texas

Timothy E. Wirth

United Nations Foundation
Washington, D.C.

Marvin Wolf

Wolf Energy Company
Denver, Colorado

LAW SCHOOL ADVISORS

Dean Harold H. Bruff

Professor David H. Getches

Professor Lakshman Guruswamy

Associate Professor Sarah Krakoff

Professor Charles F. Wilkinson

CENTER STAFF

Gary Bryner, Director

Kathryn Mutz, Attorney

Doug Kenney, Research Associate

Geri Lameman, Office Manager

NATURAL RESOURCES LAW CENTER

This publication is a product of the Natural Resources Law Center, a research and public education program at the University of Colorado School of Law. The Center's mission is to promote sustainability in the rapidly changing American West by informing and influencing natural resource laws, policies, and decisions.

Interpretations, recommendations, or conclusions in this Natural Resources Law Center publication are solely those of the authors and should not be attributed to the Center, the University of Colorado, the State of Colorado, or any of the organizations that support Natural Resources Law Center research.

Resource Law Notes is the Center's free newsletter, published three times a year.

Contributions to the Center, through the University of Colorado Foundation are tax-deductible.

Resource Law Notes

NATURAL RESOURCES LAW CENTER

University of Colorado School of Law

Campus Box 401

Boulder, CO 80309-0401

Phone (303) 492-1272 • Fax (303) 492-1297

e-mail: NRLC@spot.Colorado.edu

ADDRESS SERVICE REQUESTED

Nonprofit Org.

U.S. Postage

PAID

Boulder, CO

Permit No. 257

KF 5505 .A15 R47

no. 52

Resource law notes : the
newsletter of the Natural
Resources Law Center,
University of Colorado,
School of Law
U. Colo. Law