1987

Natural Resources Law Center: Five Year Report, 1982-1987

University of Colorado Boulder. School of Law

University of Colorado Boulder. Natural Resources Law Center

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Natural Resources Law Center

Five Year Report
1982-1987

University of Colorado
at Boulder
School of Law
In the fall of 1981 the University of Colorado School of Law decided to establish a "Center for Natural Resources Law." Dean Betsy Levin convened a "Natural Resources Advisory Committee" to consider the proposal and to suggest activities that such a Center should undertake. The Committee endorsed the Law School's proposal, and Marvin Wolf of Wolf Energy Company (a 1954 graduate of the Law School) pledged $250,000 to support the Center, conditioned on the School's raising an additional $500,000.

The Center's purpose was defined to be the promotion of education and scholarship in the area of natural resources law and policy. The need for such a Center grew out of a concern for the wise development and use of our scarce natural resources and the many difficult choices that are involved. Demand for energy and minerals, for water, timber, recreation, and a high quality environment often involve competing and conflicting objectives. Through programs of education, research, and publication, the Center seeks to improve understanding of these issues, to facilitate exchange of ideas, and to promote better decision making for natural resources management, use, and conservation.

Prior to the establishment of the Center, the Law School, under the direction of Professor David H. Getches, had been organizing and presenting "short courses" on topics of natural resources law. The first official activity of the newly created Center was a continuation of that short course series in June 1982. During the past five years the Center has sponsored 20 conferences and workshops on a broad range of topics.

These programs have ranged from major national conferences to small focused workshops. Nearly 2,000 participants have attended these programs, representing 37 states and the District of Columbia. Approximately 25 percent of the participants were practicing attorneys, 38 percent were affiliated with federal, state, or local government, 17 percent were from private business, 10 percent were from academia, and 5 percent represented public interest groups.

The Center supports two visitors programs. The *Distinguished Visitors Program* brings prominent scholars, practitioners, and government officials to the Law School for several days. Distinguished Visitors have included the late Senior U.S. Circuit Court Judge Jean S. Breitenstein; Charles J. Meyers, former Dean of the Stanford Law School and now partner in Gibson, Dunn & Crutcher; Clyde O. Martz, former Solicitor of the Department of the Interior and partner in Davis, Graham & Stubbs; Cecil D. Andrus, former Secretary of the Interior and Governor of Idaho; and Carol E. Dinkins, former Assistant Attorney General for Land and Natural Resources in the U.S. Department of Justice, then Deputy Attorney General, and now a partner with Vinson & Elkins.

The *Fellows Program* offers an opportunity for persons from business, government, legal practice, or universities to spend a semester in residence at the Law School doing natural resource-related research and writing. The Center has hosted nine fellows from different disciplines and countries under the auspices of this program. A number of publications and presentations have resulted from the research of these fellows.

The Center has undertaken nine research projects, resulting in two books, two book chapters, a special issue of the *University of Colorado Law Review*, two other published papers, several research reports, and several conference presentations. Several projects have involved related fields such as economics and engineering. The Center also supports natural resource-related research by Law School faculty. Law students work as research assistants on these projects.

The Center produces a variety of publications to help disseminate the results of its activities. Substantial notebooks containing detailed outlines prepared by the speakers are produced in association with each major Center conference. In addition to two books, the Center has published an Occasional Papers and Research Reports series, as well as 11 issues of its newsletter, *Resource Law Notes*.

The Center is funded by gifts, grants, and revenues from its activities. The successful fund-raising campaign to match the challenge grant made by Marvin Wolf provided a sound financial base for establishing the Center. Half of the funds received by the Center have come from gifts. One-third have come from conference revenues. Another 10 percent of Center funds have come from project-related grants, with the remainder from the sale of materials and interest.

In 1986 Center expenditures totalled about $230,000. Of this amount approximately 45 percent related to conducting conferences and other educational programs of the Center. Thirty percent related to the research and publication activities of the Center. Ten percent of the expenditures supported the Center's visitor programs, and fifteen percent related to Center administration.

In its five short years the Center has actively pursued its goal of promoting natural resource-related education and scholarship. Its programs have reached a wide, national audience, providing valuable information and training in the area of natural resources law. These programs also have served to provide provocative forums for discussion on important natural resource issues. Increasingly, the Center's research and publications help to inform the practice of natural resources law, the conduct of natural resource-related business, and the development of policy. The existence of the Center at the University of Colorado School of Law has stimulated and enhanced the learning environment of the School and helped to attract outstanding new students. In the future the Center plans to continue its programs and activities and, subject to funding support, increase its emphasis on public policy.
Now entering its sixth year, the Natural Resources Law Center has been a significant addition to the University of Colorado School of Law and its programs. It has secured the preeminence of the Law School in natural resources law not only in the Rocky Mountain region, but also nationally. The Center has enhanced the learning environment of the School by stimulating the integration and expansion of its curricular offerings in natural resources law. It has improved the Law School’s ability to recruit both outstanding students, attracted here because of the School’s reputation as one of the nation’s leading institutions for the study of natural resources law, and nationally recognized faculty, drawn to the School because of the opportunity to participate in the work of the Center.

The Center has advanced the education of our students by providing funds to enable them to work on natural resources law projects with faculty members and Visiting Research Fellows. Not only do students employed in this manner benefit by receiving the financial assistance needed to support their legal education, but they also have the valuable educational experience of working closely with a faculty member on a major research project. In its first five years, the Natural Resources Law Center has employed approximately 50 students, roughly estimated at $46,700 in financial aid. The Center has also provided scholarships to enable interested students to attend its summer conferences and other workshops as full participants, allowing them to hear and meet with many of the nation’s leading experts in natural resources.

The Center has both stimulated and supported scholarship on the part of the faculty, not only of those who teach primarily in the natural resources law area, but also of those who teach in related areas. Often, Center projects have served to promote interdisciplinary research and publication, coauthored by members of the law faculty and faculty in other disciplines, both at the University of Colorado and at other academic institutions.

The Law School has been able to expand its outreach efforts to assist in the educational and professional growth of the practicing bar, government officials, and others through the Center’s programs. The Center has served to stimulate debate and thought and has aided in the development of natural resources policies. In addition to serving the State of Colorado, the Center has been successful in reaching a diverse national audience with its educational programs. The Center’s objectives, to establish itself and the School of Law as nationally recognized sources of education and scholarship in the area of natural resources law and to enrich and enhance the educational environment at the School, have clearly been accomplished. The University of Colorado, its Law School, and the people served by these institutions have benefited greatly from the activities of the Natural Resources Law Center.

Betsy Levin
Dean
In 1979 AMAX, Inc. presented the University of Colorado School of Law with a $5,000 grant, to be used to support activities in the area of natural resources. Professor David H. Getches suggested to then Dean Thomas G. Brown that the grant be used to sponsor a "short course" on public land law for practicing attorneys and others. The success of this program, held in July 1980, led Professor Getches to organize a similar "short course"—this time on water law—held in June 1981. Attendance at this program was nearly double that of the year before. The Law School's involvement with natural resources conferences was successfully launched.

In 1981 Betsy Levin became Dean of the Law School. Recognizing the importance of natural resources in the West and the strength of the faculty members teaching and writing on subjects of natural resources law, she sought to further develop the capabilities of the Law School in this area. After discussion with the faculty of the Law School, a "Natural Resources Advisory Committee" was convened at the School in November 1981 to discuss questions about the School's natural resources curriculum and to consider and provide advice on a proposal to establish a "Center for Natural Resources Law."

Clyde O. Martz, a prominent natural resources practitioner at Davis, Graham & Stubbs, Denver, CO, chaired the meeting. Others in attendance were John U. Carlson, a water law attorney then with Holland & Hart; Guy R. Martin, former Assistant Secretary for Land and Water Resources, U.S. Department of Interior, former Commissioner of Natural Resources for the State of Alaska, and partner in Perkins, Coie, Stone, Olsen & Williams, Washington, DC; Dr. Ruth A. Maurer, Associate Professor of Mineral Economics at Colorado School of Mines, Golden, CO; Raphael J. Moses, water law practitioner with Moses, Wittmermyer, Harrison and Woodruff, P.C., Boulder, CO; Laurence I. Moss, former President, Sierra Club, consulting engineer, Energy Design and Analysis, Estes Park, CO; Robert P. Pasque, Manager of Lands, Cities Service Corporation, Denver, CO; David P. Phillips, Executive Director, Rocky Mountain Mineral Law Foundation, Denver, CO; Dr. Robert E. Sievers, Professor of Chemistry and Director of Cooperative Institute for Research in Environmental Sciences, University of Colorado at Boulder; Leo N. Smith, natural resources and mining law practitioner, Molloy, Jones, Donahue, Trachta, Childers & Mallamo, Tucson, AZ; Marvin Wolf, President, Wolf Energy Company, Denver, CO; and Ruth Wright, State Representative, Boulder, CO.

The committee endorsed the Law School's proposal that such a Center should be established...

**CENTER HISTORY HIGHLIGHTS**

- **1980 and 1981**: Law School presents successful natural resources law summer "short courses."
- **November 1981**: Distinguished Advisory Committee endorses Law School's proposal to establish "Center for Natural Resources Law."
- **November 1981**: Challenge grant of $250,000 is presented to the Law School by Marvin Wolf ('54), President, Wolf Energy Company.
- **June 1982**: Center sponsors its first summer conference.
- **Fall Semester 1982**: Development Committee is established, chaired by Clyde O. Martz.
- **Fall Semester 1982**: Center's first Research Fellow is in residence.
- **January 1983**: Center presents first Denver luncheon symposium on a topical issue.
- **Spring Semester 1983**: Center's second Research Fellow is in residence.
- **April 1983**: Judge Jean S. Breitenstein comes to the Law School as the Center's first Distinguished Visitor.
- **June 1983**: Center sponsors its second summer conference.
- **September 1983**: Center presents first workshop.
- **November 1983**: Center presents second Denver luncheon symposium on a topical issue.
- **November 1983**: Center hires full-time Director, Dr. Lawrence J. MacDonnell.
- **Spring 1984**: Development Committee reaches its goal of $500,000.
Attending from the Law School were Dean Levin and Professors James N. Corbridge, David H. Getches, and Stephen F. Williams. The Committee endorsed the Law School’s proposal that such a Center should be established and that, in addition to continuing the Law School’s conference activities, it should also sponsor visitor programs and facilitate increased research in natural resources law. Marvin Wolf pledged $250,000 to support the Center, subject to raising an additional $500,000 from other sources.

The June 1982 program, “New Sources of Water for Energy Development and Growth: Interbasin Transfers,” was the first to be presented by the new Natural Resources Law Center. Organized principally by Professor Getches, the program featured presentations by three Law School faculty members: Professor James Corbridge, Professor Stephen Williams, and Professor Richard Collins. To provide staff support for the new Center, Katherine S. Taylor was hired as the Center’s Administrative Assistant in September, 1982. Professor Corbridge became the Director of the Fellows Program and during that fall semester Karen Bateld, a doctoral student in political science at the University of Linköping in Sweden, became the Center’s first Fellow.

The activities of the Center expanded in 1983. A luncheon symposium on the recent U.S. Supreme Court decision, Sporhase v. Nebraska, was held in Denver in January featuring a presentation by Advisory Board member Professor Dan Tarlock. Adrian Bradbrook, Reader-in-Law from the University of Melbourne, Australia was the second Center Fellow in the spring semester. Judge Jean S. Breitenstein came to the Law School as the Center’s first Distinguished Visitor. The June conference focused on the subject of groundwater. In September a workshop on special water districts, funded by a grant from the William H. Donner Foundation, was held at the Law School. In November the Center presented another luncheon symposium in Denver—this one on “The Regulatory Status of Natural Gas Pipelines as Carriers After De-regulation of Wellhead Prices.” The organizer and one of the speakers was Professor Williams. Also in November the Center hired a full-time director, Lawrence J. MacDonnell.

To meet the challenge grant by Marvin Wolf, Dean Levin established a Development Committee with Clyde Martz as chair. Committee members, alumni of the Law School, were Karl Anuta, Kenneth Barnhill, Thomas Brightwell, Kenneth Caughey, Stanley Dempsey, Gary Greer, Clyde Hampton, Richard Helmick, David Knowlton, Valentine Logan, Guy Martin, Gilbert McSawain, John Musick, William Nelson, Peter Wall, Randall Weeks, and Marvin Wolf. The Law School’s Director of Development Barbara Allar organized the fund raising effort. The $500,000 goal was reached in the spring of 1984 (a complete list of donors is provided in the finances section of the report).

With this financial base, the Center broadened and expanded its activities in its three basic program areas—education, visitors, and research and publication. These activities are more fully described in the pages which follow.
The Center organizes and presents a variety of educational programs on topics related to natural resources law and policy. Taught by some of the most distinguished lawyers and scholars in the country, these programs range from major national conferences to focused workshops where specific issues are addressed. These programs are aimed at practicing attorneys, government representatives, members of industry, public interest groups, and academics representing many different disciplines. They provide valuable information and training, and are provocative forums for discussion of important natural resources issues. They also provide an opportunity for those law students interested in natural resources law to meet some of the leading practitioners and scholars in the field.

The Center has presented “short courses” on natural resources law every summer since it was established. Since 1984 three workshops have been jointly sponsored with the Boulder County Bar Association. A major examination of Colorado water issues was jointly sponsored with the Colorado Water Resources Research Institute in 1985. A program on hazardous materials transportation was jointly sponsored with the Colorado Governor’s Office in 1986. The 1987 public lands conference was cosponsored by the College of Forestry and Natural Resources, Colorado State University.

The Center has organized and presented other conferences and workshops on a variety of topics.
The Center has sponsored three special luncheon programs in Denver for the practicing bar. Two were on important, new U.S. Supreme Court decisions likely to have a significant impact on the practice of natural resources law (Sporhase v. Nebraska and California Coastal Commission v. Granite Rock Co.), and the third concerned developments in the regulation of natural gas. The Center also has organized conferences on topics of special concern such as national forest management (in 1985) and external development affecting national parks (in 1986).

The success of the Center’s programs has been due in large part to the outstanding speakers and panelists. The Center’s programs have often been interdisciplinary in nature and have involved both as speakers and as attendees many with nonlegal backgrounds, including economists, geologists, engineers, hydrologists, and others.

The number of speakers at all Center programs now totals 369. Speakers have come from 31 states plus the District of Columbia. The predominant professional affiliation of the speakers has been law firms, followed by universities, state and local government, federal government, private business, and public interest groups. Approximately 2,000 people have attended the various programs since 1982. Participants have come from 37 states plus the District of Columbia, although the majority of the participants have come from Colorado. Other states with significant representation include (in descending number of total registrants): California, Arizona, New Mexico, Wyoming, District of Columbia, Montana, Texas, Nebraska, Nevada, and Utah. Approximately 25 percent of the participants were practicing attorneys, 23 percent were affiliated with state or local government, 15 percent were with the federal government, 17 percent were from business, 10 percent were from...
were faculty and students, 5 percent represented public interest groups, and 5 percent were classified as others.

**A SUMMARY OF NRLC EDUCATION-RELATED ACTIVITIES**

**Summer Programs**


**Luncheon Symposia**


*The Regulatory Status of Natural Gas Pipelines as Carriers After Deregulation of Wellhead Prices.* November 4, 1983. Held in Denver, this luncheon program featured two speakers and drew 41 attendees.


**Co-Sponsored Programs**

*Introduction to Superfund.* December 1, 1984. This program, cosponsored with the Boulder County Bar Association, was held at the Law School. It involved four speakers and 32 registrants.

*Colorado Water Issues and Options: The 90's and Beyond.* October 8-9, 1985. Held in Denver, this conference, cosponsored with the Colorado Water Resources Research Institute, involved 12 speakers and 33 panelists, and attracted 236 registrants.

*The Section 404 Dredge and Fill Permit Program.* March 8, 1986. Cosponsored with the Boulder County Bar Association and held at the Law School, this program involved five speakers and drew 54 registrants.

*Hazardous Materials Transportation.* September 6, 1986. Cosponsored with the Colorado Governor's Office and held at the Law School, this program drew 41 registrants and involved six speakers.


**Special Programs**


DISTINGUISHED VISITORS AND FELLOWS PROGRAM

Programs

The Center's Distinguished Visitors Program brings prominent scholars, practitioners, and government officials involved in natural resources to the School of Law for several days. While in residence, the distinguished visitors participate in a variety of activities including lectures, seminars and classes, and informal discussions with faculty and students. They also meet with faculty from other departments in the university, give public lectures to the community, and speak to members of the practicing bar at luncheon programs.

Distinguished Visitors

The late Judge Jean S. Breitenstein was the Center's first Distinguished Visitor in April 1983. Judge Breitenstein, a Senior U.S. Circuit Court Judge, had served on the U.S. Court of Appeals for the Tenth Circuit since 1957. After receiving his undergraduate and law degrees at the University of Colorado, he practiced law for 30 years, primarily in the area of water law, and then served as U.S. District Judge for the District of Colorado for three years, before being appointed to the U.S. Circuit Court. He also was appointed Special Master by the U.S. Supreme Court to two original jurisdiction interstate water suits.

Charles J. Meyers

Charles J. Meyers came to the Law School in April 1984 as the Center's second Distinguished Visitor. He has been an attorney in the Denver Office

Research Fellows Program

• Participants: academics representing various disciplines, government attorneys, attorneys from corporations or private practice

• In-Residence: one semester

• Activities: scholarly research and writing, auditing of law school courses lectures to students and faculty on their research, informal discussions with students and faculty
of Gibson, Dunn and Crutcher since 1982 where he practices primarily in the areas of water law and oil and gas law. Prior to that he was the Dean of the Stanford Law School and also the Richard E. Lang Professor of Law. He is the coauthor of leading casebooks in oil and gas law and water law and the author of numerous articles on these and other subjects. He has taught at the Universities of Texas, Minnesota, Columbia, and Cornell. He received his LL.B. and LL.M. from the University of Texas and his J.S.D. from Columbia. Dean Meyers has been a member of the NRLC Advisory Board since 1981.

Clyde O. Martz was the Center Distinguished Visitor in April 1985. He is an attorney with Davis, Graham & Stubbs in Denver where he practices a broad range of natural resources law.

After graduation from Harvard Law School, he joined the faculty at the University of Colorado School of Law in 1947, teaching mining law, oil and gas law, and water law. He authored the first casebook on natural resources law which was published in 1951. He moved from academia into private practice in 1962. In 1967 he went to Washington, D.C. to serve as Assistant Attorney General for Land and Natural Resources in the Department of Justice. In 1980 he returned to Washington as the Solicitor for the Department of the Interior. Mr. Martz has been a member of the Center’s Advisory Board since its inception and was its Chair from 1981 to 1986.

Cecil D. Andrus came to the Law School in September 1985 as the Center Distinguished Visitor. He was elected Governor of the State of Idaho in 1986, having also held that position from 1971 to 1977. Between 1977 and 1981 he served as Secretary of the Interior. During his tenure as Secretary, over 100 million acres of land in Alaska was set aside as new national parks, wildlife refuges, wild and scenic rivers, and national forest lands. At the same time he worked to reestablish a viable coal leasing program on the public lands and to amend the laws governing leasing of oil and gas in the outer continental shelf to permit balanced development of these resources.

Carol E. Dinkins was the Center Distinguished Visitor in September 1986. She is an attorney with the firm of Vinson & Elkins in Houston, Texas. Her practice is primarily in the area of environmental law. Between 1981 and 1983 she served as Assistant Attorney General for Land and Natural Resources in the U.S. Department of Justice. In 1984 she returned for a year to the Department of Justice as Deputy Attorney General. Among her many outside activities she is a member of the Board of Directors of the Environmental Law Institute and of the Environmental and Energy Study Institute. Her undergraduate degree is from the University of Texas and her law degree from the University of Houston.

Center Fellows

Karen Bateld, a political science doctoral student from the University of Linköping in Sweden, was the first Center Fellow. She visited at the Law School during the fall of 1982, studying transboundary water conflicts between the United States and Mexico on the Colorado River.

Adrian Bradbrook, Reader-in-

Publications by Center Fellows

The Fellows Program offers an opportunity for persons from business, government, legal practice, or universities to spend a semester in residence at the School of Law.
Jon K. Mulford, an attorney practicing law in Aspen, Colorado, was a Center Fellow in the spring of 1984. His research, supported in part by a grant from the Rocky Mountain Mineral Law Foundation, examined the land sale and exchange policies of the Bureau of Land Management and the U.S. Forest Service. He presented his findings at a Center conference on the “Federal Land Policy and Management Act” in June 1984. He also wrote an article for the Center’s newsletter Resource Law Notes on “Federal Land Tenure Policy.”

Barbara Lausche, now an attorney with the World Wildlife Fund in Washington, D.C., was a Center Fellow in the spring of 1985. Her research centered on international environmental issues. She published an article in Resource Law Notes, “Law, Development, and the Sri Lankan Elephant.” She has been a Visiting Fellow at Oxford and a Research Associate at the IUCN Environmental Law Center in Bonn, Germany.

James Kennedy, an attorney practicing real estate and land use law in Ketchum, Idaho, also visited the Center as a Fellow in the spring of 1985. His research on avalanche zoning and avalanche liability law was supported in part by a grant from the American Bar Foundation.

Steven J. Shupe, an attorney and now president of Watershed West in Santa Fe, New Mexico, was a Center Fellow in the fall of 1985. His research on ways to improve water use efficiency was supported, in part, by a grant from the David and Lucile Packard Foundation. He presented his research findings at a Center conference that fall and published his report in the Center book, Tradition, Innovation, and Conflict: Perspectives on Colorado Water Law.

N. Earl Spangenberg, an associate professor of water and forestry at the University of Wisconsin, Stevens Point, also was a Center Fellow in the fall of 1985. His research concerned the relationship between nonpoint source pollution controls and management practices in forestry and agriculture. He published some preliminary findings in Resource Law Notes as “Thoughts About Nonpoint Source Pollution Control.” Subsequently he has published several additional articles on this general subject.

David Mastbaum, an attorney in private practice in Boulder, was the Center Fellow in the spring of 1986. His research centered on the development of an alternatives analysis for activities adjacent to national parks that would adversely affect park values and uses. He helped organize the Center conference, “External Development Affecting the National Parks: Preserving The Best Idea We Ever Had,” held in September, 1986 at which he presented the results of his research. He also published a summary article, “No Park Is an Island: A Simple Solution for the Thorny Problem of Park Protection,” in Resource Law Notes.

Cheng Zheng-Kang, an associate professor at Peking University Department of Law in Beijing, People’s Republic of China, was the Center Fellow in the fall of 1986. During his visit, he studied U.S. environmental law and the enforcement of these laws. He published a Center Occasional Paper, “A Brief Introduction to Environmental Law in China.” A modified version of this paper was published in Resource Law Notes as “The Chinese Approach to Legal Management of the Environment.”
The Center undertakes research on subjects of natural resources law and policy. Most Center research projects are supported by a specific grant. The Center also supports research and writing by faculty and visiting research fellows. Student research assistance is extensively used in these projects.

The Center produces a variety of publications in order to disseminate broadly the results of its activities. Substantial notebooks containing detailed outlines prepared by the speakers are produced in association with each major Center conference. These notebooks are provided to all conference attendees and are available for purchase following the conference. The Center has published two books. It has also established an “Occasional Papers” and “Research Report” series which makes available the research findings of Center associates. The Center also publishes a newsletter, *Resource Law Notes*, several times yearly which features information about the Center as well as substantive articles.

**Center Research Projects**

1. **Special Water Districts Project**

   This project, initiated with the support of the William H. Donner Foundation, examined the role of special water districts in the face of increasing pressures on the limited water supplies of the western United States. A special two-day workshop was convened in September, 1983 with a group of invited participants including managers of special water districts, government officials, and academics. Four specially prepared papers were presented and discussed. A book, *Special Water Districts: Challenge for the Future*, including the edited papers and other material was edited by Professor James N. Corbridge, Jr. and subsequently published by the Center.

2. **The Endangered Species Act**

   This project, funded in part by the Colorado Water Resources Research Institute, examined the effect of the Endangered Species Act (ESA) on water development activities. Particular attention was paid to the application of the ESA in protecting endangered whooping cranes in the Platte River basin and endangered fishes in the Colorado River basin. The project report, “The Endangered Species Act and Water Development Within the South Platte Basin,” contains a detailed analysis of the statute and interpretive case law, a discussion of selected legal issues, and a summary of the interaction between the ESA and water development activities in the South Platte and Colorado River basins. A major conclusion is that the potency of the Act should be directed toward the development of solutions that will recover the species of concern and not merely be used to block development.

3. **Legal Impediments to Water Conservation**

   The David and Lucile Packard Foundation provided partial funding for a study of the benefits of improved efficiency in the use of water and the

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<thead>
<tr>
<th>CENTER’S PROGRAM OF RESEARCH AND PUBLICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Center Research Projects</strong></td>
</tr>
<tr>
<td><strong>Special Water Districts Project</strong></td>
</tr>
<tr>
<td>Source of Funds: William H. Donner Foundation</td>
</tr>
<tr>
<td><strong>The Endangered Species Act Project</strong></td>
</tr>
<tr>
<td>Source of Funds: Colorado Water Resources Research Institute</td>
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<tr>
<td><strong>Legal Impediments to Water Conservation</strong></td>
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<tr>
<td>Source of Funds: David and Lucile Packard Foundation</td>
</tr>
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<td><strong>Natural Gas Prorationing Project</strong></td>
</tr>
<tr>
<td>Source of Funds: University of Colorado, Boulder Enrichment Funds</td>
</tr>
<tr>
<td><strong>Area-of-Origin Issues Project</strong></td>
</tr>
<tr>
<td>Source of Funds: Colorado Water Resources Research Institute</td>
</tr>
<tr>
<td><strong>Mine Waste Regulation Project</strong></td>
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<tr>
<td>Source of Funds: Center’s Own Funds</td>
</tr>
<tr>
<td><strong>Environmental, Health, and Safety Regulation of Mining Project</strong></td>
</tr>
<tr>
<td>Source of Funds: Center’s Own Funds</td>
</tr>
<tr>
<td><strong>Conjunctive Use of Surface and Ground Water Project</strong></td>
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<tr>
<td>Source of Funds: Colorado Water Resources Research Institute</td>
</tr>
<tr>
<td><strong>Instream Flow Protection Project</strong></td>
</tr>
<tr>
<td>Source of Funds: General Service Foundation</td>
</tr>
<tr>
<td><strong>Center Publications</strong></td>
</tr>
<tr>
<td>• Books</td>
</tr>
<tr>
<td>• Occasional Papers</td>
</tr>
<tr>
<td>• Center Newsletter</td>
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<tr>
<td>• Conference Notebooks</td>
</tr>
<tr>
<td>• Law Review Articles and Chapters in Books</td>
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legal and institutional impediments to making such improvements. The principal investigator for the project was Center Fellow Steven Shupe. The results of his research were presented at a Center conference, “Colorado Water Issues and Options,” held in October, 1985 and published as a chapter entitled “Wasted Water: The Problems and Promise of Improving Efficiency Under Colorado Water Law” in the Center book, Tradition, Innovation, and Conflict: Perspectives on Colorado Water Law.

4. Natural Gas Prorationing

This project was undertaken with program enrichment support from the University. It examined increasing state regulation of natural gas by means of prorationing and ratable take programs. A special workshop, organized by Professor Stephen F. Williams, was held in Boulder in June, 1985. Edited versions of the papers presented at that workshop together with a transcript of portions of the workshop proceedings were published in a special issue of the University of Colorado Law Review, “Symposium: Workshop on Natural Gas Prorationing and Ratable Take Regulation.”

5. Area-of-Origin Issues

In the arid West water supplies often must be moved substantial distances to the place of use. This interdisciplinary project focused on the issues that are raised by the removal of water from the area of origin. The report, “Guidelines for Developing Area-of-Origin Compensation,” sets out the approaches taken in a number of states to provide some basis of protection to the area of origin. Special attention is given to the situation in Colorado. General economic considerations are presented. The major conclusion is that there are legitimate concerns that can best be addressed through a compensation approach. The research was supported in part by a grant from the Colorado Water Resources Research Institute.

6. Mine Waste Regulation

This project was initiated in conjunction with a special conference organized by the Henry Krumb School of Mines at Columbia University and the U.S. Bureau of Mines, “The Changing World Metals Industries.” The research examined environmental problems associated with wastes from mining and the federal laws aimed at cleaning up existing wastes presenting a hazard to human health and the environment as well as controlling the management of newly generated wastes. A major conclusion of the research was that mine wastes require careful management and control but that they should not be regulated under the extraordinarily complex provisions governing hazardous wastes. The research report, “Regulation of Wastes from the Metals Mining Industry: The Shape of Things to Come,” was published as a Center Occasional Paper and in Mineral Processing and Technology Review.

7. Environmental Health and Safety Regulation of Mining

This project was begun in connection with a conference, “Public Policy and the Competitiveness of U.S. and Canadian Metals Production,” organized by the Colorado School of Mines and sponsored by the U.S. Bureau of Mines and the Canadian Department of Energy, Mines, and Resources (Mineral Policy Sector). The research reviewed the environmental, health, and safety issues associated with mining, examined the laws which govern these aspects of mining—primarily in the U.S. and, to a lesser degree, in Canada and other countries, summarized available information regarding the costs of these laws and related regulations, and considered the effect of these costs on the competitiveness of the U.S. metal producing sector. A major conclusion is that the direct effect of environmental, health, and safety regulations on U.S. competitiveness appears to be less than factors such as ore grade, labor costs, and exchange rates.

8. Conjunctive Use of Surface and Ground Water

Supported in part by a grant from the Colorado Water Resources Research Institute, this ongoing project examines legal and institutional arrangements that have been established to encourage fuller utilization of the water resources in the South Platte basin through the conjunctive use of surface and ground water. The research involves case studies of two organizations of ground water users whose large-scale water pumping has been integrated into the surface rights system, as well as studies of plans for augmentation permitting new, out-of-priority water uses.

9. Instream Flow Protection

This ongoing project is funded by the General Service Foundation and entails an evaluation of the effectiveness of enforcement of selected state instream flow programs and a number of cooperative efforts to create protected instream flows as well as
evaluating federal programs which have the effect of creating instream flows. Principal investigator for this project is former Center Fellow Steven Shupe.

Center Publications

1. Books

In 1984 the Center published Special Water Districts: Challenge for the Future. Edited by Professor James N. Corbridge, Jr., it includes papers presented at a workshop held in Boulder in 1983. Major issues discussed at the workshop and considered in the book are water supply problems, public perception of districts, jurisdictional conflicts with other districts and agencies, financial and planning problems, dispute resolution problems, and district organization and voter participation.

In 1987 the Center published Tradition, Innovation, and Conflict: Perspectives on Colorado Water Law. This book contains ten papers on issues related to Colorado water law and policy as well as edited transcriptions from six workshops at which these papers were discussed at the 1985 conference, "Colorado Water Issues and Options: The 90's and Beyond."

2. Occasional Papers

"The Future of National Parks: Recreating the Alliance Between Commerce and Conservation" is an edited version of the keynote address given by Professor Robin Winks at the 1986 Center conference, "External Development Affecting the National Parks: Preserving 'The Best Idea We Ever Had.'"

"A Brief Introduction to Environmental Law in China" was written in the fall of 1986 by Professor Cheng Zheng-Kang while visiting the Law School as a Research Fellow.

"Regulation of Wastes from the Metal Mining Industry: The Shape of Things to Come" is an extended version of a presentation given at Columbia University in 1986.

"Emerging Forces in Western Water Law" is based in part on work done by Steven Shupe while a Visiting Research Fellow at the Center in 1985. It was originally published in Resources Law Notes.

"The Rights of Communities: A Blank Space in American Law" is an edited version of a public talk given by Professor Joseph L. Sax while a visiting professor at the University of Colorado School of Law in the summer of 1984.

"Nuisance and the Right of Solar Access," "Tortious Liability for the Operation of Wind Generators," and "The Access of Wind to Wind Generators" were all written by Adrian Bradbrook, Reader in Law, University of Melbourne, based in part on work done while a Visiting Research Fellow at the Center in 1982.

3. Newsletter

Eleven issues of Resource Law Notes have been published by the Center between January 1984 and June 1987. In addition to including information about Center programs and activities, the newsletter has included a number of substantive articles including "Federal Land Tenure Policy" by Center Fellow Jon K. Mulford (No. 3, Sept. 1984), "Law, Development... and the Sri Lankan Elephant" by Center fellow Barbara Lausche (No. 5, May 1985), "Returning Land Management Under FLPMA to the Principles of the Public Land Law Review Commission" by Clyde O. Martz (No. 5, May 1985), "The Future of Western Water Law" by Professor David H. Getches (No. 6, Sept. 1985), "Land Use and Water Quality: Thoughts About Nonpoint Source Pollution Control" by Center Fellow Professor N. Earl Spangenberg (No. 7, Jan. 1986), "Stipulation in Mineral Leasing Act Leases: Power to Spare or Spare Power?" by John R. Little, Jr. (No. 7, Jan. 1986), "On the Ground' Along the Colorado River" by Center Director Larry MacDonnell (No. 8, Apr. 1986), "Navigating the Wetlands Jurisdiction of the Army Corps of Engineers" by Christopher H. Meyer (No. 9, Aug. 1986), "No Park Is An Island: A Simple Solution for the Thorny Problem of Park Protection" by Center Fellow David Mastbaum, and "Out-of-Basin Water Exports in Colorado," by Center Director Larry MacDonnell (No. 11, Apr. 1987).
4. Articles and Chapters

The Center has supported research or invited papers that have resulted in published articles and chapters in books. The following is a partial list of the research published or in progress by members of the University of Colorado Law School faculty:

Richard B. Collins


David H. Getches


James N. Corbridge, Jr.


Daniel B. Magraw


Charles F. Wilkinson


Stephen F. Williams


Lawrence J. MacDonnell, Director


In addition, Professor Norton Steuben has, with the support of the Center, developed a new course at the Law School on the Taxation of Natural Resources, and is developing materials for a casebook to be published on the topic.

Faculty from other law schools and practitioners have also published research supported by the Center. Some of these publications include:


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The Natural Resources Law Center is supported by gifts, grants, and revenues from its activities. Gifts comprise approximately 50 percent of the funds received by the Center. Conferences continue to be a major source of Center revenues. Revenues from conference registrations represent approximately 33 percent of the funds received by the Center. In addition, the Center has sought and obtained funds related to specific projects, generally research-related. The major source of such funds has been foundations.
The Center’s expenditures for calendar year 1986 totalled about $230,000. Of this amount approximately 45 percent was related to the conferences and other educational programs sponsored by the Center. About 30 percent of the expenditures were related to the research and publication activities of the Center. About 10 percent of the expenditures supported the Center’s visitor programs, and about 15 percent related to Center administration.
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- Professor A. Dan Tarlock
- Professor Stephen F. Williams & Faith Williams

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- Union Pacific Foundation
  (Rocky Mountain Energy and Champlin Oil)
- University of Colorado, President's Discretionary Fund
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- Martin Exploration
In five short but busy years the Center has established itself as a leading source of education and analysis in the natural resources area. Increasingly it has been broadening the kinds of activities it undertakes. It has expanded its educational programs from a single annual "short course" to a mix of conferences and workshops on a variety of topics. The programs have become more interdisciplinary in nature and attract a diverse audience. The Center has developed a program of research, generally supported by grants. Research is undertaken by Center Fellows, by faculty associated with the Center, and by Center staff. The Center also has produced a variety of publications, ranging from a periodic newsletter to substantial books.

The Center and its Advisory Board are now in the midst of a thorough review and analysis of Center programs and activities. This five year report is one product of that review. The process has been highly beneficial. One early conclusion from that review is that the Center should continue its three basic program areas of education, visitation, and research and publication. These activities are now well established and contribute substantially to the accomplishment of the Center's educational and informational objectives.

In addition, the Center intends to develop a more policy-oriented component that would emphasize critical issues affecting natural resources in the State of Colorado and the West. To this end, the Center will seek to develop and sponsor policy forums and seminars involving decision makers and others, although the Center itself will continue to refrain from promoting and endorsing any particular policy position. Its research will seek to surface the major policy options and related issues. Publications will serve to inform policy discussions and further those discussions.

In recent years the Center has sought to broaden its activities in a more interdisciplinary way. This effort will be continued and expanded. An effort will be made to expand its linkages with other academic institutions and disciplines, both within the State of Colorado and outside the state.

The Center also is exploring ways to ensure its continued financial viability now that the initial fund raising effort, undertaken to match the challenge grant, has been completed. Additional sources of funding must be established if the Center is both to maintain its current activities and add others.
APPENDICES

Appendix A
NRLC ADVISORY BOARD

In November 1981 Dean Betsy Levin convened a group of distinguished and experienced scholars and practitioners, the “Natural Resources Advisory Committee,” to discuss matters related to the School’s natural resources curriculum and a proposal for a “Center for Natural Resources Law.” This group consisted of Clyde Martz as Chair and John Carlson, Guy Martin, Ruth Maurer, Raphael Moses, Laurence Moss, Robert Pasque, David Phillips, Robert Sievers, Leo Smith, Marvin Wolf, and Ruth Wright. Other members of this Committee, who were unable to attend this meeting were Stanley Dempsey, Hubert Farbes, Charles Meyers, James Robb, Ernest Smith, and Dan Tarlock. When the Natural Resources Law Center was established, this group became the original Center Advisory Board.

Since then, the Advisory Board has guided the growth and development of the Center. Meeting twice a year, usually in January and June, the Advisory Board reviews Center activities since the last meeting and discusses proposed activities. Drawing from their diverse and extensive experience in their natural resource-related professions, Board members have been instrumental in shaping the programs and activities of the Center. Their generous donation of time and effort has contributed importantly to the success of the Center.

Former and Present Advisory Board Members’ Biographies


Hubert A. Farbes, Jr. (1981-83). Conover, McClearn, Heppenstall & Kearns, Denver. First Vice-President,
Hubert A. Farbes, Jr.

Member (1980-84), Rocky Mountain Mineral Law Foundation. LL.B., University of Colorado School of Law.

Guy R. Martin (1981-87). Perkins Coie, Stone, Olsen & Williams, Washington, D.C. Assistant Secretary of the Interior for Land and Water Resources (1977-81); Commissioner of Natural Resources for the State of Alaska (1975-77); Professor of Political Science and Public Law, Alaska Methodist University. J.D., University of Colorado School of Law.

Clyde O. Martz (1981-88). Davis, Graham & Stubbs. Executive Director, Colorado Department of Natural Resources (1987); Solicitor, Department of the Interior (1980-81); Assistant U.S. Attorney General, Department of Justice (1967-69); Professor of Law, University of Colorado School of Law (1947-62). LL.B., Harvard.

Charles J. Meyers (1981-87). Gibson, Dunn & Crutcher, Denver. Professor (1962-76) and Richard E. Lang Professor of Law and Dean (1976-81), Stanford University School of Law; Vice Chairman, Governor's Commission to Review California Water Rights Law (1977-78); Member, Western Governors Association, Task Force on Water Resources (1985-86). LL.B., University of Texas School of Law; LL.M. and J.S.D., Columbia University School of Law.

Raphael J. Moses (1981-87). Moses, Wittemyer, Harrison & Woodruff, Boulder, CO. Regent, University of Colorado (1973-74); Member, Vice Chairman, Counsel and Consultant, Colorado Water Conservation Board (1952-77); Member, Ad Hoc Committee on Water Resources, Federation of Rocky Mountain States, Inc. (1975-76); Chairman, Western States Water Council (1966-69). J.D., University of Colorado School of Law.

Charles J. Meyers


Robert Pasque (1981-86). Manager of Lands, Cities Service Oil and Gas Corporation, Enid, Oklahoma. Member and Past Chairman, Public Lands Committee, Western Oil and Gas Association; Member, Public Lands Committee, Interstate Oil Compact Commission. J.D., University of Colorado School of Law.

William H. Nelson (1987-90). Nelson, Hoskin, Groves & Prinster, Grand Junction, Colorado. Chairman, Mineral Law Section (1972-73), Member, Board of Governors (1973-76), and President (1979), Colorado Bar Association; Chairman, Special Committee on Atomic Energy Law,

William H. Nelson

David P. Phillips (1981-ex officio). Executive Director, Rocky Mountain Mineral Law Foundation, Denver (1971-). Of Counsel, Industrial Resources (1966-70); Geological Engi-


Ernest E. Smith (1981-87). Rex G. Baker Centennial Chair in Natural Resources Law (1983-), Joseph C. Hutcheson Professor in Law (1980-83), Dean (1974-79), and Professor (1968-), University of Texas School of Law; Of Counsel, Hughes & Luce (1981-).

Leo N. Smith (1981-86). Molloy, Jones, Donahue, Trachta, Childers & Mal lamo, Tucson. Member, Rocky Mountain Mineral Law Foundation. LL.B., University of Colorado School of Law.


Gretchen VanderWerf (1986-89). Hawley & VanderWerf, Denver. Trustee (1980-86) and Executive Committee (1984-86), Rocky Mountain Mineral Law Foundation; Member, Rocky Mountain Oil and Gas Association, Interstate Oil Compact Commission, Colorado Oil and Gas Conservation Commission; Director,


Gilbert F. White (1984-87). Distinguished Professor Emeritus, Department of Geography, University of Colorado, Boulder. Former Project Director, Natural Hazards Research and Applications Information Center, Institute of Behavioral Science, University of Colorado; Chairman, Environmental Studies, Natural Resources Council (1975-77); President, Haverford College (1946-55); President, Scientific Committee on Problems of the Environment of the International Congress of Scientific Unions (1976-82). Ph.D., University of Chicago.


James C. Wilson (1987-90). Former President and Chief Executive Officer, Rocky Mountain Energy, Broomfield, Colorado. President, Union Pacific Mining Corporation (1971-74); Member and Past President, Board of Trustees, Colorado School of Mines; Member and former Chairman, Board of Directors, Western Regional Council. M.A., Economics, Columbia University.


Ruth Wright (1981-86). Representative, House Minority Leader, and Member, Agriculture, Livestock and Natural Resources Committee, Colorado State House of Representatives;
Appendix B
NRLC FACULTY ADVISORY COMMITTEE

Even before the Center was established, Professor David Getches had begun organizing and presenting “short courses” on topics of natural resources law and policy. In 1981 Professor James N. Corbridge, Jr. spoke at the water law short course organized by Professor Getches. Representing the Law School at the November 1981 meeting of the group convened by Dean Betsy Levin to advise the Law School on its natural resources law offerings and programs were, in addition to the Dean, Professor Corbridge, Professor Getches, and Professor Stephen Williams. With the institution of the Natural Resources Law Center this group was established as the Faculty Advisory Committee, responsible for the immediate management of the Center.

Professor James N. Corbridge, Jr. (1981-) was actively involved in organizing the Center’s summer programs in 1983, 1984, 1985, and 1986. He also participated in the workshop on special water districts in 1983 and edited the Center book, Special Water Districts: Challenge for the Future, published in 1984. He was a contributor to the Center research report, “Guidelines for Developing Area-of-Origin Compensation.” In 1986 he was appointed Chancellor of the University of Colorado, Boulder.

Professor David H. Getches (1981-) has been a major force in the life of the Center from the beginning. He organized all the programs through 1983 when he took a leave of absence from the Law School to become the Ex-executive Director of the Colorado Department of Natural Resources. Before leaving, he secured a grant from the William H. Donner Foundation to support the workshop on special water districts. Even while on leave of absence he continued to help shape the Center conferences and was a speaker at many of these conferences. He also continued to participate in the Center Advisory Board meetings. His paper at the 1985 Colorado water issues conference, “Meeting Colorado’s Water Requirements: An Overview of the Issues,” was published in the Center book, Tradition, Innovation, and Conflict: Perspectives on Colorado Water Law. He returned to the Law School faculty full time in January 1987 and has resumed active participation in the affairs of the Center.

Professor Charles F. Wilkinson (1987-) visited at the School of Law in the 1984-85 academic year. In addition he became involved in the Center’s Faculty Advisory Committee. The Center has provided funding for research assistance for Professor Daniel B. Magraw which he used in connection with several articles: “Transboundary Harm: The International Law Commission’s Study of ‘International Liability’,” in 80 Am. J. Int’l. L. 305 (1986); “The International Law Commission’s Study of International Liability for Nonprohibited Acts As It Relates to Developing States,” 61 Wash. L. Rev. 1041 (1986); and “International Legal Remedies” in The International Transfer of Hazardous Technologies: The International Legal Challenge. Professor Magraw spoke on international issues at the 1986 Center conference, “External Development Affecting the National Parks: Preserving ‘The Best Idea We Ever Had.’” He has prepared a paper on this topic, “International Law and Park Protection: A Global Responsibility,” for inclusion in a forthcoming book on national parks.

Associate Professor Daniel B. Magraw (1987-) has recently joined...
to teaching courses in natural resources law he was very active with the Center. He helped to organize a one-day program in March 1985 on "Management of National Forests in the Rocky Mountains." He was a major contributor to the organization of the summer 1985 water conference "Waste Water Law in Transition." In the fall of 1985 he was in residence at the Law School as a Visiting Natural Resources Scholar. The Center provided funding for student research assistance in support of his research and writing while visiting the Law School. In 1986 Professor Wilkinson joined the Advisory Board of the Center and helped to organize the summer 1987 conference on Public Lands. Professor Wilkinson joined the permanent faculty of the University of Colorado School of Law in June 1987 and became a member of the Faculty Advisory Committee at that time.

**Professor Stephen F. Williams** (1981-86) helped organize and spoke at the fall 1983 luncheon symposium on "The Regulatory Status of Natural Gas Pipelines as Carriers After De-regulation of Wellhead Prices." In 1984 he was appointed to the position of Natural Resources Scholar, a position which enabled him to devote half of his time to research and publication. He organized a special workshop on trends in state regulation of natural gas held in Boulder in June 1985. Materials from that workshop were published as a special issue of the *Law Review* in 1986. In October 1985 he spoke at the Center conference on Colorado water issues. His paper, "A Market-Based Approach to Water Rights: Evaluating Colorado’s Water System,” became a chapter in the Center book, *Tradition, Innovation, and Conflict: Perspectives on Colorado Law*. In 1986 he was appointed to the U.S. Court of Appeals for the District of Columbia Circuit. He became a member of the Advisory Board of the Center in 1987.

**Professor Richard B. Collins** spoke at the 1984 and 1985 summer water conferences on issues related to Indian water rights. A developed version of his 1984 presentation was published as “Indian Allotment Water Rights” in 20 *Land and Water Law Review* 421 (1985).

**Professor Norton L. Steuben**, with assistance from the Center, has developed a new course, and materials for that course, the "Taxation of Natural Resources."
1986-87 Natural Resources Law Center Advisory Board


Gary L. Greer, Esq., Sherman & Howard, Denver.

Charles W. Howe, Professor, Department of Economics, University of Colorado, Boulder.

Jay Hughes, Dean, College of Forestry and Natural Resources, Colorado State University, Fort Collins.

Ralph W. Johnson, Professor of Law, University of Washington, Seattle.

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John Tilton, Professor, Department of Mineral Economics, Colorado School of Mines, Golden.

Gretchen VanderWerf, Esq., Hawley & VanderWerf, Denver.

John G. Welles, Executive Director, Denver Museum of Natural History, Denver.

Gilbert F. White, Professor, Department of Geography, University of Colorado, Boulder.


James C. Wilson, Consultant, Longmont.


1986-87 Faculty Advisory Committee

Betsy Levin, Dean, University of Colorado, School of Law.

James N. Corbridge, Jr., Professor of Law (on leave). Chancellor, University of Colorado, Boulder.

David H. Getches, Associate Professor of Law, University of Colorado, Boulder.

Daniel B. Magraw, Associate Professor of Law, University of Colorado, Boulder.

Charles F. Wilkinson, Professor of Law, University of Colorado, Boulder.

Center Staff

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Katherine Taylor, Executive Assistant.

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