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Summer 2011

Baselines Newsletter, no. 8, summer/fall 2011

University of Colorado Boulder. Natural Resources Law Center

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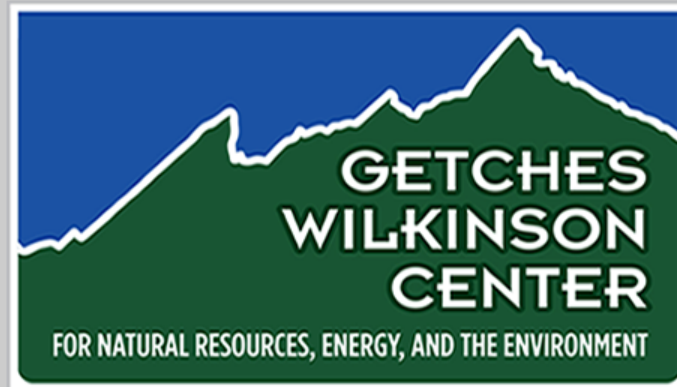
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BASELINES: THE NATURAL RESOURCES LAW CENTER NEWSLETTER, no. 8, summer/fall 2011 (Natural Res. Law Ctr., Univ. of Colo. Law Sch.).

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BMP Project Awarded USAID Grant

NRLC's Intermountain Oil and Gas BMP Project will assist the U.S. Agency for International Development (USAID) to address environmental and regulatory aspects of shale-gas development in the Ukraine.

Kathryn Mutz, NRLC's BMP Project Manager, **Matt Sura**, recent Law School graduate, and NRLC law student Research Assistants will assist USAID to guide the Government of Ukraine with its early stages of establishing the regulatory framework for shale-gas development. This cooperation will serve to increase Ukraine capabilities in addressing environmental concerns and will create a framework for monitoring/mitigating possible negative impacts and for facilitating sound investments by international and Ukrainian companies. BMP project staff will be visiting the Ukraine as part of this grant.

The BMP Project was launched in 2008 with financial support of Bob Miller (Miller, Agro and Robbins). Over the past 2 years, the project has been funded by a RPSEA grant awarded to the Environmentally Friendly Drilling Project (coordinated by the Houston Advanced Research Center).

**NRLC is co-sponsor of the
4th annual Schultz Distinguished Lecturer:**
part of Colorado Law's *Energy Innovation Series*

Pulitzer Prize winner

Dan Yergin

October 19, 2011: 5–6 pm

Wolf Law Building, University of Colorado

“The Quest: The Future of Energy”



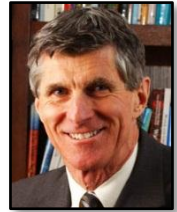
Dr. Yergin is a highly respected authority on energy, international politics and economics, and is a world-recognized author and business leader. He is chairman of IHS Cambridge Energy Research Associates, one of the world's leading consulting and research firms, and a recipient of the *United States Energy Award* for “life-long achievements in energy and the promotion of international understanding.” Dr. Yergin is the author of the new book *The Quest: Energy, Security, and the Remaking of the Modern World*, which has been hailed “the book you must read to understand the future of our economy and our way of life.” (see www.danielyergin.com).

SAVE THE DATE: June 6–8, 2012
for the **2012 Clyde Martz Summer Conference**

An Energy Agenda for the American West

The conference will focus on the future of energy in the West — on a “managed transition” to a different energy mix, on the need to nest this effort in a framework that acknowledges interconnections, and on identifying the most salient opportunities to consider and the legal, political, financial, technical) challenges.

Remembering David Getches (1942–2011)



See *Director's Corner* (page 2)

For Memorial Brochure, tributes, and photos:

<http://www.colorado.edu/law/faculty/getches/>

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WHO WE ARE

Founded in 1982, the Natural Resources Law Center is dedicated to informing and influencing natural resources law and policy. The Center fosters practical and effective solutions to resource problems through its extensive research program, outreach activities, and educational programs for law students and the general public. Over its nearly 30 year history, the Center has developed a reputation as a trusted voice on the key natural resource issues of the day.

STAFF

Mark Squillace, *Professor of Law and NRLC Director*
Heidi Horten, *Program Manager*
Douglas Kenney, *Sr. Research Associate*
Kathryn Mutz, *Sr. Research Associate*

Red Lodge Clearinghouse Project:

Judson Brehmer, *Project Manager*
Heather Hansen, *Staff Writer*

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Director's Corner
Mark Squillace, Professor of Law
And NRLC Director



As this newsletter attests, the NRLC has been busy and productive over the past few months. The highlight of the summer had to be our fabulous summer conference titled "Navigating the Future of the Colorado River." It offered great exposure for our Colorado River Governance Initiative project, and we engaged a great crowd of lawyers, government policymakers, and other interested parties on the critical issues that face those of us who depend upon and care about the River. Summer also attracted what may have been a record number of students working for the NRLC, and they provided outstanding support for the Center's myriad research projects. These projects are all described in much more detail on page 3 of this newsletter.

Even as we celebrate a successful year, we mourn the sudden loss of our beloved Dean, David Getches. Without David's vision and leadership there would be no Natural Resources Law Center. It was David who had the idea to begin the summer conference program and then to build the new Center around that program. It was David who secured the initial funding for the NRLC and supported the Center through his scholarship, hard work, and the sheer force of his personality. Indeed, over the NRLC's nearly 30 years, virtually all of our major projects were influenced in some substantial way by David Getches.

The Center will not be the same without David Getches, and we are working hard to find some appropriate way to honor him for his unparalleled support for the NRLC and its work. We are working with the *University of Colorado Law Review* to plan a symposium that will celebrate David's scholarly work. **This event will take place on Friday, April 20, 2012.** We hope to announce our plans for honoring David at that event. Please stay tuned.

When planning year-end giving,
... please consider supporting the NRLC.



To support the NRLC, *click:*
[CU Foundation link](#)
... or contact **Marilyn Moses**
Assistant Director of Development
303-492-1744 ■ marilyn.moses@cufund.org

Recent NRLC Events

April 6, 2011: —

Joint Program of the Natural Resources Law Center and the Colorado Bar Assoc.—Water-Law Section:

HOT TOPIC: Interbasin Compact Committee (IBCC): Past and Present

presented by **Alexandra L. Davis**, former Director of IBCC negotiations and current Assistant Director of Water, Colorado Dept of Natural Resources. For [Video of event:](#) <http://rlch.org/events/colorados-interbasin-compact-committee-ibcc-past-and-present>.

May 26, 2011: —

Best Management Practices (BMPs): What? How? and Why?

Working with the Houston Advanced Research Center, the NRLC hosted the quarterly meeting of the [Environmentally Friendly Drilling Systems](#) here at the Wolf Law Building. Over 70 attended the workshop and others participated by web conference. The meeting focused on incorporating BMPs into multi-well pad developments, whether or not BMPs are effective in mitigating environmental and community impacts, and their costs. The workshop was intended to motivate discussion among all participants and to help expand the information in the BMP Project database and website. The evening program of the workshop included a screening of *Haynesville: A Nation's Hunt for an Energy Future* to examine the discovery of the largest natural gas field in the United States.

[Workshop materials](#) are available at:
<http://www.oilandgasbmps.org/workshops/EFD2011/index.php>

June 8–10, 2011 —

2011 Clyde Martz Summer Conference



Navigating the Future of the Colorado River

The 2011 summer conference was hugely successful — in attendance, continued media coverage, and continued response and requests for information and more presentations on the subject. Event speakers and participants examined current laws and policies governing Colorado River management. Discussions addressed new developments and studies that will inform future decisions, and explored a broad range of options for addressing the identified challenges and opportunities.

Videos of the three-day event, PowerPoints, and other conference materials are available at: [2011 Conference:](#) <http://www.colorado.edu/law/centers/nrlc/events/past5.html>

2011 Summer Research Activities at NRLC

Summer 2011 at NRLC involved 20 law students (Research Assistants), 4 volunteers, and 2 PhD Environmental Studies students assisting with research on 7 projects, described below.

Restoring the Public Interest in Western Water Law — *Mark Squillace*



Justin Bonebrake (left) and **Jeremy Baker** (right) worked on preparing an article addressing the failure of western states to consider the public interest when allocating water rights. All western states recognize either constitutionally or

statutorily that water is a public resource that must be managed for the benefit of all. Many of these states specifically require that decisions to allocate water resources be carried out in a manner that protects the public interest. In practice, however, states often award water rights without ever even considering the public interest values associated with such rights.

Jeremy and Justin examined Western states' water laws and policies and documented the extent to which the states are addressing or failing to address public interest concerns when administering these laws.

Water Conservation Disincentives (Funding: *Western Water Assessment/CIRES*) — *Doug Kenney*

Lindsey Jensen and **Erin Rossiter** investigated fiscal disincentives and supply reliability concerns associated with water conservation. They addressed (1) How does the need for revenue generation via water sales discourage water utilities from pursuing water conservation? (2) Are there alternative revenue models found in other sectors and public enterprises (e.g., some electric utilities) that offer behavioral incentives more conducive to pursuing demand management? and (3) Utilities are often hesitant to pursue outdoor conservation measures for fear of hardening the demand (i.e., removing the "slack" in the system, thereby reducing the ability of consumers to reduce demand in periods of shortage). To what extent is "demand hardening" a real threat to water supply reliability?

Colorado River Governance Initiative (Funding: *Walton Family Foundation*) — *Doug Kenney*

Britta Beckstead, **Cory Hoerner**, and PhD student **John Berggren** worked on identifying a range of possible institutional changes to river management that might address the myriad challenges facing the river. Also contributing was **Jason Robison**, Harvard University PhD student. Key to this effort was the NRLC's 2011 Colorado River conference (June 8-10), and a subsequent "solutions oriented" report (now in preparation).

Oil & Gas Best Management Practices in the Intermountain West (BMP) (RPSEA grant awarded to the Environmentally Friendly Drilling Project, coordinated by the Houston Advanced Research Center)—*Kathryn Mutz*

Law students **Ashley Palomaki**, **Kristen Rice**, **Lauren Walker**, and **Kirbee Yost**, plus undergraduates **Eric Bullock**, **Brigitte de Perrot**, **Lindsey Ratcliff**, and **Leigha Silberman** assisted in researching and updating the BMP project website and database [www.oilandgasbmeps.org]. The focus of this project is a searchable database of mandatory and voluntary practices currently in use and/or recommended for responsible oil and gas development in Colorado, Montana, New Mexico, Utah, and Wyoming. Summer work focused on regulation of oil and gas by local governments and tribes, fracing, cost and cost-savings from implementing BMPs, and functionality improvements to the database and website.

Water Transfers in an Era of Climate Change (Funding: *Estrella Fellowship*) — *Mark Squillace*

With the help of four capable law students — **Mystery Murphy**, **Mohit Sandu**, **Erica Steidl**, and University of Washington Fellow **Asher Kohn** — the NRLC completed a long-standing project for the National Oceanic and Atmospheric Administration (NOAA) involving agricultural to urban water transfers. The Center's report to NOAA included two major case studies and a substantial report that, among other things, set forth a series of recommendations for improving the current water transfer processes used in prior appropriation states. One of the case studies involved the Northern Colorado Water Conservancy District and focused particular attention on the District Colorado-Big Thompson Project. The other involved the proposed Superditch project. The reports are available on the Red Lodge Clearinghouse website at <http://rlch.org/reading/water-transfers-changing-climate>

Strip-Mining Handbook — *Mark Squillace*

Law students **Zach Martin**, **Alli Melton**, and **Mitch Sickon** worked on *The Strip Mining Handbook* (2nd ed.), a guide for citizen activists who are interested in addressing the environmental problems associated with coal mining. The first edition (paperback) was published in 1990, and a second edition was published in 2010 on the Red Lodge website (www.rlch.org). As part of this summer's effort, Zach, Alli, Mitch, and Mark Squillace attended a workshop for coal activists in Pittsburgh (July 29–31). In preparation for that event, the RAs reviewed, edited and improved the current version of the *Handbook* for use as a text for a class at the Pittsburgh meeting. We are now incorporating feedback from that class to finalize *the Handbook* before it is submitted to the printer.

**2011 HARRISON FELLOWSHIP:
Study in China**

The David L. Harrison Innovations in Water Law & Policy Fellowship was established in 2010, to honor long-time NRLC Advisory Board member David Harrison of Moses, Wittemyer, Harrison and Woodruff, PC. David Harrison's colleagues established the Fellowship to provide a Colorado Law student with the opportunity to spend their summer working on water governance issues in an international context. The Harrison Fellow works with The Nature Conservancy to advance innovative solutions for international water-resource issues.

The first recipient of the Fellowship, **John Buchanan**, worked on a remarkable project with The Nature Conservancy (TNC) from its Beijing office. The project focuses on improving the environmental and social impacts of four dams, either under construction or in planning stages, on the Yangtze River upstream from the Three Gorges Dam. The Chinese government currently plans to operate the dams mainly for hydropower, but it will also use the dams for flood control, which means that the water levels in the reservoir must be lowered before the flood season and afterwards raised to maximize hydropower generation. Raising and lowering the water levels creates very unnatural flows for the river and can disrupt natural processes like fish spawns.

Aspects of this study that John researched involved what, if any, legal structures exist in China that could be used to hold the hydropower revenues in trust and oversee the project, and how a compensation program could be administered for residents living in the rural floodplain areas. He worked with TNC employees who are part of the project, as well as with government officials, scientists and professors from relevant government agencies and Peking University. He also visited floodplain areas and other similar areas in the Huai River basin.



John Buchanan on the Yangtze

Two *non*-Colorado Law students worked at the NRLC this summer on fellowships from their institutions:

- **Asher Kohn, University of Washington**, who worked on the Water Transfers/NOAA project (see page 3).
- **Jason Robison, Harvard University**, who worked on the Colorado River Governance project (see page 3).

Environmental Law Society (ELS) UPDATE

By **Mitch Sickon**, ELS Vice President

This year, the Environmental Law Society has a variety of events and informational sessions planned for raising awareness of environmental issues, encouraging community participation, and developing connections with local environmental law practitioners.

First up is the ELS fellowship fund-raising event . . .

Race Judicata 5k

September 24th at 9:30 am at Wolf Law.

The run will be professionally timed and there will be a number of give-aways from local businesses. We will also be passing out granola bars and bananas (or other similar snacks) at the end of the run.

Who can participate: Everyone(!) -- yourself, your friends, your family. Non-runners are welcome and encouraged to join!

Entry fees: No t-shirt: \$20 ■ With a t-shirt: \$25

Anyone can register at the race website:

http://www.runraceregister.com/regliveCB.aspx?eventyear_id=147.

Proceeds will go to support law students in non-paying or low-paying summer internships.

Throughout the rest of the school year, ELS will be hosting:

- three attorney panels (in October, November, and December 2011). Each attorney panel will be focused on either governmental, non-profit, or private law career paths. Speakers will be encouraged to share war stories and give advice on entering their particular job field.
- a trivia night in January,
- environmental law faculty discussions, and
- a smattering of other social events.

Details of these and other events will be posted as the year continues on the ELS TWEN website and Facebook page:

<http://on.fb.me/oceVEV>

Other News



Former Fellow with the NRLC, **Elizabeth McClanahan**, was recently invested as Justice of the Supreme Court of Virginia, after serving several years on the Virginia Court of Appeals. Elizabeth was from the law firm of Penn, Stuart,

Eskridge & Jones, in Abingdon, Virginia, when she was awarded the 1993–1994 *El Paso Natural Gas Fellowship*. During her fellowship, Elizabeth initiated the NRLC's work on unconventional gas development by her study of ownership issues in the development of coalbed methane. See:

<http://valawyersweekly.com/2011/09/02/mcclanahan-invested-on-the-supreme-court/>

FOCUS on NRLC Board of Advisors

Chair: Michael Gheleta, Office of the Regional Solicitor
U.S. Dept of the Interior (Lakewood, CO)

Marilyn Averill, Center for Science and Technology Policy
Research; PhD candidate-Environmental Studies Program,
University of Colorado (Boulder)

David Bailey, Carver Schwarz McNab & Bailey (Denver)

Britt Banks, Executive Vice President (Retired), Newmont
Mining Corp. (Denver)

Sarah Bates, Center for Natural Resources & Environmental
Policy - University of Montana (Missoula, MT)

Kate Burke, Insight Law, LLC (Durango, CO)

Deb Donahue, University of Wyoming College of Law (Laramie)

Greg Hobbs, Justice, Colorado Supreme Court

Guy Martin, Perkins Coie (Washington, DC)

Ann Morgan, The Wilderness Society (Denver)

Peter Nichols, Trout, Raley, Montaño, Witwer & Freeman
(Denver),

Clay Parr, Parr Waddoups Brown Gee & Loveless (Salt Lake
City)

David Phillips (*Ex Officio*), Exec Director, Rocky Mountain
Mineral Law Foundation

Teresa Rice, Encana Oil & Gas (USA), Inc., (Denver)

Karin Sheldon, Executive Director, Western Resource
Advocates (Boulder)

Ruth Wright, former Colorado State Legislator (Boulder)

Margo Zallen, Senior Attorney, U.S. Dept of the Interior
(Lakewood, CO)

Emeritus:

James Corbridge (Grove, OK)

David Harrison (Moses, Wittemyer, Harrison & Woodruff,
Boulder)

Marvin Wolf (Denver, CO)

Law School Faculty Advisors:

William Boyd

Lakshman Guruswamy

Sarah Krakoff

Bruce Kramer, *Adjunct Faculty*

Charles Wilkinson

Joe Feller, *Ex Officio*, Arizona State University Law School

Board Member Profile

As he puts it, **Clay Parr** finally matched aspirations with aptitudes when he entered the University of Utah Law School in 1965 having previously spent seven years obtaining BA and MA degrees in geology and three years serving as an aircraft carrier officer in the U.S. Navy. At law school, he was law review managing editor and graduated with honors in 1968.



Clay's legal career began at a small firm in Anchorage, a choice based upon the awesome Alaska geography that he witnessed during an hour-long military flight layover. Anxious to combine his interest in minerals with his law practice, Clay returned to Salt Lake City in 1970 to take a position in the legal department of The Anaconda Company (then the world's largest copper company) working under future governor Scott Matheson. Those two years were followed by a year at division headquarters in Tucson and two years at the head office in New York City.

He left the corporate world and returned to private practice in Salt Lake City, joining in 1976 the then year-old firm that would ultimately evolve to the institution now known as Parr Brown Gee & Loveless. During Clay's long career with the firm, his practice has involved all aspects of natural resources law, including hardrock minerals, oil and gas, coal, geothermal resources, salts of the Great Salt Lake, and industrial minerals. Beginning in the late 1990s, his focus shifted to international mineral transactions, enabling him to do work on numerous projects around the globe pertaining primarily to gold mining.

Clay has shared his expertise through publication of sections on mining law, ancillary use rights, and environmental laws applicable to mining in handbook publications of the American Institute of Mining and Metallurgical Engineers. He has taught a class on legal aspects of mining engineering at the University of Utah College of Mines and a class on mining law for many years at the University of Utah Law School. He has presented papers and contributed to publications of the Rocky Mountain Mineral Law Foundation and the ABA.

He has been active in the areas of professional and public service serving as President of the Rocky Mountain Mineral Law Foundation, Chair of the Coalition for Utah's Future, Vice Chair of the Utah Energy Conservation & Development Council, Member of the State Board of Parks and Recreation, Chair of the U of U Law School's Alumni Board, and President of the Utah Landman's Association.

Clay retired from full-time practice in 2010 and currently is of-counsel to his firm. In July 2011, he was deeply honored to be named by the Rocky Mountain Mineral Law Foundation as a recipient of the *Clyde M. Martz Teaching Award in Natural Resources Law*, thus linking his name with that of the man who was his professional idol.

Board Member Profile — continued



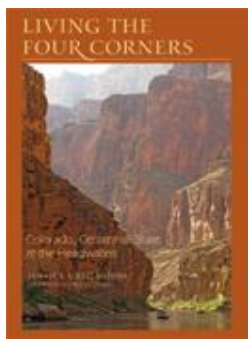
Britt Banks — recently retired as Executive Vice President, Legal and External Affairs at Newmont Mining Corporation, based in Denver, CO. Newmont is one of the world's largest gold producers, with operations in Nevada, Peru, Australia, Indonesia, Ghana, and exploration properties worldwide.

Britt co-chairs the Global Agenda Council on the Future of Mining and Metals at the World Economic Forum, and was a founding member of the Forum's Partnering Against Corruption Initiative Task Force. He also chairs the New Member Review Panel of the International Council on Mining & Metals.

He serves as President of the Board of Trustees of the National Court Appointed Special Advocates Association, and as a member of the Board of Advisors of the Natural Resources Law Center. In the fall of 2010, he taught *International Natural Resources Law & Policy* at CU-Law.

Colorado Supreme Court Justice

Greg Hobbs — His book, *Living the Four Corners*, was shortlisted for Colorado Authors' League Award honor. As described in an April 8, 2011 article by [Alli Gerkman](#): Colorado's premier organization for professional writers, The Colorado Authors' League, announced finalists for its 2011 *Colorado Authors' League Awards*, and among those finalists is [Living the Four Corners: Colorado, Centennial State at the Headwaters](#), by Justice Hobbs (published by [CLE in Colorado](#)). "We are honored to have worked with Justice Hobbs on a literary journey that takes the reader through his professional interests and his personal passion," said Dawn McKnight, Director of Publications and Assistant Executive Director for CLE in Colorado.



Parting shots of the NRLC's 2011

Clyde Martz Annual Summer Conference



Photos courtesy of **John McChesney**, Director, Rural West Initiative; Stanford University Bill Lane Center for the American West

Recent NRLC Staff Activities

Mark Squillace:

Publications

"Accounting for Water Rights in the Western United States." in *International Water Accounting: Effective Management of a Scarce Resource* (expected in 2011).

"Water Transfers for a Changing Climate." Report for the National Oceanic and Atmospheric Administration (to be submitted for journal publication, 2011).

(with Alexander Hood). "Climate Change, Public Lands, and Decision-making under NEPA." Report for the Western Water Assessment (to be submitted for journal publication, 2011)

Presentations:

"The Future of the Colorado River." Presentation at the Colorado River District's Annual Water Seminar, Grand Junction, CO, Sept. 15, 2011.

"Downsizing Dependence on the Colorado River." Presentation at the California Water Policy Conference, Los Angeles, March 3-4, 2011.

Doug Kenney:

Publications:

(with R. Wilkinson, editors, in press). *The Water-Energy Nexus in the Western United States*. Cheltenham: Edward Elgar Publishing.

2011. "The Water-Energy Nexus and the Downfall of the Supply-Side Paradigm." *The Water Leader*, Issue 3, pp. 14-15. Institute of Water Policy, National University of Singapore.

2010. (with others). "Relative Costs of New Water Supply Options for Front Range Cities.": Phase 2 Report submitted to the Colorado Water Conservation Board – Colorado Water Institute.

Presentations:

"Policy and Legal Implications of Reduced Colorado River Flows." Presentation at the Annual Conference of the Universities Council on Water Resources and the National Institutes of Water Resources. Boulder, CO; July 12, 2011.

"How Does Climate Change Impact the Need for, and Direction of, Institutional Reform?"

Presentation at the NRLC's Annual Clyde Martz Summer Conference, University of Colorado Law School, Boulder, CO; June 9, 2011.

Media Stuff

Featured guest on KGNU (Denver-Boulder, CO) Radio "How on Earth" on Colorado River issues, May 31, 2011.

