AMERICAN FIRE
University of Oregon School of Law
Journal of Environmental Law and Litigation

From raging wildfires near urban developments in the wildland-urban interface, to financial and health costs of containment, natural disasters result in the loss of life, property, and severe damage to the environment. The JELL 2017 Fall Symposium and accompanying 2018 Issue seek to further the dialogue between communities facing high natural wildfire risk and the local, state, and federal agencies responsible for mitigation and management. In this Symposium, we will explore developments in wildfire policy and law after the third consecutive warmest year (2016 global average), and the emerging area of “disaster law.”

SCHEDULE

8:30 am  Registration and Breakfast

9:30 am  Opening Remarks
  Dean Marcilynn Burke, Oregon Law

9:40 am  Firefighter Fatalities and Wildfire Mitigation Law
  Lloyd Burton, University of Colorado, Denver
  Pending CLE.

10:50 am  Break

11:00 am  Panel 1: Federal Wildfire Mitigation; The Interface between Federal Public and Private Lands
  Blake Hudson, Houston Law Center; Robert Keiter, University of Utah; Moderated by Professor Tom Lininger, Oregon Law
  Pending CLE.

12:30 pm  Lunch, served in Law School Commons

12:45 pm  Lunch Hour Panel: Wildfire and Cultural Engagement
  Vikki Preston, Cultural Resources Tech III, Karuk Tribe; Jennifer Dyer, USFS, Six Rivers National Forest

1:30 pm  Panel 2: Strategies in Forest Health Management
  Jamison Colburn, Penn State University; Kari Marie Norgaard, University of Oregon
  Pending CLE.

3:00 pm  Break

3:10 pm  Melding Wildfire Law into a Comprehensive Statute
  Allan Kanner, founding member Kanner & Whiteley, LLC
  Pending CLE

4:15 pm  Dinner Reception at Falling Sky Pizzeria
  Erb Memorial Union

Audio and panel summary reports will be posted here following the Symposium.

Presentation materials available at https://law.uoregon.edu/explore/jell-symposium-2017-american-fire
Dean Marcilynn A. Burke is the Dean and Dave Frohnmayer Chair of the University of Oregon School of Law. Prior to joining Oregon Law, Dean Burke served in the Bureau of Land Management of the U.S. Department of the Interior from 2009-2013. Initially, Dean Burke served as Deputy Director for Programs and Policy, until her 2011 appointment by President Barack Obama as the Acting Assistant Secretary for Land and Minerals Management. In that role, she helped develop the land use, resource management, and regulatory oversight policies that are administered by the BLM, the Bureau of Ocean Energy Management, the Bureau of Safety and Environmental Enforcement, and the Office of Surface Mining Reclamation and Enforcement, with a geographic scope that encompasses the continental U.S. and Alaska. Following her term at the BLM, she resumed her role as Associate Dean and Associate Professor of Law at the University of Houston Law Center, where she had served as a member of the faculty since 2002.

Keynote: Firefighter Fatalities and Wildfire Mitigation Law
9:40 am – RM 184

Professor Emeritus Lloyd Burton of the University of Colorado, Denver is the founder and managing co-host of the Jurisprudence of Disasters, a collaborative research network established under the auspices of the Law and Society Association. Much of his research centered on the interface between environmental and disaster management. His research includes wildfires in the wildlands-urban interface in states of the Mountain West, and hazardous infrastructure in urban settings. He has done overseas sabbatical research in New Zealand (Fulbright Award, 1994); Thailand (2004); Australia; and Spain (2012). He has written books on the water rights of American Indian tribes, and on legal aspects of the religious uses of public lands.

Panel 1: Federal Wildfire Mitigation; The Interface Between Federal Public and Private Lands
11:00 am – RM 184

Blake Hudson is a Professor of Law at the University of Houston Law Center. He grew up on private timberland in southern Alabama, and his scholarship is aimed at private forest management policy and the intersection of land use and natural resources management on private lands.

Professor Hudson’s presentation examines the role of federal wildfire management in the western U.S. While Western wildfires consume more acreage, wildfires occur more frequently and destroy a disproportionate number of structures in the Southeastern U.S., where 86% of forests are privately owned. Most climate models project increased wildfire activity in the Southeast, where population and urbanization will also increase the most in coming decades. Nonetheless, state wildfire forest management policies are decidedly lacking in the region. This presentation will contextualize and discuss the need for more active state wildfire policies aimed at private forests in the Southeast.

Professor Robert B. Keiter is the Wallace Stegner Professor of Law, University Distinguished Professor, and founding Director of the Wallace Stegner Center for Land, Resources, and the Environment at the University of Utah S.J. Quinney College of Law. His books include To Conserve Unimpaired: The Evolution of the National Park Idea (2013); Keeping Faith with Nature: Ecosystems, Democracy, and America’s Public Lands (2003); The Greater Yellowstone Ecosystem: Redefining America’s Wilderness Heritage (1991). His other writings include book chapters and articles on wildfire law and policy.

Professor Keiter’s presentation will examine the evolution of federal wildfire law and policy on the public lands, with a focus on contemporary legal issues related to the Healthy Forest Restoration Act of 2003 and Federal Tort Claims Act litigation. It updates and expands upon work the author has published during the
past ten years on this subject, drawing upon thirty-five years of experience researching and writing on federal public land law and policy.

*Moderated by Professor Tom Lininger*, whose latest research focuses on the intersection of environmental law, ethics and criminal procedure. As a former prosecutor of environmental crime and a plaintiff’s attorney who sued polluters, Professor Lininger is interested in customizing ethical and procedural rules for the unique context of environmental advocacy. Professor Lininger has served on the state board of directors for the Oregon Natural Resources Council. He is the ethics advisor for the Sustainable Future Section of the Oregon Bar, and he is a member of the Ethics Committee for the American Bar Association’s Section on Environment, Energy, and Resources.

**Lunch Panel: Wildfire and Cultural Engagement**

12:50 pm – RM 184

Karuk tribal member **Vicki Preston** is the Karuk Tribe Cultural Resources Tech III for the Department of Natural Resources in Orleans, California. Ms. Preston works on cultural prescribed burn projects and wildfire events in the Klamath Basin.

**Jennifer B. Dyer** (not pictured) is the USFS Six Rivers National Forest Program Manager. A professional archaeologist with the Forest Service since 2001, she has been the Staff Archaeologist for the Jemez and Cuba Ranger Districts on the Santa Fe National Forest in New Mexico. Ms. Dyer also assisted in the management of the heritage program on the Forest. She has extensive tribal consultation experience, having worked closely with several of the surrounding Pueblos for many years. She also has wildfire and prescribed fire experience and was the Lead Resource Advisor and Tribal Liaison during the 156,000-acre Las Conchas wildfire of 2011.

**Panel 2: Strategies in Forest Health Management**

1:30 pm – RM 184

**Jamison E. Colburn** is a Professor of Law and the Joseph H. Goldstein Faculty Scholar at Penn State University. Prior to teaching, he was Assistant Regional Counsel for the United States Environmental Protection Agency Region III and served for four years as pro bono counsel to the Connecticut River Watershed Council. His expertise in the National Environmental Policy Act stems from over a decade of research and scholarship focused on the Act in more than a dozen articles and book chapters. He is the founder and editor of the NEPA Lab, a website devoted to NEPA.

Professor Colburn will be presenting his forthcoming research piece entitled *The NEPA Retreat Alternative Amidst the Disasters: Purpose and Need*. This piece is an examination of the NEPA alternatives doctrine, the constraints that exist on agency discretion to avoid proposing and analyzing politically unpopular alternatives under NEPA Section 102, and the state of fire planning and NEPA documents in the American West today.

**Professor Kari Norgaard** is an Associate Professor of Sociology and Environmental Studies at University of Oregon. Over the past ten years, Dr. Norgaard has published and taught in the areas of environmental sociology, gender and environment, race and environment, climate change, sociology of culture, social movements, and sociology of emotions. She is currently engaged in environmental justice work with Native American Tribes on the Klamath River.

**Keynote: Melding Wildfire Law into a Comprehensive Statute**

3:10 pm – RM 184
Allan Kanner graduated from Harvard Law School in 1979, and then clerked for the late Judge Robert S. Vance of the U.S. Fifth Circuit Court of Appeals. He founded the firm Kanner & Whiteley, L.L.C. in 1981 and has since acquired a national reputation in the fields of complex litigation, environmental law, and consumer fraud. He has taught law courses at Tulane Law School, Duke University, Yale University, and the University of Texas. He has also authored and co-authored two books and published over sixty scholarly articles. He has litigated landmark environmental and natural resource damage cases, including representing Louisiana in the recovery of nearly $10 billion in litigation following the BP Oil Spill.

Mr. Kanner will be presenting his forthcoming article titled Like a Phoenix Rising From the Ashes: Melding Wildfire Law into a Comprehensive Statute which proposes a comprehensive statute akin to other environmental statutes, including the Oil Pollution Act and the Comprehensive Environmental Response, Compensation, and Liability Act for the handling of wildfire natural disasters. He will focus on the applicability of traditional natural resource damage assessments used following other natural disasters to wildfire litigation and restoration. A comprehensive statute centered on restoration rather than traditional tort damages will serve to create a more sustainable and robust regime of wildfire law. In this way, the U.S. Forest Service will be better equipped to both manage and protect forest systems.

ABOUT JELL

The Journal of Environmental Law and Litigation (JELL) has provided a national, unbiased forum for the discussion and presentation of new ideas and theories in environmental and natural resources law since 1985. JELL is published and managed by students of the University of Oregon School of Law and plays an integral role in the University of Oregon's nationally and internationally recognized Environmental and Natural Resources Law Program. Neither JELL nor the University of Oregon School of Law maintain any positions on issues discussed in published articles or academic symposia.

A special thank you to all of the speakers for traveling to Eugene and presenting to students and community members on this important issue. Thank you.

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