



UNIVERSITY
OF OREGON
School of Law

ENGAGING THE LAW TO SUPPORT Sustainability ON EARTH

ENVIRONMENTAL and NATURAL RESOURCES LAW at THE UNIVERSITY OF OREGON FALL 2012

Seeking Solutions

ENR Expanding Interdisciplinary Research Projects and Fellows Program

For more than forty years, the University of Oregon School of Law's Environmental and Natural Resources Law (ENR) Program has focused on innovative educational tools to prepare students for the legal profession while providing cutting-edge solutions to the most challenging environmental issues of our day. Building on this tradition, in 2003 ENR launched its Interdisciplinary Research Projects and Fellows Program, which teams student energy with faculty and practitioner expertise to meet community needs.

Thanks to a generous gift from UO alumnus Tom Bowerman, the University of Oregon School of Law is expanding the groundbreaking work already being conducted by the ENR Program's Interdisciplinary Research Projects and Fellows Program.

Bowerman's gift will enable the program to fund additional paid fellows and maintain high-quality administrative staff. More importantly, the gift will support the expansion of the ENR interdisciplinary projects through the support of a research associate to work with law students, other graduate students, faculty members from across the university, governmental organizations, and nonprofit organizations to execute important research initiatives.

The newly created research associate position will be responsible for conducting independent research as part of one or more of the flagship ENR interdisciplinary projects: the Conservation Trust Project, the Energy Law and Policy Project, the Food Resiliency Project, the Global Environmental Democracy Project, the Native Environmental Sovereignty Project, the Oceans,



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—Michael Moffitt, dean, UO School of Law

Coasts, and Watersheds Project, and the Sustainable Land Use Project.

These projects draw upon existing faculty strengths and provide synergistic opportunities for promoting student experience, providing service to the community, reaching out to diverse communities, bringing global content to the curriculum, and bringing intellectual energy to bear on some of these critical environmental issues.

"Through increased research capacity, the Interdisciplinary Projects and Fellows Program will continue to offer multidisciplinary solutions to today's environmental challenges while enhancing students' educational opportunities," said Heather Brinton,

managing director for the Environmental and Natural Resources Law Program. "It also allows for us to be directly responsive to our current circumstances and to fully realize our role as part of a major research institution that leads the field of environmental and natural resources law."

Michael Moffitt, dean of the School of Law, noted the generosity of Bowerman and the power of his gift.

"This gift and the vision associated with this program will enhance our law school's ability to do the three most important things a law school can do: teach our students, expand our

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Message from the Director

As you read this newsletter, you will understand why I feel privileged to serve as the managing director of the University of Oregon’s Environmental and Natural Resources Law Program. Because of our faculty, students, and alumni, we are a remarkable community of champions for the environment and the public interest.

And we are all keenly aware that our ecological and economic circumstances are driving an evolution in environmental law, how we practice it, and how we teach it.

When our program launched its Interdisciplinary Projects and Fellows Program less than a decade ago, it was inspired by a vision of teaming student energy with faculty expertise to meet community needs. It was rooted in our belief that a modern legal education needed to focus on interdisciplinary practical skills development, that we needed to find ways to minimize our students’ educational debt, and that students needed to be inspired to embrace the role of the citizen-lawyer in a democracy. This vision meant educating our students about innovative policy solutions—the lawyer’s work in law-making, not merely law-applying. Finally, it recognized the tremendous amount of work that needs to be done to remake a society in a transformational age and a belief that law schools should serve as laboratories for solutions.

During the next several years, ENR is slated to increase the impact of its Interdisciplinary Projects and Fellows Program. Thanks to generous donor support, ENR will be increasing the financial support of law student fellows and,



“We are all keenly aware that our ecological and economic circumstances are driving an evolution in environmental law.”
—Heather Brinton

through the addition of a research associate, increasing its capacity to perform legal and interdisciplinary policy analysis needed to find real solutions that make a real difference on the ground. It is an exciting time for the ENR Program and our efforts to meet our mission to engage the law to support sustainability on earth.

Our faculty continues to take on current advancements in their respective fields. Adell Amos, John Bonine, and Mary Wood are currently writing or updating casebooks and nutshells in their areas of expertise. Working with a law fellow in the Conservation Trust Project, Lynne M. Nickol, Richard Hildreth coauthored an article on marine spatial planning. Roberta Mann has been researching tax incentives to encourage smart grids and Nancy Shurtz recently published an article on eco-friendly building, featuring Portland’s experience. Their commitment to making a difference on environmental issues is nothing short of inspiring.

Finally, we mourn the loss of an incredible hero for humanity and the environment, and an integral part of our ENR community, Svitlana Kravchenko. While devastating, ENR takes comfort in knowing that her legacy,

ever expanding, will live on as we all strive to honor her, and as we all try to make her dream of an equitable, just, and healthy planet come true.

Motivated and inspired by our achievements, our loss, and our shared aspirations, the ENR community is committed to our path ahead. I welcome your thoughts and look forward to sharing our efforts as we continue to fulfill our mission.

Seeking Solutions continued from page 1

understanding about the law, and create a positive impact in the world,” Moffitt said. “I am confident that this innovative approach to legal education will be transformational, and I am deeply grateful to Tom Bowerman for his support and his creativity.”

Bowerman hopes that the research made possible through his gift will go beneath the layers of current policy debates and reveal a set of broadly shared goals and values.

“I expect this research program will foster policy insights into chronic, persistent problems. The Oregon ENR Program already attracts brilliant students, and the aim is to tap this talent for policy research as well as provide them with a high sense of relevance.”

Donors and Sponsors 2011

Without the generosity of donors, the ENR Program would not be possible. With our deep gratitude, thank you for your support.

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| Michael D. Axline | Paul V. Konka |
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Svitlana Kravchenko Wins Prestigious ABA Award



Svitlana Kravchenko, University of Oregon School of Law professor and director of the Master of Laws Program in Environmental and Natural Resources Law, has been chosen posthumously for the American Bar Association's highest award in environmental law. She passed away in February 2012. The American Bar Association's Section of Environment, Energy, and Resources—Task Force on Policy and Coordination selected Kravchenko as the recipient of the thirteenth annual American Bar Association Award for Distinguished Achievement in Environmental Law and Policy. Oregon law student Elizabeth Brown submitted the nomination.

“Professor Kravchenko’s international accomplishments and reputation never interfered with her generosity at a personal level,” said Brown. “Her efforts to inspire her students in both Oregon and Ukraine were remarkable.”

The ABA award was established to honor individuals and institutions responsible for major contributions in the field of environmental law and policy. Recipients are chosen because their accomplishments led to significant improvements in environmental laws and policies. Kravchenko played a leading role in drafting and implementing the Aarhus public participation convention in Europe and Central Asia. She also created the first public interest

law firm in Ukraine. While in Oregon, she designed and led the state’s first graduate program in environmental law and published the world’s first law school textbook on the links between human rights and the environment. The American Bar Association lauded her “impressive record of achievement in scholarship, teaching, and public service.” The award ceremony took place on Sunday, August 5, at the ABA annual meeting in Chicago. Oregon law professor John Bonine, Kravchenko’s husband, accepted the award on her behalf, along with other members of her family.

ENR Program Projects and Fellows

Led by faculty members and program administrators with expertise in the area and staffed by student fellows, ENR's seven interdisciplinary projects provide research, analysis, and innovative solutions.

Conservation Trust Project

Focusing on public trust theory and private property tools to achieve landscape conservation

The fellows for the Conservation Trust Project (CTP) evaluated liability issues associated with the alteration of wetlands and dam removal. CTP fellow Lynne M. Nickol coauthored "Implementing Regional Coastal and Marine Spatial Planning," 42 ELR 10346 (April 2012) with Professor Richard Hildreth. CTP also organized a brown-bag event, "Land Trust Conservation."

Energy Law and Policy Project

Exploring innovative law and policy to promote a green-energy future

The Energy Law and Policy Project looked at national and state energy issues, explored program-building partnerships with energy organizations, and supported a related



policy conference: "Smart Grid: Today's Regulation and Tomorrow's Technology," held at the University of Oregon in Portland, White Stag Block, Portland, Oregon, October 21, 2011.

Global Environmental Democracy Project

Preparing students to be advocates for global change

The Global Environmental Democracy Project focused on a guidebook for "victory speakers" (speakers addressing issues related to climate change).

Fellows also supported events honoring the legacy of Professor Svitlana Kravchenko. Bowerman fellow Emily Follansbee explored the issue of forum non conveniens and its effect on foreign plaintiffs' claims against United States corporations. Bowerman fellow Andrew Narus evaluated campaign finance reform in Oregon.

Native Environmental Sovereignty Project

Examining emerging tribal roles in comanaging lands and resources

The Native Environmental Sovereignty Project (NESP) organized the fifth annual Rennard Strickland Lecture. The 2011 speaker was solicitor Hillary Tompkins, who presented "Pathways in Indian Law."

During this year's Public Interest Environmental Law Conference, NESP fellows coordinated the Indigenous Peoples Reception. This year's reception was a resounding success with overwhelming attendance.

NESP fellows also helped organize the alternative tax preparation during spring break at the Coquille Indian Tribe Reservation.

Oceans, Coasts, and Watersheds Project

Engaging the law to promote sustainability for ocean, coastal, and freshwater resources

The Oceans, Coasts, and Watersheds Project fellows worked on revising the Bureau of Land Management's Western Water Law website, evaluated the public trust and water, and organized a number of relevant panels at this year's Public Interest Environmental Law Conference.

ENR Adds Seventh Interdisciplinary Project: Food Resiliency

This year, ENR will be adding a seventh interdisciplinary research project: Food Resiliency. Led by Professor Mary Wood and Assistant Professor Michael Fakhri, this project will address key environmental issues relating to sustainable food and agricultural production: international frameworks to ensure food sovereignty, security, and justice; land-use reform to promote urban food production; use of public parks and spaces as "foodscapes"; impacts from genetic modification of food and genetic pollution to neighboring organic farmers; transitioning

from pesticides and herbicides; and legal incentives to promote carbon sequestration in farming practices, among many others. Local resilience to natural disaster and climate change is a key theme driving communities to develop self-sufficiency in their food systems.

"The Food Resiliency Project embraces an emerging legal field and will explore the leading edge of policy relating to all stages of the food process, from production and packaging to distribution and consumption," says Fakhri. "I'm excited to work with students on projects addressing these vital issues."



Sustainable Land Use Project

Evaluating land use laws, theories, and practices to ensure sustainable development in our communities

The fellows for the Sustainable Land Use Project (SLUP) worked closely with the University of Oregon's Sustainable Cities Initiative (SCI). SCI is a cross-disciplinary program seeking to promote the design and development of sustainable cities, from planning to building design. SLUP fellows provided legal research related to civil rights and transportation planning decisions, greenhouse-gas emissions scenario planning in Oregon, and the link between development and water service availability. SLUP

fellows helped organize "Lawyers and Planners: The Future of Sustainable Cities," featuring Oregon alum and Seattle attorney Chuck Wolfe.

SLUP also cosponsored, with SCI, "Stopping Oregon Sprawl" with Former Justice Michael Gillette and Robert Liberty on October 25, 2011, which discussed Oregon's statewide planning program's success at curbing urban sprawl.

SCI fellow Lauren King evaluated the consistency of Oregon's transportation planning rule with Oregon's statewide planning goals and Bowerman fellow Jason Nelson-Elting looked at bicycle and pedestrian connections in suburban multifamily housing.

If you are interested in learning how you can support ENR's interdisciplinary projects and fellows program, please contact Heather Brinton at hbrinton@uoregon.edu.

Bowerman, Brower, Sustainable Cities, Chapin Clark, and Dean's Distinguished Fellows

Because of generous donor support, the ENR Program provided six paid stipends to fellows to further their project work.

The 2011–12 Bowerman, Sustainable Cities, Chapin Clark and Dean's Distinguished fellows researched the issue of forum non conveniens and its effect on foreign plaintiffs' claims against United States corporations; the consistency of Oregon's transportation planning rule with statewide planning goals; bicycle and pedestrian

connections in suburban multifamily housing; and states' efforts at campaign finance reform.

This year's recipients will focus on private-public partnerships and their relationship with sustainable energy projects; campaign finance reform; water as a property interest; and highway projects and their alternatives under the National Environmental Policy Act, and the addition of ENR's seventh interdisciplinary project, Food Resiliency.

2011–12 ENR Fellows

Conservation Trust: Lynne Nickol, Ian McCurdy

Energy Law and Policy: Yochanna Zakai, Andrae Washington

Global Environmental Democracy: Emily Follansbee (Bowerman Fellow), Laura Horton, Anna Makowski

Native Environmental Sovereignty: Christopher Cooney, Amanda Rogerson (Dean's Distinguished Environmental Law Fellow), Joe Bushyhead

Oceans, Coasts, and Watersheds: Molly Fales, Margaret Townsend (Chapin Clark Fellow), Rachel Lipinski

Sustainable Land-Use: Jessica Bloomfield, Jason Nelson-Elting (Bowerman Fellow), Lauren King (Sustainable Cities Fellow), Michele Peterson, Katherine McFerson

2012–13 ENR Fellows

Conservation Trust Project: Robin Meacher, Elizabeth Berg

Energy Law and Policy Project: Rebecca Rushton, Jason Nelson-Elting (Bowerman Fellow), Elena Domingo, Taylor Engers

Food Resiliency Project: Nate Bellinger (Bowerman Fellow)

Global Environmental Democracy Project: Andrew Narus (Bowerman Fellow), Ashley Carter (Dean's Distinguished Environmental Law Fellow), Gordon Levitt (Dean's Distinguished Environmental Law Fellow), Adam Walters

Native Environmental Sovereignty Project: Joe Bushyhead, Amanda Rogerson, Margaret Townsend

Oceans, Coasts, and Watersheds Project: Alyssa Englebrecht, Katherine Cummings (Bowerman Fellow), Malia Losordo (Chapin Clark Fellow), Kristina Schmunk (Dean's Distinguished Environmental Law Fellow), Michael Kinsey

Sustainable Land Use Project: Erin Toft-Dupuy, Katherine McFerson, Jessica Bloomfield (David Brower Fellow)

ENR-ADR Fellow in Environmental Conflict Resolution: Aileen Carlos

Thirtieth Annual Public Interest Environmental Law Conference

by Aileen Carlos, Katie Cummings, Mike Goetz, Bob O'Halloran, and Alek Wipperman

The thirtieth annual Public Interest Environmental Law Conference (PIELC) took over the law school and the Erb Memorial Union at the University of Oregon from March 1 to 4 this year. The conference theme was “New Frontier: The Political Crossroads of Our Environmental Future.” Over the course of four days, practicing attorneys, academics, politicians, and law students gathered to discuss the past and future of environmental policy.

More than 2,500 attendees were able to interact with prominent figures in the environmental law and policy field, including Professor Lisa Heinzerling (who was awarded the David Brower Lifetime Achievement Award), Professor Zygmunt Plater, Tyrone Hayes, and Richard Heinberg, to name a few. Participants also celebrated Charlie Tebbutt’s career as he was honored with the Kerry Rydberg Award. Panelists and keynote speakers focused on the success of environmental activism and litigation over the last thirty years, as well as the opportunities for future generations of lawyers and activists to pick up the torch and confront the continuing threats facing humans and our environment.

The conference highlighted the past, present, and future of the environmental movement. Barbara and Ken Brower, the son and daughter of David Brower, one of the most important environmentalists of the twentieth century, honored their father and his achievements by speaking to attendees on the 100th anniversary of his birth. Many community members also helped pay tribute to the late Svitlana Kravchenko, who was posthumously awarded the first Svitlana Kravchenko Memorial Award, which will honor an environmental activist that carries on Svitlana’s passion for international environmental law and activism. A

Save the Date

Attend the thirty-first annual Public Interest Environmental Law Conference,

Earth: Too Big to Fail

February 28–March 3, 2013

www.pielc.org

new generation of environmental activists also spoke about the progress of the Atmospheric Trust Litigation Project, and the talented artists Alixa and Naima performed original poetry and music about environmental destruction and the challenges that lie ahead.

We hope that you enjoyed this year’s conference as much as we did, and we hope to see you next year at the thirty-first PIELC, taking place the first weekend in March 2013. For more information, please visit www.pielc.org.

About the authors: **Aileen Carlos** will graduate in 2014 with a JD and an MA in conflict resolution. She is a joint ENR/ADR fellow and codirector of Land Air Water, the environmental law student organization that organizes the Public Interest Environmental Law Conference, taking place February 28–March 3, 2013. **Katie Cummings** is a

third year law student who is currently serving as the notes and comments editor for the *Journal of Environmental Law and Litigation*. She is also a Bowerman Fellow in the ENR program and previously worked as a codirector of the 2012 Public Interest Environmental Law Conference. **Michael Goetz** is a third year law student and managing editor of the *Journal of Environmental Law and Litigation*. Michael is also a codirector of Land Air Water. **Bob O’Halloran** is a 2013 JD candidate and served as codirector during the 2012 Public Interest Environmental Law Conference. **Alek Wipperman** is a third year law student and editor in chief of the *Journal of Environmental Law and Litigation*. Alek was also codirector of the 2012 Public Interest Environmental Law Conference.



The David Brower and Kerry Rydberg Awards

Each year, the students of Land, Air, Water (LAW) recognize two outstanding environmental activists at the Public Interest Environmental Law Conference. The Kerry Rydberg Award recognizes achievements in grass-roots environmental law. The award is named in honor of a 1987 Oregon law school graduate who was dedicated to public interest law until a tragic automobile accident prematurely ended his life. The David Brower Lifetime Achievement Award honors an individual who embodies the values of David Brower and has dedicated his or her life to environmental activism.

The 2012 recipient of the Kerry Rydberg Award for environmental activism was attorney Charlie Tebbutt, who currently works in a private practice specializing in environmental law. Tebbutt has successfully taken on important legal challenges such as banning field burning in Oregon. Prior to opening his own practice, Tebbutt was an attorney with the Western Environmental Law Center from 1994 to 2009. Tebbutt “represent[s] people and organizations to protect themselves and the planet.” Read more about Tebbutt and his recent accomplishments at www.charlietebbutt.com.

This year, the David Brower Lifetime Achievement Award was presented to law professor Lisa Heinzerling of Georgetown University Law Center. “Professor Heinzerling was the clear choice to receive the David Brower Award in light of her distinguished service to the values and work ethic of David Brower,” said PIELC conference codirector Alek Wipperman. “Her longtime commitment to environmental litigation and her creative administrative brilliance make her an example to public interest



Charlie Tebbutt, recipient of the 2012 Kerry Rydberg Award.



Professor Lisa Heinzerling, recipient of the David Brower Lifetime Achievement Award.

environmental advocates around the world. She has remained committed to working in the public interest, both

through her government service and her role in teaching the next generation of lawyers.”

Western Environmental Law Center Update

by Peter Frost

Peter Frost and John Mellgren, adjunct professors for the Environmental Law Clinic and attorneys at the Western Environmental Law Center in Eugene, Oregon, led students in a variety of projects. Three students researched and wrote portions of briefs in state trial court challenging California's plan to stock its rivers with millions of nonnative fish. Third-year law student Chris Cooney appeared at oral argument, asserting that Montana's stocking program was preferable to California's. Students researched por-

tions of the federal Wilderness Act to support the relief phase of a recent successful lawsuit challenging the building of a new structure in the wilderness. A student researched state water law and federal endangered species laws related to a derelict dam that inhibits upstream migration of wild salmon. Finally, students worked on matters aimed at ending reliance on fossil fuels, including challenging a state permit allowing a coal plant to expand its edifice of wastewater ponds that are leaking into regional ground water systems,

appealing in state court a local permit allowing a utility to expand its coal-ash landfill capacity to allow dumping of coal-combustion wastes for another thirty-five years, and a potential Clean Air Act lawsuit against a large coal-fired power plant in the northern Rockies.



Peter Frost is an attorney with the Western Environmental Law Center and adjunct instructor at the UO School of Law.

Environmental Law Alliance Worldwide Update

by Liz Mitchell

During the 2011–12 academic year, five Oregon law students worked as externs with Environmental Law Alliance Worldwide (ELAW). ELAW externs have the unique experience of providing legal research to leading environmental and human rights lawyers from outside the U.S. who are actively litigating or advocating for law reform in their home countries. ELAW is grateful for the assistance provided by Logan Krochalis, Andrae Washington, and Kristopher Cahoon, along with LLM candidates Samantha Atukunda Kakuru and Antonia Zeas.

Over the past year these students worked on a wide variety of interesting, cutting-edge issues. Among other things, the externs provided information to ELAW's partners about African laws requiring public disclosure of foreign investment contracts, the role of intellectual property rights in protecting traditional knowledge, laws and regulations protecting mangrove forests, community rights to access

marine fisheries, and the prosecution of environmental crimes in the U.S. The externs also enjoyed opportunities to meet with and assist lawyers who were visiting the U.S. to participate in ELAW's fellowship program. This past year our visitors included advocates from Mongolia, Swaziland, Nicaragua, Haiti, and Russia, as well as a judge from Honduras.

With research assistance from our partners and law externs, ELAW successfully launched a comparative legal tool on environmental impact assessment (EIA) laws in July. The EIA Law Matrix—also known as “ELM”—will help advocates answer questions about the EIA process, see global and regional EIA trends, and identify laws that contain model language. You can view the ELM website at www.elaw.org/eialaws.

We were particularly happy when Samantha Atukunda Kakuru opted to participate in the ELAW externship program this past spring. Samantha represents the next generation of global environmental leaders. Her father, Ken-

neth Kakuru, is the executive director of Greenwatch—a highly successful environmental advocacy organization in Uganda—and has collaborated with ELAW for years. Samantha shares her father's commitment to protecting the environment and was inspired by her work at ELAW: “I have a burning passion to leave the earth better than I found it, for my children and generations to come. Given the reality of climate change and environmental degradation, I know this is a huge challenge. I plan to be a dedicated advocate for the protection and conservation of the environment, especially through public interest litigation.”



Liz Mitchell has been a staff attorney at the Environmental Law Alliance Worldwide since 2007. She provides legal assistance to grassroots attorneys outside the U.S. who are working to protect communities and the environment.

LLM Update: Class of 2013

The Master of Laws Program in Environmental and Natural Resources Law is excited to welcome the new class of 2013, the largest class yet, to its prominent program. The 2013 class will include thirteen students from around the world, including Australia, Cameroon, Chile, China, Colombia, India, Iran, Mexico, Mongolia, Tanzania, and the United States (Arizona, California, and Pennsylvania). Some have worked as litigators, consultants, and researchers. Others have worked for judges, in government, and in academia.

Noni Austin is an environment and planning lawyer from Sydney, Australia, working on the environmental assessment process for major developments, environmental incidents, and native title law.

Maneka Kaur, from the mountainous Jammu and Kashmir region of India, graduated from law school in Delhi this year.

Odonchimeg (“Odo”) Oyunbazar has two law degrees—from Mongolia and the United Kingdom. She has worked in Mongolia, Hong Kong, and Singapore for more than eight years on litigation, real estate, and corporate and corporate secretarial law areas.

Shaoyuan Wu is the first student to come to Oregon as part of the University of Oregon–Ocean University of China memorandum of understanding negotiated last year.

Elifuraha Laltaika is dean of the law school of Tumaini University Makumira in Tanzania. He is especially interested in human rights and environmental conservation.

Ekontang Makia is a lawyer in Cameroon. He currently works with the faculty of peace and development studies at the Protestant University of Central Africa.

Ximena Ramos graduated this year from law school in Mexico. She has been working for the last two years in a human rights litigation organization.

Juan Prieto is the regional minister of the secretary for the environment for one of Chile’s fifteen regions.

Carlos Lozano Acosta is a lawyer and researcher from Colombia, working on human rights and the environment, with a special focus on environmental damage reparations.

Josh Cleaver, from Arizona, is interested in water rights and environmentally conscious land-use planning.

Lance Quaranto, from California, plans to enter the public sector and wants to work on expanding the use of rail for transit.

Dan Zummo, from Pennsylvania, is aiming to get a position with a governmental agency or NGO that deals with natural resources law.



JELL Recently Published

Journal of Environmental Law and Litigation, Volume 26 (2) 2011

ARTICLES

“Beyond the Backlash: Using Performance-Based Regulations to Produce Results through Innovation” by Earl Blumenauer

“Defining Biomass as a Source of Renewable Energy: The Life Cycle Carbon Emissions of Biomass Energy and a Survey and Analysis of Biomass Definitions in States’ Renewable Portfolio Standards, Federal Law, and Proposed Legislation” by Christine Elizabeth Zeller-Powell

“Transgenic Plants and Substantial Success” by Maxwell Keith

“Righting Environmental Wrongs: Assessing the Role of Legal Systems in Redressing Environmental Grievances” by Josh Gellers

INTERVIEW

“The Prosecution of Environmental Crimes in Oregon: An Interview with Attorney General John Kroger”

COMMENT

“Administering America’s Offshore Oil Fields: How Fewer, Performance-Based Regulations Can Produce Better Results” by Derek Orth

“Addressing the Regulatory Collapse behind the Deepwater Horizon Oil Spill: Implementing a ‘Best Available Technology’ Regulatory Regime for Deep-Water Oil Exploration Safety and Cleanup Technology” by Brittan J. Bush

Moot Court

Students Excel at National Environmental Law Moot Court Competition

UO School of Law third-year student Yochanan Zakai and second-year student Jim DiVerde excelled at the recent National Environmental Law Moot Court Competition held at Pace Law School in White Plains, New York. The team advanced to

the quarterfinals of the competition, beating out fifty other teams from around the country, and was awarded Best Brief-Appellee by the judges. DiVerde also received the distinction of Best Oralist in the competition’s first round. The National Environmental Law Moot

Court Competition is recognized as the preeminent environmental law moot in the United States. The competition draws more than 200 competitors from diverse law schools and 200 attorneys who serve as judges for three days of oral arguments.

ENR Faculty Update



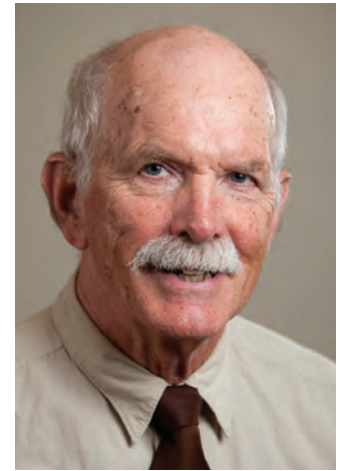
Adell Amos, associate dean for academic affairs, will be coauthoring *Water Law in a Nutshell* with Sandra Zellmer from the University of Nebraska School of Law for West Publishing. Amos presented “The Klamath Basin: A True Story” at the Fortnightly Club, Eugene, Oregon, on February 16, 2012. In March, Amos worked with the Environmental Law Alliance Worldwide consulting with Russian, Mongolian, and Haitian environmental lawyers on climate-change adaptation strategies for major hydropower projects. In addition, Amos has been working to build relationships between UO law and Ocean University in China.



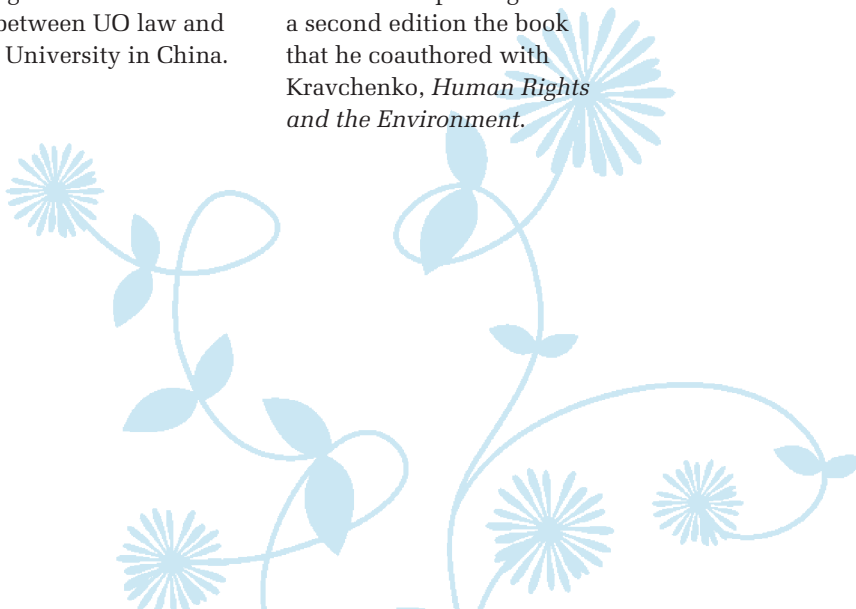
John Bonine published an article in the *Global Business and Development Law Journal* (2012) at Pacific-McGeorge Law School in California on the European Court of Human Rights, coauthored with Svitlana Kravchenko. On May 23–25, Bonine presented lectures in Ukraine on human rights and the environment, under the auspices of the Edmund Muskie Program of the U.S. Department of State. On July 1–5, he presented a lecture at the IUCN Academy of Environmental Law Colloquium at the University of Maryland. Bonine is working with his graduate LLM students on updating for a second edition the book that he coauthored with Kravchenko, *Human Rights and the Environment*.



Michael Fakhri's research focuses on the examining the relationship among international law, socio-economic development, and agriculture. He is one of the faculty leaders on the ENR Food Resiliency Project and is studying how the practices of various international institutions affect food law and politics. He is currently writing a book that uses the transnational history of the sugar trade as a way to provide insight into the multilateral institutional history of international trade law over the last century.



Richard Hildreth's article “Implementing Regional Coastal and Marine Spatial Planning,” coauthored with law student Lynne M. Nickol, was published in the *Environmental Law Review* 42(4) (April 2012). Also, Hildreth’s 2010 article “International Treaties and U.S. Laws as Tools to Regulate the Greenhouse-Gas Emissions from Ships and Ports,” coauthored with UO law graduate Alison Torbitt, JD ’10, which originally appeared in *International Journal of Marine and Coastal Law* 25 (2010), will be reprinted with permission in the forthcoming *Proceedings of the Law of the Sea Institute*. The fourth edition of *Coastal and Ocean Law*, coauthored by Hildreth together with Rieser, Christie, and Kalo, will be published by West in spring 2013 in time for use in fall 2013 courses.





Roberta Mann, along with Robert Liberty, the UO Sustainable Cities Initiative executive director, presented a Continuing Legal Education piece entitled “The Environment of the Future” on February 24 at a meeting of the Oregon State Bar Government Law Section in Salishan, Oregon. Mann addressed changes to renewable energy tax incentives and their impact on state and local governments. She serves on the National Academy of Sciences study panel on the carbon emissions impact of the Internal Revenue Code, which held its third meeting in April. Mann presented her paper “Smart Incentives for the Smart Grid” at the Law Society Conference in Honolulu this past June. The paper discusses the impact of renewable energy on the electrical grid and proposes incentives to encourage increasing grid capacity via tax incentives.



Nancy Shurtz’s interests include individual and business tax law, tax policy, environmental policy, and women and the law. She is editor for the Media/Book Products Committee of the American Bar Association’s Real Property, Probate, and Trust Section. Shurtz has been a literature reviewer and columnist for *Estate Planning* magazine since 1990. Recently, she consulted with Mills College in California about the formation of an all women’s law school after her article on the subject came out in 2005 in the *Hastings Women’s Law Journal*. Nancy Shurtz’s abstract entitled “Market Instruments and Green Building Practices: How the Great Recession is Reshaping Environmental Policy in the Western United States” was accepted at the twelfth Global Conference on Environmental Taxation, October 20–21, in Madrid, Spain. Her new article “Eco-Friendly Building from the Ground Up: Environmental Initiatives and the Case of Portland, Oregon” was published in the *Journal of Environmental Law and Litigation* in the spring 2012 issue.



Mary Christina Wood, faculty director for the Environmental and Natural Resources Law Program at Oregon, and coauthors have completed their second edition of *Natural Resources Law* (West Publishing, forthcoming fall 2012). On February 25, Wood presented a talk on atmospheric trust litigation at Yale Law School’s conference “New Directions in Environmental Law: [Re]Claiming Accountability.” On February 18, Wood led a workshop on “Victory Speakers for Climate Campaigning” at the Rocky Mountain Power Shift Conference in Missoula, Montana. Wood also presented on two panels at the Public Interest Environmental Law Conference held at the UO School of Law: “Taking the Long View When Allocating Water Resources” on March 2 and “Public Trust and Atmospheric Trust Litigation” on March 3.

In May, she made an address on climate change at the National Indian Timber Symposium, held at the Warm Springs Indian Reservation. Wood is on sabbatical for the 2012–13 academic year.

JELL Recently Published

Journal of Environmental Law and Litigation, Volume 27 (1) 2012

SYMPOSIUM

“The Local Revolution: How Relationships and Legal Policies Are Helping Create Sustainable Communities around the Country”

“The Legal Landscape of the Sharing Economy” by Jenny Kassan and Janelle Orsi

ARTICLES

“Differential Access to Justice in Environmental Cases Involving Private Property and Public Laws” by Michael Axline

“Putting Aeolus to Work without the Death Toll: Federal Wind Farm Siting Guidelines Can Mitigate Avian and Chiropteran Mortality” by Blake M. Mensing, Esq.

“Human Flotsam, Legal Fallout: Japan’s Tsunami and Nuclear Meltdown” by Robert B. Leflar, Ayako Hirata, Masayuki Murayama, and Shozo Ota

“History of the Cumulative Effects Analysis Requirement Under NEPA and Its Interpretation in U.S. Forest Service Case Law” by Courtney A. Schultz

“In Third Parties We Trust? The Growing Antitrust Impact of Third-Party Green Building Certification Systems for State and Local Governments” by Darren A. Prum, Robert J. Aalberts, and Stephen Del Percio

“Eco-Friendly Building from the Ground Up: Environmental Initiatives and the Case of Portland, Oregon” by Nancy E. Shurtz



Distinguished Visitors and Events, 2011–12

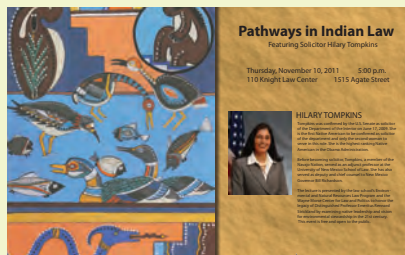


“The Local Revolution: How Relationships and Legal Policies Are Helping Create Sustainable Communities around the Country,” Journal of Environmental Law and Litigation Symposium. *September 9, 2011, 9:00 a.m.–5:00 p.m.*

“The Acid Test: Oceans Acidification and the Pacific Northwest,” cosponsored with Environmental Entrepreneurs, Natural Resources Defense Council, Business Leaders for Climate Solutions, and Voice for Oregon Innovation and Sustainability. *September 12, 2011, 6:00–8:00 p.m.*

“Stopping Oregon Sprawl: From the Mockery of Ad Hockery to the Rule of Law,” a discussion with former Oregon Supreme Court justice Michael W. Gillette and Robert Liberty, executive director of the Sustainable Cities Initiative. *October 19, 2011*

“Today’s Regulation and Tomorrow’s Technology” Smart Grid Conference, cosponsored with Citizens Utility Board (CUB) Policy Center. *October 21, 2011*



“Pathways in Indian Law,” featuring solicitor Hillary Tompkins. The fifth annual Rennard Strickland Lecture, honoring the former UO law school dean and Native American scholar, examines native leadership and vision for environmental stewardship in the twenty-first century. Cosponsored with the Wayne Morse Center for Law and Politics. *November 10, 2011, 5:00 p.m.*



“The Public Trust: The Law’s DNA,” featuring Professor Gerald Torres. *February 23, 2012*

Thirtieth annual Public Interest Environmental Law Conference with keynote addresses, workshops, films, celebrations, and more than 150 panels. *March 1–4, 2012*

Bowerman Center Calendar Fall 2012–Spring 2013

“Achieving Degrowth in Overdeveloped Countries for the Sake of Humanity.” Erik Assadourian, senior fellow at Worldwatch Institute. A 2012–13 Fireside Conversation Series event. *September 26, 2012, 5:00 p.m., 141 Knight Law Center.*

“New Directions for Human Rights and the Environment: A Symposium Inspired by Svitlana Kravchenko.” Presented jointly by the University of Oregon School of Law’s *Journal of Environmental Law and Litigation* and *Oregon Review of International Law*. *September 28–29, 2012. Knight Law Center.*

“Cities, Economic Development, and Sustainability” Joan Fitzgerald, Director of the Law and Public Policy Program at Northeastern University. A 2012–13 Fireside Conversation Series event. *October 10, 2012, 5:00 p.m. 110 Knight Law Center.*

Public Interest Environmental Law Conference. February 28–March 3, 2013 Knight Law Center.

The Bowerman Center is pleased to participate in programs, conferences, and events throughout the year. For additional information and updates, please visit enr.uoregon.edu.

Fireside Conversation Series, 2011–12

Cosponsored by the UO’s Appropriate Dispute Resolution Center, Environmental Studies Program, Environmental and Natural Resources Law Program, Green Business Initiative, Climate Change Research Group, and Sustainable Cities Initiative.

Speaker: Adell Amos. **“Water and Climate Change: The Role of the Federal Government.”** *September 28, 2011, 5:00 p.m.*

Speaker: Kari Marie Norgaard. **“Living in Denial: Climate Change, Emotions, and Everyday Life.”** *October 12, 2011, 5:00 p.m.*

Speaker: Mike Hoglund. **“From Scenario to Reality: Reducing Greenhouse Gases in the Portland Region.”** *November 16, 2011, 5:00 p.m.*

Speaker: Derek Smith. **“Creating a Scalable Home Energy Efficiency Industry.”** *January 18, 2012, 5:00 p.m.*

Speaker: John Orbell. **“How Can the Social Sciences Address Humans’ Future Response to Climate Change?”** *March 14, 2012, 5:00 p.m.*

Speaker: Anthony Leiserowitz. **“Climate Change in the American Mind.”** *April 25, 2012, 5:00 p.m.*

Faculty Profile

ENR Welcomes Visiting Professor Jared Margolis



“I am so excited to join the UO law faculty, and honored to have the opportunity to teach in such a prestigious program.”

Visiting professor Jared Margolis will be joining the Oregon Law faculty this fall from Vermont, where his private law practice focuses on land use and environmental law. Margolis will be teaching courses on environmental law, advanced appellate advocacy, and hazardous waste law, in addition to an undergraduate land use planning class.

“I am so excited to join the UO law faculty, and honored to have the opportunity to teach in such a prestigious program,” says Margolis. “I look forward to working with students to dissect the legal, policy, and environmental concepts that my classes present, and I intend to put information in a context that will allow my students to use what they learn in their legal and environmental careers. It is a privilege to play a part in creating the next generation of legal professionals.”

Most recently, professor Margolis has been working on the proposed reli-

censing of Vermont Yankee, a nuclear power plant in Vermont. In that case, Margolis represents the New England Coalition (NEC), a nonprofit advocacy group focused on investigating the safety, suitability, and environmental effects of nuclear power plants and informing the public and government agencies of the hazards and risks of nuclear power. Margolis has represented NEC before the Vermont Public Service Board regarding the proposed relicensing of the plant as well as an investigation into leaking underground pipes, and before the federal courts regarding the scope of preemption over nuclear plant regulation. While in Oregon, Margolis will continue to represent NEC, challenging Entergy’s application for a state certificate of public good for the Vermont Yankee plant.

Margolis also served on the executive committee and as attorney for the Sierra Club’s Vermont Chapter for several years, and recently formed a

nonprofit called the Northern Environmental Law Center that offers litigation, legal consultation, and dispute resolution for environmental and land-use issues. His recent work has included challenging the development of a Walmart in St. Albans, Vermont, protecting inventoried roadless areas in the White Mountain National Forest, and coauthoring a brief in the Sixth Circuit regarding the extent of Clean Water Act jurisdiction over wetlands. In addition to his law practice, he teaches courses in environmental studies and law at the University of Vermont and Johnson State College.

Margolis earned his undergraduate degree from Colgate University and then attended Brown University, earning a master’s degree in environmental studies. His thesis focused on prioritizing lands for habitat protection. He then attended Vermont Law School, where he was environmental editor for the Vermont Law Review.

ENR Alumni Update

Adam Abrams, LLM '09, since earning his master's of law in environmental and natural resources law from the UO School of Law, has become a strong



advocate in the fight for making our air and atmosphere recognized as part of the Public Trust Doctrine. Abrams recently made significant progress

in Texas with judicial recognition that the air and atmosphere are public trust assets under both the common law Public Trust Doctrine and the Texas constitution. This ruling has also opened the door for greater environmental advocacy by allowing for judicial review of rejected petitions for rulemaking under the Texas Water Code, which is the Texas Commission on Environmental Quality's enabling act.

Adam is the staff attorney with the Texas Environmental Law Clinic and is partnered with Our Children's Trust, a team of attorneys who are taking on the fight for air and atmospheric recognition in Texas and eleven other states. Adam states "I'm so proud and grateful to be part of Our Children's Trust, undertaking to safeguard our planet for future generations. While both my legal career and the atmospheric trust litigation effort in Texas are far from over, I'm confident in conveying that my involvement in this case will forever be a source of both personal and professional pride for years to come."

Jonathan Manton, JD '03, founded Sawnee Services, a public interest government relations company, in 2010. He was ranked by a survey of the 2011



Oregon Legislative Assembly as the most effective lobbyist in Salem, the lobbyist most committed to the public interest, and the lobbyist with the

highest integrity. He was the leading advocate behind legislation creating Oregon's first Area of Critical State Concern to protect the Metolius River Basin. He coauthored the Crosswalk Safety Act to clarify protections for pedestrians and people with disabilities. He remains committed to protecting funding for Domestic Violence Clinical Legal Education in Oregon and he recently helped launch the Stop Violence against Women PAC, the first such political action committee in the nation. He also serves as a board member of Our Children's Trust, a nonprofit pursuing litigation to spur government action to combat climate change.

Kelly Matheson, JD '99, works as a program manager with Witness, an international human rights organization that uses video to support change



in human rights practice, policy, and law. Currently, she is collaborating with Our Children's Trust to support Atmospheric Trust Litigation (ATL).

The theory of ATL was developed by UO professor Mary Wood and is being put into practice by daring lawyers from across the country, many of them UO alumni. This theory has been recognized as the only legally binding global approach to address the climate crisis. A series of ten short films complements the lawsuits, hoping to achieve an artful and passionate pairing of litigation, outreach, and movement-building in support of our youth.

Craig Neyman, JD '91, is vice president and chief financial officer for the David and Lucile Packard Foundation. Formerly, he served for



more than fourteen years as vice president and chief investment officer, among other roles, for the Nature Conservancy, where he exercised oversight

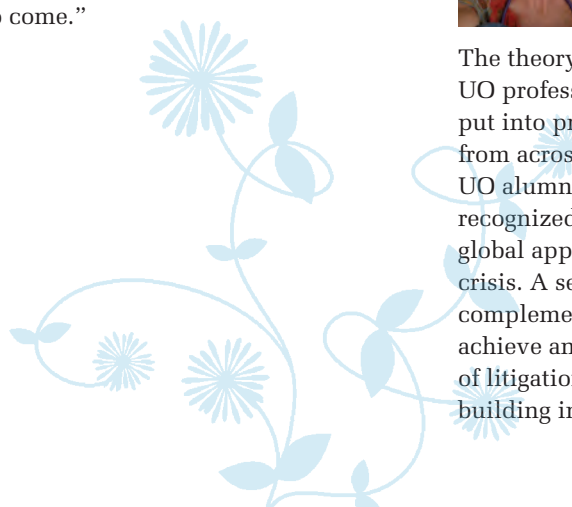
for nearly \$2 billion of investment assets, which primarily consisted of the organization's endowment for conservation lands, capital for its conservation projects, and planned giving investments. In addition to his law degree from the University of Oregon, Craig is a graduate of Wharton Business School, is a certified public accountant, has attained the certified investment management analyst (CIMA) designation, and is a member of the Oregon State Bar.

Samuel Roberts, JD '11, is currently working at the firm of Hutchinson, Cox, Coons, Orr & Sherlock in Eugene, Oregon. At present, his work consists



mostly of general civil litigation along with some transactional energy lease and contract negotiation work. In addition, he has been working on a

volunteer-pro bono basis with a group of public interest energy stakeholders in developing Oregon energy policy to implement more robust development of community-based energy projects. This work is a continuation of the work he performed as a David Brower Fellow in that his specific role has been to assist the group in developing legislative and regulatory improvements to Oregon law that relate to securities issues in community energy development.



Student Profile: Bowerman Fellow Jason Nelson-Elting

Jason Nelson-Elting is a third-year student and ENR fellow at Oregon law. Last year as a Bowerman Fellow with the ENR Program's Sustainable Land Use Project, Nelson-Elting authored a brief, "A Local Government's Guide to Utilizing Exactions for the Improvement of Bicycle and Pedestrian Connectivity." One of the goals of the brief was to significantly change how connectivity happens in suburbia. It evaluated how to reduce greenhouse-gas emissions and local air pollution by decreasing the number of unnecessary vehicle trips. Nelson-Elting states that, for this to happen, it is pertinent that cities be easier to navigate via bicycle or on foot. If change is going to be made, the government needs to be involved, according to Nelson-Elting. His brief offered examples of local property cases that either worked or failed in increasing bicycle and pedestrian connectivity. Furthermore, he takes what he has learned from these examples and applies them to how the government can make changes today.

The brief was created in partnership with the UO's Sustainable Cities Initiative (SCI), a cross-disciplinary organization that seeks to promote education, service, public outreach, and research on the design and development of sustainable cities. SCI codirector Nico Larco, an associate professor in the architecture department, said the brief is a great example of how cross-disciplinary collaboration can have tremendous benefits and impact. "This is a fantastic document that will be incredibly helpful to the planners I have been



By working on this project, Nelson-Elting hopes to create positive, palpable changes in Oregon communities.

talking to throughout the state," Larco said. "This brief, together with the

Get Connected handbook, has the potential to significantly change how connectivity happens in suburbia." By working on this

project, Nelson-Elting hopes to help create positive, palpable changes in Oregon communities.

During his first year at Oregon law, Nelson-Elting was a Dean's Environmental Law Fellow working with the Global Environmental Democracy Project. In his third year, Nelson-Elting will take on a third ENR interdisciplinary project as a Bowerman Fellow working with the Energy Law and Policy Project. Through it, he will work on a research project examining the intersection between energy law, tax policy, and sustainability. Nelson-Elting graduated from the University of Oregon in 2005 with a bachelor's degree in Spanish.

Environmental and Natural
Resources Law Program: Engaging
the Law to Support Sustainability
on Earth

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Message from the Director
Congratulations, PIELC
Faculty Profile: Jared Margolis
Student Profile: Jason Neilson-Eiting

Highlights

Fall 2012

ENVIRONMENTAL AND NATURAL RESOURCES LAW

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TO SUPPORT
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