



UNIVERSITY
OF OREGON

School of Law

ENGAGING THE LAW
TO SUPPORT
Sustainability
ON EARTH

ENVIRONMENTAL and NATURAL RESOURCES LAW at THE UNIVERSITY OF OREGON SPRING 2010

Innovation: How Concentrated Winter Courses Are Giving Oregon Law Students an Edge

By Sommer Templet

For the first time in its history, the University of Oregon School of Law offered five one-week intensive courses this past winter break.

During "January term," students were afforded the opportunity to get an edge in their particular field of interest by learning from some of the brightest and most respected minds in those specialties. A total of five courses were offered, including Cap and Trade Policy. "The law school's experiment with offering an optional January term has been a real success," said Michael Moffitt, associate dean of academic affairs. "The intensive format opens the possibility for creative course structures and for new course content. The cap-and-trade course with David Van't



Hof is a great example of the kinds of courses we hope to be able to offer in the coming years."

Through the law school's innovative January term, the Environmental and Natural Resources Law Program has an additional curricular tool to prepare students for legal practices that deal with climate change, including energy and green business. The School of Law already offers several courses in energy law, green business law, and climate law. However, the addition of a course specifically dedicated to cap-and-trade systems is both timely and invaluable in light of the

current regulatory trend to use market mechanisms to control greenhouse gas emissions.

The recent passage of the Waxman-Markey bill in the United States House of Representatives, which seeks to establish a cap-and-trade system at the national level, makes clear that the United States is moving closer to implementing a mechanism for greenhouse gas emissions control. Such emissions trading systems are extremely complex and require a comprehensive understanding of the relevant legal issues and the related economics, markets, technologies, and multiple-jurisdictional players. Through the January term cap-and-trade course, students were

Continued on page 2

"Understanding the legal backdrop for greenhouse gas regulation is increasingly important for law students, and it was very timely to have the cap-and-trade course sandwiched between the Copenhagen meetings and the U.S. Senate taking up renewed efforts on climate legislation. We had great conversations among the students and with guest speakers about the technical options for cap-and-trade design as well as possible next steps for establishing meaningful greenhouse gas regulations in the U.S." ~David Van't Hof

Innovation: How Concentrated Winter Courses Are Giving Oregon Law Students an Edge, continued from page 1

exposed not only to these details but also to the critical issues of design and enforcement, and the legal and policy positions of the various stakeholders.

Oregon students had the particular advantage of learning the ins and outs of the cap-and-trade system from one of the greatest minds in the field, David Van't Hof. Currently a shareholder at Lane Powell, Van't Hof focuses his practice in areas of sustainability, renewable energy, green building, and carbon regulation. Before joining Lane Powell, Van't Hof spent many years as Governor Ted Kulongoski's sustainability policy advisor. In his capacity as advisor, Van't Hof led Oregon's participation in the Western Climate Initiative and developed Oregon's nationally recognized climate change and renewable energy policies. Meg Rowe, a third-year

student, summarized her experience: "I found the cap-and-trade class to be very informative and well presented. Van't Hof is, of course, a principal architect of the state's carbon reduction plan and an inside expert on the Western Climate Initiative's proposed cap-and-trade program."

The School of Law's commitment to being on the cutting edge of both academics and environmental concerns by offering minicourses taught by experts such as David Van't Hof benefits students and Oregon alike by educating and empowering students to achieve positive impacts on climate change.

Sommer Templet is a third-year law student focusing on environmental and natural resources and sustainable business law.



Adjunct Instructor
David Van't Hof



From Eugene to Copenhagen

3L Tim Ream spent fall semester externing with the Climate Change Secretariat in Bonn, Germany and then served as a legal policy advisor to Greenpeace International at the Copenhagen climate negotiations. While in Copenhagen, Ream posted a series of dispatches on his impressions of the Copenhagen Summit. To read the dispatches, visit enr.uoregon.edu/news/.

Progressing Beyond Copenhagen: Hopes for a Climate Deal Must Wait Another Year

by Tim Ream

It is never easy to sit down and write a short story about global warming. It would be so helpful to tell a simple story of a monster and a hero at the climate talks in Copenhagen last December, even though the hero lost this time. But no simple story will do the issue justice. The climate issue is unparalleled for quite a few reasons.

Perhaps most importantly, the magnitude and scope of the climate catastrophe is without comparison in human history. We are only beginning to experience the impacts of global warming, but most analysts who have looked seriously at the science of climate change predict almost unimaginable future impacts.

Climate change is not simply going to be the number one environmental issue faced by the next generation. It will likely be the number one food security issue and the number one water security issue, thereby making it a human rights threat of absolutely unprecedented importance.

Also working against positive change is the scientific complexity of the climate problem and its solutions. A deep understanding of climate science requires a fair mastery of physics, chemistry, statistics, and modeling. A deep understanding of solutions requires further knowledge of engineering and economics, if not social psychology and political science. This complexity provides ripe ground for those who aim to confuse the public, deny global warming, and delay solutions. In the battle to communicate, scientists accustomed to academic dis-

cussions in peer-reviewed journals find themselves pitted against the world's best-funded public relations firms, hired by the world's most powerful fossil-fuel corporations.

And if this were not enough, a political system driven by twenty-four-hour news cycles and fifteen minutes of fame must address a problem that requires massive social change today to save future generations, most of whom are not yet even born. Metaphors fail. There is no known story of a monster that can fill all the globe's sky forever, one who comes now to destroy the future, one who can only be slain by the concerted efforts of a billion well-organized heroes.

But as they say in the monster stories, all is not yet lost. The majority of people in nearly every nation of the world want their governments to stop global warming. And there is an international process in place for addressing climate change. The 1992 United Nations Framework Convention on Climate Change and its 1997 Kyoto Protocol represent the first international steps taken to address the growing climate catastrophe. The recent meetings in Copenhagen under the auspices of these treaties provided an opportunity for the nations of the world to step up to a new level of commitment to stopping the worst climate impacts.

Going into the December meetings, civil society had managed to agree on a crystallized description of what was needed. We wanted a "FAB" deal—F-A-B, a deal that was fair, ambitious, and binding.

The greenhouse gases that currently blanket the Earth, and that will remain for hundreds of years even after we stop polluting, have come primarily from developed countries. The rich countries not only hold historical responsibility for causing global warming, they continue to dump far



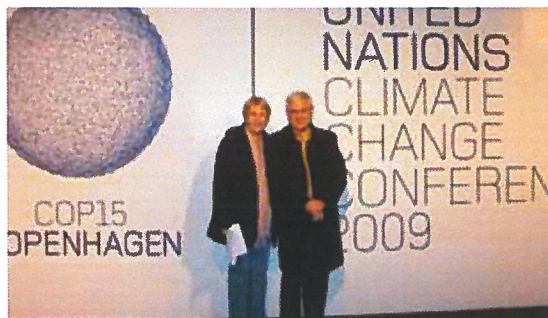
Tim Ream

more of these gases per person into the atmosphere every day. A fair agreement then would have two components. First, developed countries would take the lead in reductions of greenhouse gas emissions, moving first and making the deepest cuts. Second, developed nations would take responsibility for the problem they have created by providing adequate funds to developing countries both to adapt to a changing climate and to assure future development occurs on a low-carbon pathway.

The ambitious requirement can be reduced to a simple metric: any deal touted as stopping climate change needs to be scientifically defensible. Everyone agrees that we cannot let the planet get more than 3.6 degrees Fahrenheit above preindustrial temperatures. In Copenhagen, the majority of nations, but not the big emitters like the United States, were calling for a rise of no more than 2.7 degrees Fahrenheit. We have already warmed by about 1.5 degrees Fahrenheit. Steep cuts are needed—and needed now—to minimize damage.

Continued on next page





Professors Svitlana Kravchenko and John Bonine in Copenhagen

The UO in Copenhagen

Several faculty members, students, and alumni from the University of Oregon were able to participate in the United Nations climate conference this year.

- **Rachel Kastenberg**, J.D. '06, a member of the U.S. Department of State's special envoy for climate change, participated in the official U.S. delegation. **Alyssa Johl**, J.D. '08, working for the Climate Law and Policy Project, headed a team of NGOs seeking to incorporate human rights language into treaties. Johl received support from Professors John Bonine and Svitlana Kravchenko, who both served as part of her delegation.
- Oregon law faculty members **John Bonine** and **Svitlana Kravchenko** also spent time crafting language in support of a "compliance mechanism," described as an international body that reviews whether countries are keeping their commitments to climate change. In addition, they worked as part of the Legal Response Initiative, a worldwide rapid-response network that aims to answer pressing legal inquiries from NGOs.
- **Shangrila Joshi Wynn**, a Wayne Morse Dissertation Fellow and UO doctoral candidate in environmental studies and geography, attended as a representative of the Association of American Geographers. Her focus is on India's role in the continuing international climate policy negotiations and debates.
- **Bob Doppelt**, program director for the UO Institute for a Sustainable Environment's Climate Leadership Initiative, was also present, observing the negotiations and working with others to influence the language and details.

Progressing Beyond Copenhagen: Hopes for a Climate Deal Must Wait Another Year, continued from page 3

The binding requirement speaks for itself. Rich nations have a long track record of generous international promises followed by spotty delivery. Political promises will not stop climate change—only actions will. Reduction pledges must be subject to international review with significant consequences for failure to act. Only then can we be sure that these critical commitments will not be subject to changing political whims.

With civil society in agreement on measures for success, it has been relatively easy to assess the resulting "Copenhagen Accord." And the results are disappointing even beyond the most pessimistic of premeeting analysis. Working backward through the three requirements, the accord is not binding, not ambitious, and not fair.

The Copenhagen promises are not binding; they are nothing more than aspirational political statements with no system to ensure compliance and no consequences for failure to follow through. No level of ambition is set in the accord. There is no language calling for certain reductions by a certain time frame. There is a loose commitment to keep the world from heating beyond 3.6 degrees Fahrenheit, but that is simply a reiteration of similar political statements already made by nearly every nation. With the purposeful exclusion of emission-reduction targets in the Copenhagen Accord, the temperature commitment hardly seems worth the paper it is written on.

Nor can the deal be said to be fair. Once again, developed nations have failed to commit to the early and deep domestic reductions of greenhouse gases that would signal to the rest of the world that the climate problem is being taken seriously by those who

caused it. Also of great concern is the fact that the accord could represent the first step on a slippery slope that shuts the U.N. out of climate negotiations. If this were to happen, the only forum for smaller, poorer nations to affect the negotiating process would disappear, a tremendous blow to fairness.

The only bright spot in the accord is a commitment of \$10 billion per year for three years for adaptation and mitigation from developed to developing countries. Even here, though, analysts point out that this is likely a small amount compared to real need and there is no clear formula explaining how much each country will donate or what mechanism will be used to distribute the funds.

In Copenhagen, the monster won. And there is plenty of blame to go

[Continued on next page](#)

"The University of Oregon brings tremendous intellectual resources to the unparalleled problem of climate change. Faculty and students—from every possible discipline—are actively seeking solutions to global warming and all of its attendant consequences. Our collective circumstances, and the UO's strength on environmental and sustainability issues, are allowing the ENR Program to reach out across disciplines and fields for innovative approaches in these extraordinary times."

~Heather Brinton, Managing Director



Progressing Beyond Copenhagen: Hopes for a Climate Deal Must Wait Another Year, continued from page 4

around. Certainly powerful oil and coal corporations and their public relations mercenaries are at the top of the list. Both Republican and Democratic leaders deserve a heap of scorn for inaction or worse. President Obama ceding leadership on the issue to those same senators is far from blameless. The U.S. role in Copenhagen was an international embarrassment that caused progressive nations to hesitate and let major polluting nations like ours completely off the hook.

But let's take some of the blame ourselves as individuals. This was never going to be easy, but we have simply not yet pressured our leaders to the point that Congress will act nationally, or the president internationally. Climate change is not yet a top-tier issue for enough concerned people.

Our failure to get a FAB deal in 2009 now makes 2010 incredibly important. Climate negotiations replay themselves in Cancun in December of this year. People who understand the seriousness

of the problem and truly care about the Earth and future generations need to prioritize this issue right now. We must get a strong climate bill out of Congress this spring, and a FAB international deal in December. The future is counting on us, and the stakes, truly, have never been higher. Let's get to work, heroes.

Tim Ream is a third-year law student and a fellow for the Wayne Morse Center for Law and Politics.

New ENR Fellowships

By Rachael Roberts

The ENR Program advances the work of its six interdisciplinary projects by teaming student energy with faculty expertise to meet community needs. For the 2010–11 academic year, generous support has made it possible to offer three additional funded fellowships: the David Brower, Chapin Clark, and Dean's Environmental Law Fellowships.

The David Brower Fellowship honors the legacy of David Brower, known for being an outspoken voice for the environment who was never afraid to advocate when others fell silent. He served as the first executive director of the Sierra Club in the 1960s. Later, he founded Friends of the Earth, a worldwide environmental network, as well as the Earth Island Institute. Brower was also a recurrent figure at the Public Interest Environmental Law Conference (PIELC), where his enthusiastic presence greatly contributed to its character. In memory of Brower's contributions and achievements, PIELC now honors those individuals who uphold his ideals and integrity by granting them the David Brower Lifetime Achievement Award.

As former dean, Chapin Clark helped shape Oregon's Environmental and Natural Resources Law Program.



2009–10 fellows for the ENR Program

Clark will always be revered for his defense of Oregon's waters and wilderness. He was an expert in the field of western water law, and in 1986 he received the UO's Charles E. Johnson Memorial Award for meritorious service. His legacy is one of good conscience and fairness. The Chapin Clark Fellowship will honor Clark's legacy of ardent and honest work on behalf of the environment.

Finally, the Dean's Environmental

Law Fellowship will enhance and expand the fellows program by allowing more students the opportunity to engage in focused and critical environmental work. Through project development and substantive research and writing, law student fellows tackle real-world environmental problems and work to create solutions.

Rachael Roberts is a second-year law student and a guru for the 2009 and 2010 PIELC.



ENGAGING THE LAW
TO SUPPORT
Sustainability
ON EARTH

ENVIRONMENTAL and NATURAL RESOURCES LAW

Spring 2010 Vol. 10 No. 1

Mary Wood, Faculty Director
mwood@uoregon.edu

Heather Brinton, Managing Director
hbrinton@uoregon.edu

Jill Forcier, Administrative Assistant
jillf@uoregon.edu

Rachael Roberts, Newsletter Editor
Sommer Templet, Newsletter Editor

www.enr.uoregon.edu
enr@uoregon.edu
541-346-1395



Highlights

Innovation: How Concentrated Winter Courses
Are Giving Oregon Law Students an Edge

Progressing Beyond Copenhagen

The UO in Copenhagen

New ENR Fellowships



UNIVERSITY OF OREGON
School of Law

An equal-opportunity, affirmative-action institution committed to cultural diversity and compliance with the Americans with Disabilities Act. This publication will be made available in accessible formats upon request. ©2010 University of Oregon DES0310-048by