



NATURAL RESOURCES & ENVIRONMENTAL LAW PROGRAM

November 2021 Newsletter

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FACULTY PUBLICATIONS AND PRESENTATIONS



Joe Schremmer's recent article, *A Unifying Doctrine of Subsurface Property Rights*, will be published in the *Harvard Environmental Law Review*

Joe Schremmer has several works forthcoming, including [*A Unifying Doctrine of Subsurface Property Rights*](#) in Volume 46 of the *Harvard Environmental Law Review* (2022); *Regulating Natural Gas Venting and Flaring as Waste: A Review of the New Mexico Approach*, *Oil Gas & Energy L. Intelligence* (2021–22), and two works with Tara Righetti studying common law doctrines of waste and their implications for private law theory and environmental protection, *Waste and the Governance of Private and Public Property*, 93 *Colo. L. Rev.* (2022) and *Rediscovering the Doctrine of Waste*

and *Common Law Environmental Governance*, *Nat. Res. & Evt.* (2021–22). He is also looking forward to publication of the 11th edition of *Cases and Materials: The Law of Oil and Gas* (West Academic), with Pat Martin, Bruce Kramer, Keith Hall, and Tara Righetti. At the 2022 AALS conference, Schremmer will present two works in progress: *Pore Space Ownership Under a Natural Law Perspective* at the Environmental Law and Natural Resources & Energy Law Sections' Works in Progress, and *Estate Severance and the Persistence of Natural Law* at the Property Law Section's New Voices Program. He has also made several presentations over the summer and fall of 2021, including presenting papers at the annual conferences of the Law and Society Association (LSA) and the Association for Law, Property & Society (ALPS), workshopping a paper at the Vermont Environmental Law Colloquium, delivering a paper at a faculty colloquium and to the mineral law institute at the Paul M. Hebert Law Center at Louisiana State University, and teaching at the Rocky Mountain Mineral Law Foundation's Oil and Gas Law Short Course.

Cliff Villa spoke on environmental justice at the virtual Annual Institute of the Rocky Mountain Mineral Law Foundation. Later in July, Villa participated in an in-person gathering in Colorado Springs of the Environmental Law Collaborative (ELC). ELC participants included scholars from across the country, challenged to imagine adaptation of the legal system to a world dramatically warmer than today. Essays from this summer's gathering now appear on the Environmental Law Profs blog, including Villa's contribution, LETTING GO OF 2°C, LETTING GO OF RACE? In September, Villa testified as an expert witness on environmental justice in a hearing over proposed rules for the oil and gas industry in New Mexico (see related story). Villa also gave virtual presentations on environmental justice themes at Vermont, UC Hastings, and CUNY. In October, Cliff met with students and faculty at Stanford Law School and presented a forthcoming paper, *Environmental Justice in Modern Legal Practice*, 33 *N.Y.U. Environmental L. J.* __ (2022). In addition, Villa spoke recently on environmental justice in a podcast series produced by [*Resilient New Mexico*](#). He

also led an Environmental Justice Bus Tour to the Laguna Pueblo to learn about the impacts of uranium mining (see related story).

Reed Benson will have his latest article, [*A Contentious Mission: Water Supply and Corps of Engineers Reservoirs*](#), published in Vol. 32 of the Duke Environmental Law & Policy Forum (2022). It examines current Corps authorities and practices regarding municipal and industrial water supply, reviews the Corps' failed attempt to adopt a national Water Supply Rule, and addresses unresolved policy issues regarding water supply from existing Corps projects. Benson presented on "Interjurisdictional Water Resources" at the Pacific Northwest Economic Region Summit, a hybrid event held both in-person (in Bozeman, Montana) and online. He served on the planning committee for the first in-person Water Law Conference of the Rocky Mountain Mineral Law Foundation, November 4-5 in Santa Fe. Benson moderated the "Private Investment in Water" panel, which included Alexandra Davis (City of Aurora, Colorado) and Buzz Thompson (Stanford Law School). He also participated in a Water Law Workshop following the RMMLF Conference, where he presented his early work-in-progress on a legal framework for repurposing reservoirs. At the RMMLF Annual Institute in July, he received the Clyde O. Martz Award ([see related story](#)).

Elizabeth Elia presented her forthcoming article, [*"Servitudes Done 'Properly': Propriety, Not Contract Law"*](#) at Vermont Law School's Colloquium on Environmental Scholarship in September. The article will be published in Volume 37 of the Journal of Land Use and Environmental Law in June 2022. The article argues that the way courts uphold contemporary servitudes, including conservation easements, that don't meet traditional common law requirements is consistent with a proprietarian approach to property. Elia also organized and moderated a panel discussion at UNM Law entitled "Mapping Inequality: Reckoning with Historic Redlining and its Legacy" (see related story). Additionally, Elia was featured in local television news stories about the eviction crisis in Albuquerque and the use of eminent domain in siting the proposed New Mexico United stadium.

Gabe Pacyniak presented a work in progress, *Lessons for an Equitable Clean Energy Transition from the COVID-19 Disconnection Crisis: A Legal Survey of State Policy Options* at the Energy Policy Institute's 10th Annual Energy Policy Conference, Vermont Law School's Colloquium on Environmental Scholarship, and the Early-career Energy Scholars Workshop. The article argues that COVID-19 has uniquely shined a light on utility disconnections and allowed unprecedented experimentation with policy tools to prevent such disconnections, and that such policies must be a part of clean energy transition. The article stems from Pacyniak's work last [*year to prevent COVID-related utility disconnections*](#) in New Mexico. Pacyniak recently presented at New Mexico's Climate Summit and at a meeting of the New Mexico State Climate Equity Advisory Group, and was featured in a climate mitigation-focused episode of the [*Resilient New Mexico*](#) podcast. He also presented to the state bar on challenges by Native American Tribes to the Navigable Water Protection Rule.

NREL Clinic Argues For Stronger Community Protections In Ozone Precursor Regulations



NREL Clinic Student Travis Shimanek Puts on Prof. Cliff Villa as an Expert Witness on Environmental Justice via Zoom in the Ozone Precursor Hearing

Students in UNM's Natural Resources and Environmental Law Clinic represented the Center for Civic Policy and NAVA Education Project—organizations focused on promoting welfare of communities of color, and particularly Native American communities—in a formal rulemaking in front of the state's Environmental Improvement Board on proposed regulations to limit ozone precursors from oil and gas infrastructure. As part of their representation, the students put on witnesses, including UNM Prof. Cliff Villa, who testified about the EIB's duty to consider environmental justice impacts, as well as representatives from both organizations. A main goal of the Clinic's intervention was to propose changes to the rule that would require more frequent leak detection and repair for facilities in close proximity to where people live, work, and play. The clinic was supervised by Gabe Pacyniak in this work. The rulemaking is one of two rulemakings initiated in response to an executive order on climate change issued by New Mexico Gov. Lujan Grisham, and will apply to both new and existing sources of oil and gas pollution. Taken together, the two rulemaking will substantially reduce methane emissions from oil and gas infrastructure in New Mexico, the state's largest source of greenhouse gas emissions.

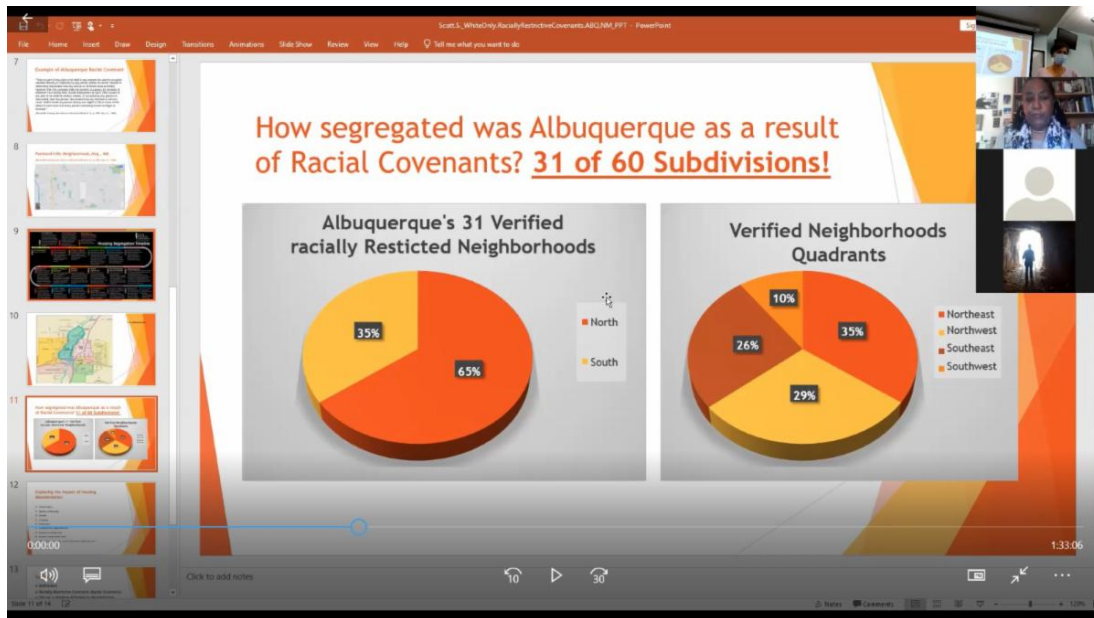
Benson Receives Natural Resources Law Teaching Award



Reed Benson received the Clyde O. Martz Teaching Award from the Rocky Mountain Mineral Law Foundation in 2021, making Benson the first recipient of the award at UNM. According to the Foundation, Benson was chosen for the award because he embodies the highest qualities of a teacher and mentor to students and lawyers. Now in his 20th year as a law professor, Benson teaches courses relating to water law, public lands and administrative law. He has been actively involved with the Foundation in various ways, especially since coming to New Mexico in 2008. "This award means a lot, especially when I see the names of past recipients," said Benson. "I am very grateful to the Rocky Mountain Mineral Law Foundation for its support of law schools and law teaching." Alex Ritchie, Executive Director of the Foundation, noted that Benson is only the 31st recipient of the Martz award since it was established 27 years ago. "He joins the ranks of a very select and distinguished group of law professors in the field of natural resources law, and was selected from among a strong field of nominees from throughout the nation by the award committee that includes other natural resources law professors," Ritchie said. "UNM Law is extremely blessed to have Reed leading its Natural Resources and Environmental Law Program."

Environmental Justice Events: Redlining, Cumulative Impacts, and a Pueblo Bus Tour

This fall, the program hosted three events related to environmental and racial justice in pollution control, land use, and mining.



Diana Dorn Jones discussing racially restrictive covenants in Albuquerque during the Mapping Inequality panel discussion on October 21, 2021.

Mapping Inequality: Reckoning With Historic Redlining and its Legacy featured Robert Nelson, the Director of the Digital Scholarship Lab at the University of Richmond and the developer of the nationally known “Mapping Inequality” project. The project maps redlined districts in cities across the country and shows how racist federal mortgage policies correlate with disparate economic, health, and environmental outcomes decades later. The event also featured presentations from Diana Dorn Jones, a longtime activist and executive director for United South Broadway Corporation, and Albuquerque’s Long Range Planning Manager, Mickaela Renz-Whitmore. The event was organized by Prof. Elizabeth Elia and Prof. Cliff Villa.

Environmental Justice and Cumulative Impacts: Applying the New Jersey Experience to New Mexico Challenges featured Dr. Nicky Sheats, director of the John S. Watson Institute for Urban Policy and Research at Kean University, and a national expert on environmental justice. This event was a follow up to a preliminary virtual event held last year.

Continuing Legal Education Program

Environmental Justice and Cumulative Impacts

Applying the New Jersey Experience to New Mexico Challenges



Dr. Nicky Sheats
 Director, John S. Watson Institute for Urban Policy and Research at Kean University; New Jersey Environmental Justice Alliance

Wednesday, November 3, 2021
5:30-7:00 pm
UNM School of Law, Room 2401
Free parking after 5 pm! Bring your mask!

This program has been approved by NM MCLE for 1.5 General CLE credits
 Sponsored by the UNM School of Law in cooperation with Los Jardines Institute

Dr. Sheats has helped to develop and advocate for cumulative impacts policies in New Jersey in his role as executive director of the New Jersey Environmental Justice Alliance, and shared lessons from those

experiences with the audience. Senior representatives of the city of Albuquerque also provided comments, and members of the local air quality board were in attendance. The event was organized by Prof. Cliff Villa.



UNM students visited a Superfund site to learn about uranium mining impacts on Laguna Pueblo.

Villa also organized an environmental justice bus tour to the Laguna Pueblo, 40 miles west of Albuquerque, to learn about the history of uranium mining and the disproportionate impacts of uranium contamination upon indigenous communities in the Southwest. The tour visited the Jackpile-Paguate Uranium Mine site, once one of the largest in the world, which produced about 25 million tons of uranium ore before closing in 1982. While many of the mining pits and features have now been filled in or covered, toxic metals including uranium still contaminate the environment and pose serious health risks to the Pueblo community; the former mine was listed as a Superfund site in 2013. Staff from the Laguna Pueblo's Environmental and Natural Resources Department explained much of the history as well as current activities to monitor and address concerns for uranium contamination. Tour participants were also fortunate to be joined by the Pueblo's First Lt. Governor Ken Tiller.

Alumni Spotlight: Morgan Johnson, '20, Advocates

for Federal Energy Reform



Alumna Morgan Johnson recently joined NRDC's Sustainable FERC Project

Morgan Johnson came to New Mexico with a background in public policy and a strong interest in environmental justice. She excelled at UNM Law, earning the Natural Resources and Environmental Law Certificate and winning the regional National Black Law Students Association moot court competition.

After graduating in 2020 she immediately put her advocacy skills to work as a staff attorney for Waterkeepers Chesapeake, where she handled water quality issues and led the organization's environmental justice efforts.

Johnson recently went to work for NRDC as a Staff Attorney with the Sustainable FERC Project, a coalition-based initiative promoting the transition to a clean, low-carbon, and sustainable energy future. She represents the Project in its gas advocacy work before the Federal Energy Regulatory Commission. Johnson works with a range of partners, from NGO's to frontline community groups, to improve FERC's public and landowner engagement processes, consideration of climate impacts, and environmental justice reviews.

"Working at NRDC is a dream come true for me," said Johnson. "This is a very exciting moment to be advocating at a federal level, while still working closely with communities on the ground. I'm grateful to be doing work that addresses some of the greatest challenges impacting our climate future as we transition to a sustainable grid."

**Student-Driven Series
Spotlights Climate Adaptation**



UNM student Atty Phleger during his pre-law-school career in climate adaptation

UNM students organized and hosted a three-part speaker series in November on “Climate Adaptation and the Law,” featuring speakers from the Seton Hall Law School, a private law firm, and the South Central Climate Adaptation Science Center. Sponsored by three student organizations – Environmental Law Society (ELS), Native American Law Students Association (NALSA), and the new Historic Preservation Law Society (HPLS) – the series was spearheaded by second-year student Atherton “Atty” Phleger.

Phleger’s work promoting climate adaptation began before he arrived at UNM Law. He served as the New Mexico Tribal Liaison for the South Central Climate Adaptation Science Center, where he collaborated with Tribes and Pueblos in their efforts to develop climate adaptation plans and resilience projects. He also worked as program director for CAVU, a non-profit focused on climate education.

“For me, one of the most appealing aspects of climate resilience work is the potential for collaboration and interdisciplinary projects,” said Phleger, who serves as an officer of both ELS and HPLS. “I put together this series to showcase a small portion of the many intersections between climate adaptation and the law, and encourage others to consider how their areas of interest may be influenced or informed by climate impacts.”



The CLE included a performance of historic Spanish *corridos* related to land grants and acequias.

UNM Holds Weekend CLE on Land Grant and Acequia Law

After a year-and-a-half delay due to COVID, UNM's Utton Transboundary Resources Center and Natural Resources and Environmental Law Program held a weekend continuing legal education program on the law of Land Grants and Acequias on October 15 and 16. The program was co-hosted by UNM's Land Grant Studies Program, the Land Grant Council, New Mexico Legal Aid, and the New Mexico Acequia Association, and was held on the grounds of the Cañón de Carnué Land Grant Hall.

The program was intended to provide an overview of the historical development of the law of these unique New Mexican units of government, and to provide an overview of current hot topics such as common lands encroachment, acequia easements, and issues in land grant and acequia government. It was kicked off by the directors of the Utton Center and the Land Grant Studies Program, Adrian Oglesby and Dr. L.M. Garcia y Griego.

The in-person event—which mandated vaccinations and abided by COVID-19 regulations—was sold out and a great success. Organizers were particularly excited that a number of UNM SOL recent alumnae who have worked on land grant and acequia issues attended as participants, as did many board members of land grants and acequias throughout the state.

Recordings of the CLE are being prepared and will be posted the Utton Center's website.

About the Natural Resources and Environmental Law Program

New Mexico is a place with a stunning variety of scenic beauty and natural and cultural resources, which makes it an ideal backdrop for the study of natural resources and environmental law and policy on a national scale. UNM Law's [natural resources and environmental law \(NREL\) program](#) offers students a robust variety of experiences, including a full range of [courses](#) in the field, the [NREL certificate program](#), the [NREL clinic](#), the [Natural Resources Journal](#) (the oldest U.S. law review in the field), the [Utton Transboundary Resource Center](#) (a research center dedicated to natural resources and environmental issues), an externship program, and the [Environmental Law Society](#). Students can also earn a dual degree in law and water resources.

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