



## NATURAL RESOURCES & ENVIRONMENTAL LAW PROGRAM

### November 2020 Newsletter:

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# Clinic Urges State to Strengthen Proposed Oil and Gas Methane Rules, Equitably Protect Native Communities



Photo credit: Don Schreiber

This fall, students in the Natural Resources and Environmental Law (NREL) Clinic submitted comments on proposed state rules to reduce methane emissions from the oil and gas sector on behalf of the Center for Civic Policy (CCP), a New Mexico non-profit community-advocacy organization, and the Native American Voters Alliance. The state's energy and environment agencies each proposed rules this summer in response to an executive order on climate change issued by Governor Michelle Lujan Grisham. In the spring of 2020, clinic students represented CCP in an intensive, 12-week methane advisory panel process convened by the agencies to develop a technical report to inform the rulemaking. In the submitted comments, the clinic strongly urged the New Mexico Environment Department to eliminate exemptions for marginal oil and gas wells. The clinic's analysis found that these provisions would exempt a majority of wells in the oil-and-gas producing counties that have a large Native American population, disparately impacting these communities. "This was a great opportunity to represent communities that don't usually have a voice in these very technical matters," said Hannah Rae Neal, the lead clinical law student working on the matter. "These rules have the potential to not just mitigate climate change, but to also improve the health and welfare of people living in these areas."

This semester clinic students also testified in front of the Albuquerque City Council in support of a subsequently-adopted zoning amendment requiring a cumulative pollution impact analysis prior to the approval of any new industrial development in the heavily polluted San Jose neighborhood. Students are also working with Tribal clients on a potential challenge to the EPA's Navigable Waters Protection rule, and are working on an amicus brief on behalf of conservation organizations in support of challenges to the EPA's rollback of greenhouse gas standards for cars and trucks.

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# Recent Scholarship and Presentations

**Gabe Pacyniak** will be presenting his work-in-progress *Administering Climate Justice* in a workshop on The Climate Crisis: Legal Safeguards for Justice and Security hosted by the Stockholm Environmental Law and Policy Centre and the Elisabeth Haub School of Law at Pace University. Gabe also presented the work this summer at the Early Career Energy Scholars Workshop hosted by the University of Colorado Law School. An earlier article, [Greening the Old New Deal: Reforming Rural Electric Cooperative Governance](#), 85 Mo. L. Rev. 409 (2020), was published this summer. This summer Gabe also coauthored [a white paper surveying the legal, policy, and technical landscape with regards to grid modernization](#) in New Mexico with staff from New Mexico's energy department. Gabe is also working with stakeholders on potential climate change and energy legislation proposals for this upcoming state legislative session, including with anti-poverty advocates and utilities on legislation that would partially forgive utility arrears accumulated during the COVID public health crisis.



**Joseph Schremmer** presented at the 66th Annual Institute of the Rocky Mountain Mineral Law Foundation, and the accompanying paper *Crystal Gazing: Foretelling the Next Decade in Oil and Gas Law*, is forthcoming in the Proceedings of the Annual Institute. Schremmer has another paper, *Pore Space Property*, forthcoming as the lead article in Volume 2021 of the *Utah Law Review*. His essay, *Join with me, Won't You? Civic Engagement, COVID-19, and the Millennial Generation of Law Professors*, will appear in a forthcoming volume of the *Journal of Legal Education* as part of a collection entitled *Get in Good Trouble: A Collection of Essays by Millennial Law Scholars*. Schremmer is also contributing to a new chapter of the Environmental Law Institute's treatise, *Law of Environmental Protection*, pertaining to regulation of the oil and gas industry; his contribution covers of the downstream side of the industry, i.e., petroleum refining, distribution, and marketing. Additionally, Schremmer recently workshopped two new articles. At the 11th Annual Vermont Colloquium on Environmental Scholarship, he presented a paper exploring the doctrine of waste across multiple fields of property and natural resources law with his co-author Tara Righetti. And at the Rocky Mountain Junior Scholars Conference, he presented a paper that advances the "fair opportunity" theory of oil and gas and subsurface property rights that he introduced in *Pore Space Property and Getting Past Possession: Subsurface Property Disputes as Nuisances*, 95 Washington Law Review 315 (2020).

**Cliff Villa** completed updates to his forthcoming article, *Remaking Environmental Justice*, 66 Loyola L. Rev. \_\_ (2020) to address the disparate impacts of COVID-19 and begin to account for the racial violence and increasing disasters that have wracked the United States in 2020. In June, in the immediate wake of the police killing of George Floyd, Villa helped organize and present a school-wide teach-in on Black Lives Matter. Over the summer, Villa presented via Zoom on *Environmental Justice and the Clean Air Act* for students at Barry University School of Law, and spoke with students from CUNY on *Superfund Meets Environmental Justice*. In October, Villa gave a presentation at the annual New Mexico Water Law conference, discussing the Supreme Court's recent decision in *Atlantic Richfield v. Christian* (2020). In preparation for this presentation, Villa met with Mr. Christian in Anaconda, Montana, and visited the subject site. In November, Villa spoke at a program sponsored by the UNM Medical-Legal Alliance, discussing his continued research on the Flint water crisis and presenting findings from a field visit to Flint in October.

**Reed D. Benson** has been hard at work on a new edition of the Water Resource Management casebook, due out late this year (see story below). He also covered the Supreme Court litigation in *Texas v. New Mexico* for SCOTUSblog. This case involves an interstate compact dispute on the Pecos River, and was argued on the first day of the new Supreme Court term. After writing a [preview](#) and a same-day [analysis of the argument](#), Benson will write a final entry when the case is decided. He spoke in June on a webinar called "Dividing The Waters: Water Law Update," offered to water judges across the country by the National Judicial College and its Dividing the Waters project. One of three law professors on a panel moderated by former Colorado Supreme Court Justice Greg Hobbs, Benson analyzed the Arizona Supreme Court's 2018 decision in *Silver v. Pueblo del Sol Water Co.*

**Laura Spitz** is working on a webinar series that brings experts together to strategize on ways that governments might hold fossil fuel companies legally accountable for climate change and other environmental impacts. The series is a joint initiative of three law schools and an environmental organization in Spitz' native British Columbia. During the current year she is visiting at one of these schools, Thompson Rivers University Faculty of Law in Kamloops, BC.



# UNM Faculty Work on Casebooks: Past, Present and Future



Three UNM professors are co-authors of major textbooks in environmental and natural resources law. These books vary by topic, and by the status of each one's new edition.

**Cliff Villa** is the lead author of a book released in May, *Environmental Justice: Law, Policy & Regulation*, Third Edition (2020). But work on the book continued after publication, as Villa helped produce the accompanying teacher's manual and created a new supporting website: [www.environmentaljusticebook.org](http://www.environmentaljusticebook.org). The new website provides open access to teaching materials including syllabi and class exercises; chapter materials, including key documents for each chapter; GIS tools, such as EJSscreen and EPA ECHO; useful websites; and case studies. Villa is also a co-author of the latest edition of *A Practical Introduction to Environmental Law* (2017).

**Reed D. Benson**, along with co-authors Dan Tarlock and Burke Griggs, is putting the finishing touches on a new 8<sup>th</sup> edition of *Water Resource Management*, due out late this year. The 8<sup>th</sup> edition features a new chapter on Conjunctive Management of surface and groundwater, along with many major revisions. Benson becomes the lead author on the 8<sup>th</sup> edition, as Tarlock steps back after serving as an author since the 1<sup>st</sup>. "I am so grateful for the chance to work with Dan over the years on this book," said Benson. "Burke has been a great addition to our team, and I like what we've done with the new edition."

**Joseph Schremmer** is excited to join the authors of *Cases and Materials: The Law of Oil & Gas* for an 11th edition scheduled for 2021. Schremmer and Tara Righetti will work with current co-authors Pat Martin, Bruce Kramer, and Keith Hall to carry on the long-standing casebook. Reflecting the growing importance of federal environmental regulation and local regulation of oil and gas development, the new edition will build on the chapters added on these topics in the 10th edition. "I'm humbled and grateful to be asked to contribute to the next edition," said Schremmer. "My co-authors are luminaries in the field and are extremely gracious to share the opportunity with me."

# UNM Students Place Articles for Publication on Environmental Justice

Following completion of Professor Cliff Villa's Spring 2020 Environmental Justice Seminar, at least three UNM Law students have had their seminar papers accepted for publication. **Kristen Burby**, Managing Editor of UNM's Natural Resources Journal, had her paper, *Making It Stick: Local Environmental Review Statutes*, accepted for publication by the UC Davis journal *Environs*. Burby's article provides a critical analysis of Newark, New Jersey's Environmental Justice and Cumulative Impact Ordinance, passed with fanfare in 2016 but evidently lacking in implementation. **Dharma Khalsa**, Co-Editor-in-Chief of the Natural Resources Journal, had her paper accepted for publication by the Vermont Journal of Environmental Law. Khalsa's paper, *Such a Waste: Why Composting Programs Are Not Doing Enough to Support Environmental Justice*, turns a critical eye to composting programs that fail to achieve intended results and, in particular, fail to provide accessibility to minority or low-income communities. Finally, **Sarah Hyde**, UNM Law Child and Family Justice Scholar, had



**Dharma Khalsa, Sarah Hyde, and Kristen Burby**

her paper, *Healthy Environment, Healthy Mind: Guaranteeing New Mexico's Children the Right to a Healthful Environment*, accepted for publication by Chicago-Kent's Journal of Environmental and Energy Law. Hyde's paper makes a creative and compelling argument for recognition of a constitutional right to a healthy environment for the children of New Mexico based upon provisions of the New Mexico Constitution. These three students join a growing list of recent UNM Law students whose work has been published in other schools' environmental law journals.

**VIRTUAL CONTINUING LEGAL EDUCATION PROGRAM**

## Change in the Air:

*The Election, The Supreme Court, and their Implications for Environmental Law*



**Tuesday, November 17, 2020**  
**5:15-6:45pm**

**Register Here:**  
[https://unm.zoom.us/webinar/register/WN\\_F\\_gyms\\_cSSyL-jL3We\\_o4w](https://unm.zoom.us/webinar/register/WN_F_gyms_cSSyL-jL3We_o4w)

Please join us for a lively CLE where the UNM law faculty will examine the implications of the 2020 federal election results and President Trump's judicial appointments for environmental and natural resources law.

This program has been approved by NM MCLE for 1.5 General CLE credits

Sponsored by the UNM School of Law in cooperation with the Natural Resources & Environmental Law Program

# NREL Program Faculty present *The Election, The Supreme Court, and Their Implications for Environmental Law* on Nov. 17

Faculty from the natural resources program will provide a lightning overview of potential implications from the election and the appointment of Justice Amy Coney Barrett to the Supreme Court in a virtual CLE to be held on Tuesday, November 17, at 5:15 mountain time. Program Chair Reed Benson will moderate the event and discuss federal lands management and the National Environmental Policy Act. Cliff Villa will cover implications for environmental law and environmental justice. Gabe Pacyniak will cover energy and climate change. Jennifer Hower, adjunct professor and New Mexico Environment Department general counsel, will cover potential impacts for New Mexico law and policy. Joe Schremmer will cover oil and gas. Samantha Ruscavage-Barz, adjunct professor and managing attorney at WildEarth Guardians, will cover endangered species and wildlife law.

If you would like to attend the virtual event, please register here:  
[https://unm.zoom.us/webinar/register/WN\\_F\\_gyms\\_cSSyL-jL3We\\_o4w](https://unm.zoom.us/webinar/register/WN_F_gyms_cSSyL-jL3We_o4w).

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## Alumni Spotlight: Rachel Giron, U.S. Interior Solicitor's Office

The U.S. Interior Solicitor's Office in 2019 revived its highly competitive Honors Program, hiring four new attorneys for the Solicitor's main office in Washington, DC. One of them was New Mexico Law alumna Rachel Giron.

Giron had a stellar career at UNM, graduating in 2014 at the top of her class. She received several academic honors, including the Domenici Award for excellence in environmental law. She was an editor of the *Natural Resources Journal* and a member of UNM's environmental moot court team, and earned the Natural Resources and Environmental Law certificate.



After graduation Giron clerked for a series of judges, starting with the late Chief Justice Charles Daniels of the New Mexico Supreme Court. She then held two federal clerkships, with Tenth Circuit Judge Harris Hartz and District of New Mexico Senior Judge James Parker, before joining the Interior Department's legal team in Washington.

Following her year as an Honors Attorney, Giron recently joined the Division of Water Resources within the Solicitor's Office, where she works primarily on matters involving the Bureau of Reclamation. "Water has historically been a source of conflict, and it still is, but I'm excited to work with the agency as it transitions to address new aspects of water use, develops new strategies for water management, and attempts to negotiate creative solutions to complex issues," she said.

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# 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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