



NATURAL RESOURCES & ENVIRONMENTAL LAW PROGRAM

Summer 2019 Newsletter

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NREL Program Earns A+ Rating from PreLaw Magazine

The Winter 2019 publication of PreLaw Magazine [rated UNM's Natural Resources and Environmental Law Program an A+](#), improving on last year's A- rating. Only 13 other programs in the country were awarded an A+ rating, including other top natural resources and environmental law programs such as those at Lewis & Clark, Pace, Vermont Law School, and the University of Utah. The review "graded law schools based on the breadth of their curricular offerings." UNM was recognized for its diverse course offerings in the field, its NREL Certificate program, the NREL clinic, the Natural Resources Journal, and for providing other student opportunities in the field such as the Environmental Law Moot Court team, the Environmental Law Society, and programming offered by the Utton Transboundary Resources Center.

"UNM Law has had a strong program in this field for many years, and we continue to build it," said Prof. Reed Benson, director of the NREL Program. "Opening our Natural Resources and Environmental Law Clinic in 2017 has raised us to the next level."

UNM Hosts Parenteau as Visiting Scholar



Pat Parenteau, longtime professor at Vermont Law School, served as a Visiting Scholar at UNM School of Law in Spring 2019. Parenteau's long and distinguished career in environmental law includes key positions in federal and state government, along with private practice and nonprofit conservation groups. He founded VLS' Environmental and Natural Resources Law Clinic and helped establish the school as one of the nation's best for environmental law.

Parenteau taught an Endangered Species Act (ESA) seminar at UNM and also spoke at multiple public events through the semester. He debated the ESA with former Interior Solicitor Tom Sansonetti and examined potential ESA rule revisions for the Natural Resources Journal's spring symposium. Parenteau also spoke on the Trump Administration's new proposed rule on the scope of the Clean Water Act as well as a comparative look at climate litigation in Europe and the U.S. The latter topic was the subject of his 2018 Fulbright Fellowship in Ireland.

His time at UNM was enjoyable not just for the academic experience, Parenteau said, but also the social and recreational opportunities. "Albuquerque is a vibrant city with a great system of bikeways and nearby canyon trails to explore as well as funky brewpubs and the best green chile enchiladas ever!" He was joined in some of these brewpubs by Reed Benson, who said, "Pat did a lot for us in his time here, and it was a real honor and pleasure having him at UNM."

Former Minister Christopher Finlayson Discusses New Zealand's Settlements with Māori



From left to right: Law and Indigenous Peoples Program Director John LaVelle, NREL Program Director Reed Benson, the Honorable Christopher Finlayson, Utton Center Executive Director Adrian Oglesby.

On February 25, UNM School of Law welcomed Christopher Finlayson to discuss New Zealand's model of settlement negotiations between the country's government and its indigenous peoples. Finlayson previously served as New Zealand's cabinet Minister for Treaty of Waitangi Negotiations and also as the country's attorney general.

Finlayson described the legal framework that was put into place by a 1975 New Zealand law that seeks to provide redress to Māori tribes for breaches by the New Zealand Government of

guarantees set out in the Treaty of Waitangi (a 19th Century agreement between the British Crown and the Māori). Settlements typically include financial compensation, potential return or protection of tribal lands and cultural properties, and government apologies for harms imposed on the indigenous tribes. As Minister for Treaty of Waitangi Negotiations, Finlayson oversaw negotiations of such settlements on behalf of the government.

As one example, Finlayson described how in 2014 a groundbreaking agreement was reached that entitled the Whanganui River to a legal identity, a first in the world, because the Whanganui Māori tribe regard the river as their ancestor. Finlayson said the river would have an identity "with all the corresponding rights, duties and liabilities of a legal person." The river will be represented by two officials, one from the Māori and the other appointed by the government.

The continuing legal education lecture was presented by the NREL Program, the Law and Indigenous Peoples Program, and the Utton Center.

UNM Graduates Record Number of NREL Certificate Students

UNM School of Law awarded thirteen students its [natural resources and environmental law certificate](#) in the 2018-2019 school year, its largest class of certificate awardees to date. Law students can earn the specialized certificate by earning 21 credits in qualifying courses and completing writing and experiential learning components.

The students who received the certificate this past academic year are Valentina Basile, Ann Brethour, Ashley Cook, James Grieco, Javier Gonzales, Brandon Ilgen, Samantha Kao, Thomas Kricka, Anthony Maestas, Paul Roybal, Sunnie Sartin, Serena Wheaton, and Jared Vander Dussen.

10th Circuit Remands Chaco Canyon Drilling Permits in Case Where Clinic Filed Amicus

In May, the 10th Circuit Court of Appeals ruled in *Diné Citizens Against Ruining Our Environment v. Bernhardt* that the federal Bureau of Land Management failed to adequately consider the cumulative impacts of drilling for oil and gas in the Greater Chaco Canyon region. The UNM Natural Resources and Environmental Law Clinic filed an amicus brief in the case on behalf of the All Pueblo Council of Governors (APCG) and the National Trust for Historic Preservation (National Trust). The brief argued that BLM did not meet its obligation under the National Historic Preservation Act to meaningfully consult with the 20 Pueblo Tribes represented by APCG before granting the drilling permits. The APCG Pueblos trace their ancestry to the civilizations that existed in the Greater Chaco Region and maintain ongoing connections to these lands. In its ruling, 10th Circuit's found violations of the National Environmental Policy Act (NEPA), but did not find violations under NHPA. Nevertheless, because the court's ruling requires BLM to redo its analysis of the cumulative environmental impacts of six drilling permits in the region, particularly with regards to water resources, the APCG's Pueblos will have an opportunity to participate in the

reconsideration. The case is being watched nationally because of the concerns of drilling in the greater Chaco Canyon region.

Prof. Jeanette Wolfley supervised the NREL Clinic in Spring 2019. The clinic students represented clients on a wide variety of issues, including hearings before the state water agency on water claims, filing an appeal challenging land use decisions, preparation for trial in a land grant dispute, drafting tribal cultural resources protection and leasing codes, drafting comments for tribal clients on the Waters of the United States rulemaking, and reviewing and drafting a code on oil and gas development.

UNM Law Student Rewarded for Excellence by Rocky Mountain Mineral Law Foundation



Morgan Johnson
Photo Courtesy of UNM Law Media Center

UNM law student Morgan Johnson has been awarded not one, but two, scholarships from the Rocky Mountain Mineral Law Foundation (RMMLF).

These scholarships are quite competitive, with about 100 students from many different schools seeking about 30 awards each year. These prestigious awards generally range from about \$3,000 to \$10,000 each.

“UNM Law has an excellent natural resources and environmental law program, and many of their students have become important contributors to the natural resources and environmental law community,” said Alex Ritchie, Executive Director of RMMLF.

The Frances Hartogh Diversity Outreach Scholarship, brand-new this year and named after a longtime Foundation staff person who recently retired, is specifically geared toward supporting people from under-represented groups who are interested in natural resources law and also committed to helping serve the needs of such groups. Morgan is one of the very first students to receive this new award that focuses on opportunity and diversity in the natural resources sector. Morgan also received a RMMLF Scholarship.

“Morgan has a deep interest in natural resources and environmental justice, so she is a very deserving recipient of this new award,” said NREL Program Director Reed Benson. “It’s great news for UNM as well because this law school both values diversity and emphasizes natural resources law.”

Alumna Spotlight: Lila Jones at DOJ's Environment and Natural Resources Division



Lila Jones, class of '15, joined the Department of Justice in 2015 through the Attorney General's Honors Program. She serves as a trial attorney with the Environment and Natural Resources Division where she brings enforcement actions against individuals and corporations that violate our federal civil pollution-control laws. In addition to conducting affirmative civil litigation, Lila also recently completed an 18-month detail within the Division in which she defended various United States agencies against National Environmental Policy Act actions. While at UNM Law Lila earned her NREL Certificate and was awarded Best Oralist - Honorable Mention in the Jeffrey G. Miller National Environmental Law Moot Court Competition. Outside of work, Lila serves as a volunteer attorney with the DC Pro Bono Bar and as a mentor in the Law Camp high school mock trial program.

Faculty Scholarship and Presentations

A new article by **Reed D. Benson**, [*Can A State's Water Rights Be Dammed? Environmental Flows and Federal Dams in the Supreme Court*](#), examines issues involved in the ongoing *Florida v. Georgia* litigation over the waters of an interstate river system. Florida seeks to ensure adequate flows in the Apalachicola River for ecosystem needs, and the case provides an opportunity for the Supreme Court to clarify the status of environmental water demands under the "equitable apportionment" doctrine. Benson examines the Supreme Court's 5-4 decision of 2018 in that case and contends that both the majority and the dissent fundamentally misunderstood the proper role of federal dam operations in the context of interstate water disputes. The article will soon be published in Vol. 8 of the Michigan Journal of Environmental and Administrative Law.

Gabe Pacyniak published a [white paper](#) in December identifying policy considerations related to New Mexico's current Renewable Portfolio Standard (RPS) design ahead of the state legislature's deliberation and passage of a major RPS expansion. One of the paper's findings was that New Mexico's RPS had a uniquely restrictive cost-containment measure that disproportionately shielded large customers from cost impacts and prevented the full renewable goal from being met. This mechanism was changed in the RPS expansion passed by the New Mexico legislature this year. Pacyniak is currently working to complete a law review article on how federal and state governance of rural electricity cooperatives can be improved to promote the shift to a low-carbon electricity system. He recently presented his work on this issue at the 5th Annual Arizona

Sustainability Conference of American Legal Educators hosted by Arizona State University and also presented on the topic to stakeholders in Colorado and New Mexico this past year.

Cliff Villa spent the spring of 2019 on a release from teaching in order to devote energy to an update of *Environmental Justice: Law, Policy & Regulation* (2nd ed. 2009), the leading law school text on the subject. Including co-authors Rebecca Bratspies of CUNY, Nadia Ahmad of Barry University, and Roger Lin of UC Berkeley, the update will be published by Carolina Academic Press and is expected to be available in time for course adoptions in the spring of 2020. In addition to research and writing for the EJ book, Villa completed edits to an article, “Gold King Mine Spill: Environmental Law and Legal Protections for Environmental Responders,” [2019 Utah L. Rev. 263 \(2019\)](#). Villa will also publish a review of a popular book on the same incident. “River of Lost Souls: The Science, Politics, and Greed Behind the Gold King Mine Disaster,” 41 *Pub. Land & Resources L. Rev.* 69 (2019) (book review). In March, Villa spoke at CUNY School of Law, giving a talk on the importance of “Character in Public Service.” In April, Cliff spoke at the Pace University Elisabeth Haub School of Law, which selected Villa to be the Haub Environmental Law Distinguished Junior Scholar this past year. Villa delivered an Earth Week talk at Pace entitled “Environmental Justice: Reflections and Renewal.”

Jeanette Wolfley presented at several natural resources conferences this past year, including “Tribal Perspectives of Water Settlement” at the Tribal Water Law Conference; “Nationwide Perspectives on Critical Demand for Water” in Phoenix, Arizona; “The National Historic Preservation Act and Tribal Landscapes in the Chaco Canyon Region,” at the Natural Resources and Environmental Section of New Mexico State Bar; Keynote on “Tribal Sovereignty and the Environment” at the New Mexico Tribal Leadership Conference at the Pueblo of Isleta; and “Updates on Indian Water Law Cases and Settlements” at the New Mexico Water Law Judges Annual Seminar.

The Utton Center Tackles UNM’s Sustainable Water Resources Grand Challenge

The Utton Transboundary Resource Center is part of the leadership team that will be tackling UNM’s Sustainable Water Resources “Grand Challenge.” This February, UNM President Garnett S. Stokes [announced the selection of three university-wide Grand Challenges](#) that seek to bring researchers and scholars together in interdisciplinary teams to address some of New Mexico’s most pressing issues. The goal of the Sustainable Water Resources Challenge is to develop the Rio Grande Watershed as a vibrant and resilient trans-boundary watershed that supports a thriving economy, healthy landscapes and aquatic ecosystems, and vibrant communities. UNM is providing seed funding for the interdisciplinary project.

The Utton Center has deep institutional expertise in New Mexico water governance and is known for its publications, conferences, and public service projects. “The Utton Center is excited to be working with our partners across UNM and the Higher Education Department to help develop meaningful solutions to the real and immediate water resource challenges facing New Mexico’s communities,” said Utton Center Executive Director Adrian Oglesby.

Three Students Receive Stipends for Summer Work



From Left: Mara Yarbrough,
Morgan Johnson & Aaron Villalpando

The NREL Program awarded stipends to three students who will work this summer in otherwise-unpaid positions for nonprofit organizations or government agencies. The students and their summer 2019 employers are: Morgan Johnson, for a full-time position with the nonprofit New Mexico Environmental Law Center; Aaron Villalpando, for a full-time position with the New Mexico Environment Department; and Mara Yarbrough, for a half-time position with the Land and Water Project of New Mexico Legal Aid. The NREL Program makes these awards through a competitive application process, providing stipends to two or three students who will do summer work in the field of natural resources and environmental law. "We are pleased to provide this support to Morgan, Aaron and Mara, who will get great experience doing important work this summer," said NREL Program Director Reed Benson.

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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