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Environmental Lawyer  
of the Year Award**

Oil and gas canals through coastal marshes south of New Orleans

**LITIGATION UPDATES:****BIG CASES ON THE MOVE**

**Prior newsletters have featured several major cases involving Tulane Alums, Profs and Students, including: (1) the New Orleans levee board lawsuit against oil companies for wetland damage, (2) the BP blowout civil litigation, (3) an action in the Philippines claiming roads for pedestrian and alternative transportation, (4) and litigation over a highly-endangered frog in Southern Mississippi. All four remain in motion with significant new developments.**

**1) Levee Board Case**

As readers will know, in July of last year the Southeast Louisiana Levee Authority filed suit against 97 oil and gas companies for destroying wetlands south of the City that protected the Authority's flood control and hurricane levees from coastal storms. The governor went ballistic, calling it a field day for trial lawyers and vowing to kill the case. He began at once to stack the board with those he could count on to oppose it, and when that process proved too slow, he and the oil and gas industry took it to compliant members of the legislature.

**TULANE ENVIRONMENTAL LAW SOCIETY WINS ABA AWARD**

On August 4, 2014, the American Bar Association Section on Environment, Energy and Resources honored the TEELS with its Program of the Year Award for the 18th Annual Summit held in March 2013 at the law school in New Orleans. The Summit's 23 panels organized and funded entirely by the student group drew over 800 attendees for the two-and-one-half day session, capped by field trips to the Historic District and the Maurepas Swamp. Keynoters included Keiran Suckling of the Center for Biological Diversity and Emma Marris of Science Magazine, presenting opposing views of the "Anthropocene", and outdoor pioneer and entrepreneur Yvon Chouinard, who entertained questions for an hour following his formal presentation. It was a happening. Kudos to the students who, from start to finish, made it happen.



Center: Laura Cottingham, TEELS President, and Brett Korte, Summit Chair, receiving ABA award.

## Tulane Environmental & Energy Law Society

- August 31** Bike trip to Lake Pontchartrain
- Sept 3** 1st General Meeting
- Sept 4** 1st Summit Planning meeting
- Sept 13** Service outing, coastal restoration
- Sept 17** TEELS officers meeting
- Sept 19, 20** EPA speaker and interviews,
- Sept 28** Canoe paddle, Wolf River
- Oct 2** General meeting,  
Summit assignments
- Oct 14** Overnight trip, Red Creek
- Oct 24** Plant Visit, Valero Refinery
- Oct 26** Enviro Desert Competition
- Nov/Dec** Summit Planning  
Study Time



TEELS Officers, 2014-15

**Back, L to R:** Jae Sung Shrader, Andy Meyer, Amanda Serfess, Karuna Dave, Emilie Pfister, Andrea Amaya, Maria Kalousi-Tatum **Front L to R:** Deirdre MacFeeters, Emily Prince, Catherine Simon

## 2015 SUMMIT: SAVE THE DATE

Plans for the 20th Summit are underway. Mark your calendars for February 27-28, 2015. The theme will be "Environment 2015: Energy, Water and Beyond." Please follow us on facebook for updates [www.facebook.com/TulaneEnvironmentalSummit](http://www.facebook.com/TulaneEnvironmentalSummit). For questions, or program suggestions, contact Emily Prince at [erince@tulane.edu](mailto:erince@tulane.edu).



Faculty and Fellows, 2014-15

# Faculty: Publications & Presentation

### ADAM BABICH

#### Publications:

*Twenty Questions (and Answers) About Environmental Law Clinics*, 22 Professional Lawyer, No. 1 (December 2013)

#### Presentations:

Panelist, "Interdisciplinary Perspectives on Rural Environmental Injustice," Rural Sociological Society, New Orleans, LA (8/2/14)

"Environmental Law Issues," Louisiana Judicial College Evidence & Procedure Seminar, New Orleans, LA (2/20/14)

"Industrial Siting," University of Michigan Law School Environmental Law & Public Health Conference, Ann Arbor (9/27/13)

"Cooperative Federalism in Environmental Law," *Brown Bag Seminar*, Congressional Research Service, DC (7/11/13)

### COLIN CRAWFORD

#### Publications:

*Natural Disasters and Moral Responsibility*, 8 Bahçeshir University Law Review (Istanbul, Turkey) 131 (2013)(with Maria Clara Dias)

#### Book Chapters:

*Green Building Certification: Legal and Regulatory Issues*, in *Renewable Energy*

*Generation in South America 2014: Renewable Energy, Energy Efficiency and Sustainable Development* (REGSA, forthcoming 2015) (with Becky L. Jacobs)

*Poverty Metrics and Energy Efficiency*, in *Renewable Energy Generation in South America 2014: Renewable Energy, Energy Efficiency and Sustainable Development* (REGSA, forthcoming 2015)

*Ecotourism Regulation and the Move to a Green Economy*, in Maharaj Vijay Reddy and Keith Wilkes, eds., *Tourism in the Green Economy* (Routledge, forthcoming March 2015)(with Jared Sternberg)

#### Presentations:

"Common Law Method", lecture to a first-semester procedure class, Universidad Carlos III de Madrid (April 21, 2014)

"Putting the Brakes on FIFA: Mega-Events and the Social Function of Property", faculty seminar, Universidad Carlos III de Madrid (April 23, 2014)

"Innovative Techniques to Stimulate Student Curiosity for Community Engagement in Domestic and International Settings (panelist speaking on international program development), American Association of Law Schools 37th Annual

Conference on Clinical Legal Education (April 29, 2014)

“Mega-Events and the Social Function of Property”, presenter at seminar series of the Center for the Study of State, Institutional and Democratic Policies, Institute for Applied Economic Research (IPEA), Rio de Janeiro, Brazil (June 9, 2014)

### MARK DAVIS

#### Publications:

Mark Davis, *At the Borders: The New Horizons of Water Management and Water Law*, Indiana International and Comparative Law Review, Vol 24, No. 1 (2014)

#### Presentations:

“Tarrant v. Hermann, Implications for Louisiana,” National Association of Conservation Districts, Lafayette, LA, August 2013

“Water in Perspective: Louisiana, the Nation, and the Future,” Louisiana Water Resources Commission, Baton Rouge, LA, October 2013

“Water in Perspective: Louisiana, the Nation, and the Future,” Louisiana Association of Conservation Districts, Lafayette LA, January 2014

“Financing the Future”, white paper presentation at public Forum hosted by The LENS at Loyola University (New Orleans), August 2014

“Louisiana’s 2012 Coastal Master Plan, the City of New Orleans Master Plan and the Greater New Orleans Urban Water Plan: Integrated Flood Protection and Building Resilient Communities,” Panelist, State of the Coast Conference, New Orleans, LA, March 2014

Panelist, State of the Coast Conference, New Orleans, LA, March 2014

Panelist, plenary session at conference of the International Society of Environmental Journalists, New Orleans, September 2014

### GÜNTHER HANDL

#### Publications:

*Flag State Responsibility for Illegal, Unreported and Unregulated Fishing in Foreign EEZs,*

44 ENVIRONMENTAL POLICY & LAW 158 (2014).

*Preventing Transboundary Nuclear Pollution: A post- Fukushima Legal Perspective*, in R. BECKMAN & T. KOH, EDS. TRANSBOUNDARY POLLUTION: EVOLVING ISSUES OF INTERNATIONAL LAW AND POLICY (2015).

#### Presentations:

“Flag State Responsibility for Illegal, Unreported and Unregulated Fishing in Foreign EEZs,” Third International Symposium of Laureates, Elizabeth Haub Prizes for Environmental and Diplomacy, November 2013.

“Preventing Transboundary Nuclear Pollution: A post- Fukushima Legal Perspective,” International Conference on Transboundary Pollution: Evolving Issues of International Law and Policy, National University of Singapore, Centre for International Law, February 2014.

“The Compensability of Damage from Offshore Oil & Gas Activities: Pure Environmental Loss,” Energy Law Conference: The Legal Issues Associated with the Development and Use of Arctic Energy Resources, University of Tromsø, Faculty of Law, September 2014.

### OLIVER HOUCK

#### Books:

(See sidebar)

#### Publications:

*Cooperative Federalism, Nutrients, and the Clean Water Act: Three Cases Revisited*, Environmental Law Reporter, May 2014

Book Review: *Fighting Westway*, The Environmental Forum, November/December 2014

Book Review: *The Most Important Fish in the Sea: Menhaden and America*, The Environmental Forum, July/August 2014.

Book Review: *The Snail Darter & The Dam*, The Environmental Forum, March/April 2014

Book Review: *The Power of Gold*, The Environmental Forum, November/December 2013

**Presentations:** numerous, in the region.

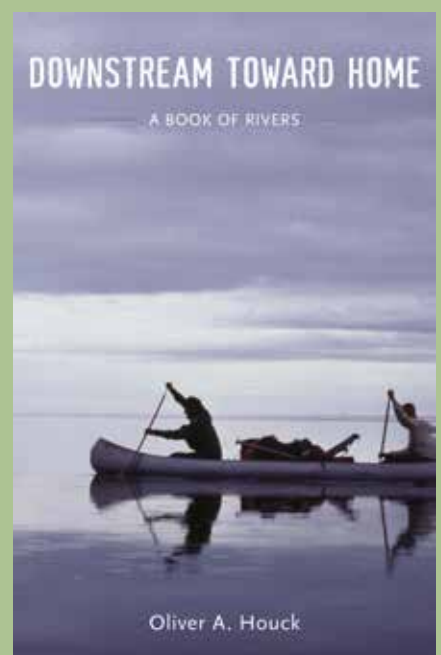
## DOWNSTREAM TOWARD HOME: A BOOK OF RIVERS

“Yes, America’s best environmental writer is a law professor. Oliver Houck’s memoir of his encounters with rivers is wise, wistful, infuriating and beautiful. It’s a privilege and a pleasure to watch him flow.”

— Michael Grunwald, Senior National Correspondent, TIME magazine

What else is there to say? This book spans over fifty years of tracking rivers large and small with friends, family, students, and sometimes alone. Some of you may have gone with him. The book covers thirty from Florida to the Potomac, Oregon Canyonlands, the coast of California and the Alaskan tundra. Every trip is different, every one says something, even in a hard rain, and every one has an environmental story that is part of the ride. It is a good read, and some parts of it are haunting.

***Downstream Toward Home* will be available on Amazon October 6.**







TELC student attorneys, faculty and Dean David Meyer at Louisiana Supreme Court

## ENVIRONMENTAL LAW CLINIC: WINNERS AND LOSERS

We examined first hand what happens. This year the Tulane Environmental Law Clinic celebrates its silver anniversary: It's been a quarter of a century since TELC's founding in 1989, and, with four full-time faculty, a citizen coordinator and 24 student practitioners this fall, we remain as active as ever.

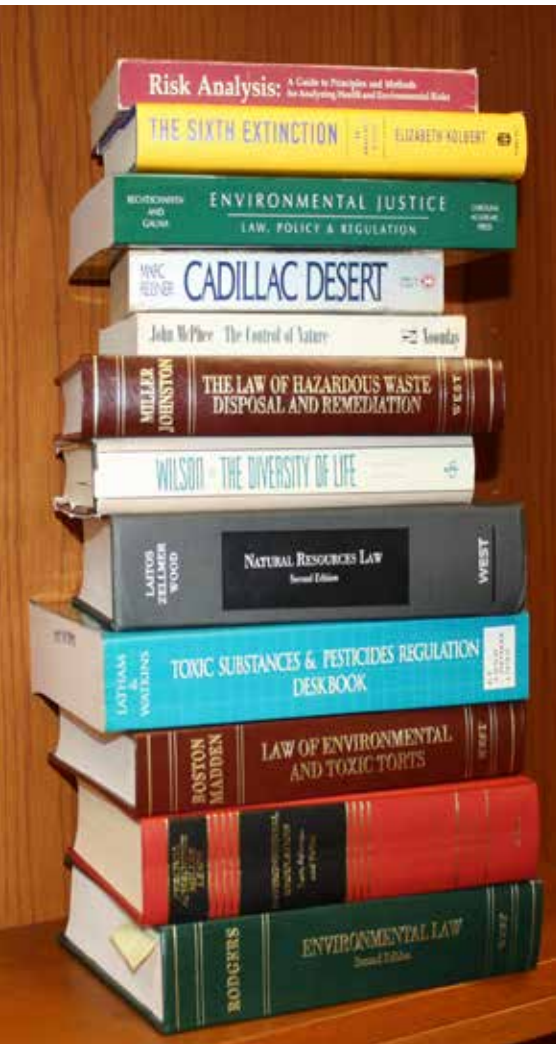
Our clients have made progress, often through negotiated settlements, and suffered some setbacks over the last year. The Gulf Restoration Network, the City of Hattiesburg and the Mississippi Commission on Environmental Quality signed a proposed consent decree this month to settle an enforcement lawsuit over the City's sewage treatment system. Although student-attorneys Lauren Kasperek and Christopher Valletta graduated before finalization of the agreement, their work made the deal possible. Specifically, their (presumably never to be ruled upon) summary judgment papers detailed more than 5000 violations over the last five years and provided the momentum that brought us to a resolution. Bringing municipal sewage treatment plants into compliance is a trick, since a shut-down order is never an option. No matter how many violations occur, sewage must

be treated and effluent discharged. The Hattiesburg facility has been the subject of failed state enforcement orders for more than two decades—since at least 1992. The parties' hope is to change that pattern by making key terms of the State's (simultaneously negotiated) "Second Amended Agreed Order" enforceable by consent decree.

On another matter, our client RESTORE settled a Safe Drinking Water Act lawsuit against Waterworks District No. 3 of Beauregard Parish.

### New Case: Fracking in St. Tammany Parish

The Clinic is representing the town of Abita Springs in opposition to the Hellas Oil fracking project in St Tammany Parish, the first such proposal in the region. A Clinic request to La DNR for a public hearing has been granted. Inter alia, local government authority to condition, limit or prohibit the project is at issue (see Dialogue, *infra*). The project will also require a Corps of Engineers Section 404 permit, and NEPA compliance.



Safe Drinking Water Act enforcement is also a difficult nut to crack since, again, a shut-down order is not feasible and—unlike the Clean Water Act—the Safe Drinking Water Act does not provide for civil penalties in citizen suits. The heart of this settlement is a provision for an independent audit for both legal deficiencies and potential improvements to the district's operations.

A third settlement—this one on behalf of the Christian Ministers Missionary Baptist Association of Plaquemines Parish and others—resolved a dispute about proposed borrow pits near Ironton, Louisiana. Our clients intend the settlement to improve management of the pits for the future, including a provision preventing their use as landfills for at least 25 years.

The setbacks? I often wish I could provide each TELC student attorney with the experience of winning his or her first environmental lawsuit. But that is not the reality of public-interest environmental law, which is an uphill battle—especially when litigating appeals of state-issued permits. Judicial review of these permits is usually limited to the record that the agency itself prepares, and occurs under an “arbitrary and capricious” standard.

I have little comfort to offer students whose clients lose important cases (and every client's case is important). They are right to be upset. If losing didn't break their hearts, they would be going into the wrong business. As professionals, however, we move on to pursue a better outcome in the next case. And win or lose, our students can take satisfaction in having helped ordinary people make their voices heard in the legal system. Over time, those voices can lead to meaningful change.

## OTHER SELECTED CLINIC DOCKET

**Mississippi DEQ revises land application permit to include additional protection for the environment:** On April 8, 2014, the Mississippi Department of Environmental Quality issued a final Water Pollution Control permit to Groundworx, LLC, which responds to concerns that Gulf Restoration Network raised during the public comment period on the draft permit. The permit is for spray irrigation of pretreated municipal and industrial wastewater on land surfaces around Hattiesburg, Mississippi. Following GRN's suggestions in the comments, the final permit includes surface water monitoring requirements for area streams, groundwater protection measures, and tighter discharge limits. TELC submitted the comments on GRN's behalf on February 22, 2014.

**Louisiana DEQ revises Settlement Agreement with ExxonMobil to close loopholes and improve enforceability of injunctive and stipulated penalty provisions:** On January 9, 2014, the Louisiana Department of Environmental Quality finalized a Settlement Agreement with ExxonMobil, Baton Rouge, over numerous violations of the Clean Air Act at ExxonMobil's various Baton Rouge facilities, including its Chemical Plant. The Agreement requires ExxonMobil to implement a Spill Prevention Control Plan, to pay penalties and to fund Beneficial Environmental Projects. The Agreement also includes a stipulated penalty provision. TELC submitted comments on behalf of the Louisiana Environmental Action Network and Ms. Stephanie Anthony on the draft agreement on October 13, 2013, addressing the many significant loopholes and laxities in the proposed Agreement. In the final Settlement Agreement, LDEQ responded to a number of the concerns raised in TELC's comments, improving the strength and enforceability of ExxonMobil's obligations under the Agreement.

**EPA objects to illegal Clean Air Act permit:** On January 30, 2014, EPA granted in part and denied in part petitions for an EPA objection to Louisiana's Clean Air Act permit for the Nucor facility in Convent, St. James Parish, Louisiana. TELC submitted these petitions on behalf of the Louisiana Environmental Action Network and Sierra Club on October 3, 2012, May 3, 2011, and June 25, 2010. The Nucor facility, as permitted, comprises a pig iron plant and a direct reduced iron (DRI) plant, both to produce feedstock for steelmaking. EPA granted the petitions because the state's permit 1) fails to control hazardous air pollutants from “charging” operations at approximately 140 coal-fired ovens in the pig iron process, 2) fails to include enough monitoring to ensure compliance with permit requirements that apply to sources of emissions from the pig iron process, and 3) fails to include emission limits to implement the health protection standard for particulate matter of 2.5 microns or less in the DRI process.

**Court orders EPA to determine whether numeric nutrient standards are necessary to meet Clean Water Act requirements:** On September 20, 2013, a district court granted the plaintiffs summary judgment in *Gulf Restoration Network et al. v. Jackson*, No. 12-cv-677 (E.D. La.) (2013 WL 5328547). The plaintiffs challenged EPA's denial of a petition for rulemaking to establish numeric standards to abate water quality degradation, including the massive low-oxygen “dead zone” in the Gulf of Mexico. EPA had denied the petition without determining whether numeric standards were necessary. The court remanded the decision to EPA, requiring a response within 180 days. TELC was part of a legal team on this case led by the Natural Resources Defense Council. The case is currently on appeal.





## TULANE INSTITUTE ON WATER RESOURCES LAW AND POLICY: INSTITUTE LEADS LOUISIANA WATER CODE PROJECT

Considering how important water is to life in general and our own well-being in particular, one might expect that questions about who can use it, for what, and where would be the subject of a well thought out system of laws and policies—a water code if you will. Well, one would be wrong if you live in Louisiana, or just about anywhere else. The growing stress on water supplies and the need for water to restore coastal wetlands has raised the profile of water as vital resource, but that has not been reflected in improved, or even updated, laws to govern its management. The Tulane Institute aims to change that. We began reviewing the ways other states manage their water resources several years ago. That work took a more Louisiana focus when Institute Director, Mark Davis, was appointed to the state Law Institute's Water Committee and the Louisiana Water Resource Commission. The Committee crafted a report to the Legislature mapping out the need for Louisiana to manage its water resources. The Louisiana State Senate responded by passing a resolution calling for the development of a water code for the state.

Developing a water code that is legally comprehensive as well as being grounded in ecologic and hydrologic reality is no easy matter, indeed it has not really been done before. The Institute is building a multidisciplinary team to shape and guide this effort, plugging into the State Law Institute and the Water Resources Commission. It will take several years to complete and will likely proceed in phases tied to emerging water management challenges such as hydraulic fracturing, coastal restoration, and climate change.

The Institute's water project is led by program manager Christopher Dalbom and is supported by post-graduate senior research fellow Harry Vorhoff and student research assistants Caitrin Reilly and James Mayo.

**Read All About It**

## TUWaterWays

**Keeps You Informed**

*Water News and More from the Tulane Institute on Water Resources Law and Policy, September 16, 2014*

**Water Infrastructure, We Can't Get Enough of It**

*Ah water infrastructure – the stuff that dreams are made of. No really, if you dream of a strong economy and steady jobs, water utilities will get you there, according to a recent report by the Water Research Foundation. The report studied*

*30 water utilities scattered across the country that have a combined market of 83 million people and directly employ 36,500 people. In order to operate and upgrade their systems, an average of \$23 billion will be spent each year over the next decade, which in turn will support 289,000 jobs and generate \$524 billion in revenue. Thanks to the Water Infrastructure Finance and Innovation Act, part of the 2014 Water Resources Reform and Development Act, utilities will get help in financing these upgrades through loans and loan guarantees backed by the U.S. Treasury...*

Nobody can know everything there is to know about how water influences our lives and laws, but if you read TUWaterWays you will have a leg up on most of your neighbors. This free weekly newsletter provides a pithy summary of the latest developments in the world of water and does it in less than two pages. To join the ranks of the water informed you can subscribe by going to our webpage: <http://www.law.tulane.edu/tlscenters/waterlaw/>.

## PAYSON CENTER FOR INTERNATIONAL DEVELOPMENT

The Payson Center is in effect a school within the law school, focused on sustainable development and adding its own faculty and students who strengthen and diversify the program. Highlights of academic year 2013-2014:

- An **undergraduate** program that continues to show robust growth, with new courses in areas like food security and gender and development. By the time of graduation in May 2014 Payson boasted 223 undergraduates who had declared an International Development major (183) or minor (40).
- **Foreign courses** for undergraduates: Payson was one of four units that welcomed the first undergraduate cohort for a Tropical Studies Semester at Tulane's base in **San José, Costa Rica**, along with Latin American Studies, Political Science, Biology, and Geology; in **Geneva, Switzerland** Payson also hosted its first undergraduate class for a course on Climate Change and Urban Development, in conjunction with the International Center for Migration and Health – students completed an internship with ICMH following the course.
- **Applied learning** courses for law and development students: Professor Colin Crawford again took students to **Panama City, Panama** for a course on Urban Sustainability: Law and Policy and to **Havana, Cuba** for a course on the development of private property markets in the island country.
- The **Summer program in Rio de Janeiro, Brazil** again allowed 25 development studies, public health and law students from across the U.S. to study Sustainable Development Law and Policy – students begin their stay in an intensive 10-day visit with stakeholders in the rain forest and then move to the city to understand the relation between natural resource protection and urban expansion.
- Payson and the Law School inaugurated the first class in the new **LLM in Law and Development**. Spring graduates Meredith Bambrick (also JD '13) and Hugo Wood are now working, respectively, for the U.S. Agency for International Development and the Office of the Vice President of Panama, respectively.
- Now in its fourth year, the joint **JD/MS in International Development** now has 11 law students enrolled.

There were other events and collaborations, but suffice it to say that we continue to be engaged.



Payson Inaugural LLM graduate Hugo Wood Núñez and Panama's Vice President and Minister of Foreign Affairs, Isabel de Saint Malo de Alvarado



Meredith Bambrick, Inaugural LLM graduate











## HABER JOSEPH MCCARTHY AWARD WINNERS

Haber McCarthy graduated from TLS in 1985 with high honors and a strong interest in environmental law. After his life was taken in an automobile accident, his former classmates created a trust fund in his name which his wife Michelle, also TLS '85, agreed to dedicate an award for the graduating student with the highest academic achievement in environmental law. With 18 years behind us now, we thought it time to report what these highly-talented graduates have gone on to do.

### **Raymond A. Just (1997), California**

After 12 years of securities and anti-trust litigation Mr. Raymond Just earned an LL.M. in Entertainment Law, and he now works as a production attorney at Paramount Pictures, currently working on "Mission Impossible 5."

### **Deborah Clarke Trejo (1998), Texas**

Ms. Clarke Trejo, formerly with the Texas Edwards Aquifer Authority, now practices administrative, regulatory, trial and appellate law involving water, endangered species, constitutional takings, elections and civil rights in Austin, Texas.

### **Shawn Dansky Rodda (1999) Denver**

Ms. Dansky Rodda is Global Corporate Counsel for the transportation division of CH2M Hill, a Fortune 500 engineering company.

### **Bryan Moore (2000), Texas**

Mr. Moore is a Principal in the Austin, Texas office of Beveridge & Diamond PC, where he practices environmental law with an emphasis on waste-related issues and litigation.

### **Jason Barbeau (2001), Washington DC**

Mr. Barbeau is a senior trial attorney in the Environmental Enforcement Section at the U.S. Department of Justice. He prosecutes federal civil enforcement actions under the Clean Water Act, Oil Pollution Act, Clean Air Act, RCRA, CERCLA, and the Outer Continental Shelf Lands Act.

### **Robert Sidman (2002), Washington DC**

After working as a senior attorney for 9 years at the Postal Regulatory Commission (PRC) in Washington, Mr. Sidman was recently promoted to Acting Deputy General Counsel. His practice consists of administrative, rate-making, and general agency law.

### **Christopher Williams (2003), New Orleans**

After working for large law firms and doing defense work for more than a decade, in September 2014 Mr. Williams opened his own law firm in New Orleans specializing in plaintiff-side employment law and civil rights litigation. John Pint (2004), Burlington, MA Mr. Pint is working for Royal Philips, a Dutch company with a license program for LED lighting products which aims to accelerate the adoption of LED as an alternative light source to inefficient halogen and incandescent lights.

### **Alex Williamson (2006), Oregon**

Alex Williamson is a partner in a small litigation firm in Portland, Oregon; his cases involve construction defects and personal injury claims, as well as EPA-mandated remediation efforts.

### **Mary Reichert (2008), California**

Mary Reichert practices as the Senior Deputy District Counsel for the South Coast Air Quality Management District in Diamond Bar, CA.

### **Andrew Seidel (2009), Madison**

After earning an LLM at Denver Law School and a brief stint in private practice. Mr. Seidel is enjoying work at the Freedom From Religion Foundation where he fights to ensure that public schools and government remain secular.

### **Claire Yancy Bergen (2010), Massachusetts**

Ms. Yancy Bergen is working with the general counsel of a publicly traded, international software company LogMeIn, Inc. in Boston, treating employment, contracts, SEC Filings, and IP litigation.

### **Diana Csank (2010), Washington DC**

Ms. Csank is an Associate Attorney with the Sierra Club in Washington, currently focused on replacing coal with clean energy in Florida, Georgia, and New Jersey.

### **Endre Szalay (2011), Seattle**

After starting as an Honors Attorney Fellow, Mr. Szalay is now an Assistant Regional Counsel with the EPA in Region 10, works primarily on Clean Water Act wetland and health standards.



Andrew Seidel debating William O'Reilly on The O'Reilly Factor

**Kirk Tracy (2012), California**

After a fellowship in DC, working with a national association of state water quality regulators, Mr. Tracy is a new associate at Paladin Law Group in Walnut Creek where he focuses on soil and groundwater contamination issues.

**Harry Vorhoff (2013), New Orleans**

Mr. Vorhoff is a Post Graduate Senior Research Fellow for the Tulane Institute on Water Resources Law & Policy, specializing in urban water and coastal restoration.

**Laura Cottingham (2014), North Carolina**

Ms. Cottingham is clerking for the Honorable Max Cogburn of the U.S. Western District of North Carolina.

**Kara McQueen-Borden (2014), New Orleans**

After graduating from Tulane Law in 2013, Ms. McQueen-Borden joined the New Orleans Office of Jones Walker, LLP as an Associate in the Business & Commercial Transactions Practice Group, with a number of clients in the energy industry.

**TULANE ENVIRONMENT & ENERGY LAW JOURNAL**



Present, from left to right, Beth Sonne: Editor-in-Chief, Matt Landry: Senior Articles Editor, Devin Lowell: Senior Notes & Comments Editor, Vanessa Graf: Senior Business Editor;



Absent: Sam Skains: Senior Managing Editor

The Journal will publish Volume 28 during the 2014-2015 school year. The first issue, to be published in Winter 2014, will explore potential legal theories to address cigarette butt litter by holding cigarette manufacturers responsible for butt waste under common law doctrines and state laws and regulations; extraterritoriality of U.S. environmental law at the U.S. military base in Okinawa, Japan; greenwashing and self-declared seafood eco-labels; and requirements for complying with all appropriate inquiries under CERCLA. The second issue, to be published in Summer 2015, will focus on environmental and energy litigation. It will explore state preemption of local government restrictions on hydraulic fracturing, natural resource damages litigation, and new approaches plaintiffs have taken to recover from energy companies for contamination and wetland loss. The Journal staff is comprised of five senior board members, six managing editors, and eleven junior members.





*Continued from pg1*



A wild show ensued. Industry proponents introduced no fewer than 11 bills in Baton Rouge terminating the case, some narrowly targeted, some eliminating virtually any attempt to sue oil and gas for any damage at all. At the end of the session, however, as the leading bill emerged it faced an uncertain chance of passage and was pulled from the floor. Overnight, a new, cut'n-paste version appeared, barely grammatical, and was rammed through in the closing minutes. A strong public call for the governor to veto the bill, supported inter alia by the Louisiana Attorney General and law professors around the country, failed, and the governor signed it, surrounded by smiling lobbyists whom he thanked openly for both drafting and supporting the measure.

Back, then, to New Orleans where industry defendants had succeeded in removing the case to federal court where, not coincidentally, its decisions would be reviewed by the 5th Circuit Court of Appeals, a place where environmental cases go to die. Indeed, the ultimate fate of the lawsuit may depend on whether the Circuit sees it as an environmental issue or one involving local property rights and public safety. Clearly, it is both.

Industry has now moved for a dismissal of the case, relying on the

bill it had worked through the legislature. Board attorneys oppose on several grounds, one being the retroactivity of the bill (which faces adverse precedent here), and another being the wording of the bill itself, which, in the haste of its drafting seems to apply to local authorities but not to state entities like the levee board. A district court decision is expected before the end of the year.

## **2) BP Litigation**

*Deepwater Horizon, April 20, 2010*

On September 4, Judge Barbier of the Eastern District of Louisiana released the Findings of Fact and Conclusions of Law from Phase One of the Deepwater Horizon trial that will determine most federal cases against BP, Transocean, Halliburton, and others. The trial has been divided into multiple phases, and Phase One, held February through April of 2013, addressed the fault of the various defendants.

In the first step towards determining how large their Clean Water Act civil penalties could be, Judge Barbier found that the spill occurred because of BP's gross negligence and willful misconduct. Therefore, it can be subject to enhanced civil penalties – up to \$4,300 per barrel of oil discharged.

The decision also held that BP, Transocean, and Halliburton are each liable under maritime law for the blowout, explosion, and spill. BP was reckless while Transocean and Halliburton were negligent. The court apportioned fault with 67% to BP, 30% to Transocean, and 3% to Halliburton.

One of the questions involved was whether the apportionment of fault under maritime law affected the potential Clean Water Act civil penalties for BP. The answer is “no,” but it may shine a light on where the judge's thoughts lie as to the per-barrel penalties he ends up levying. It would be easier to imagine him penalizing BP the full 100% of the potential fine had he found them 100% at fault for the spill.

However, one should not assume this is the last word on these matters. BP has already said that they will appeal the finding, and one could imagine the plaintiffs also appealing the matter (such

as challenging the Fifth Circuit maritime punitive damages precedent). How this all shakes out after appeal(s) is anyone's guess, but, at the very least, should negotiations for settlement take place any time soon, they will take place on different footing than before.



## **3) Philippines Highways Case**

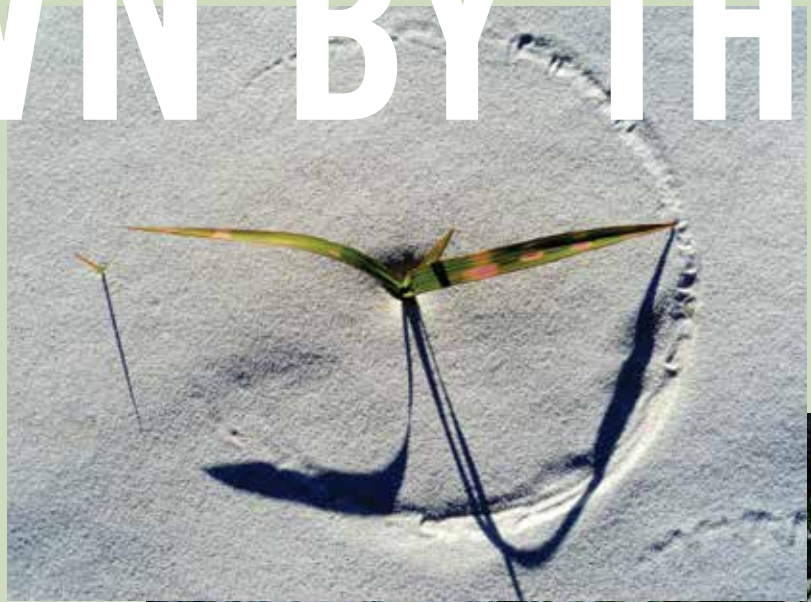
*Antonio Oposa and model of Manila plan*

Also about this time last year Philippines environmentalists, led by the legendary lawyer Tony Oposa, filed a path-breaking lawsuit against government officials (including a TLS doctoral candidate on leave) to open one-half of state roads to alternative transportation uses, from pedestrians on up. Negotiations among the parties subsequently produced a few supportive statements but little action.

Seizing the moment, and believing firmly that the longest journey begins with a single step, Oposa enlisted students and mentors from the architecture school of a local university to draft a Green Loop Plan for Cebu City, the heart of the capitol. On August 21 of this year the plan was unveiled in a public meeting by the dean of the school of architecture, and seconded by the executive director of the Cebu City Traffic Operations Management division, who promised to work with the citizen groups to “ensure its success”. Less visibly, perforce, our SJD candidate is also in the wings, pulling strings, making it happen from the inside. Like they say, it takes a village.

The plan, starting small, dedicates one half of the streets in the heart of the city to non-automobile transit for the month of September. *Continued on pg 14*

# DOWN BY THE



Sand Bar, Red Creek



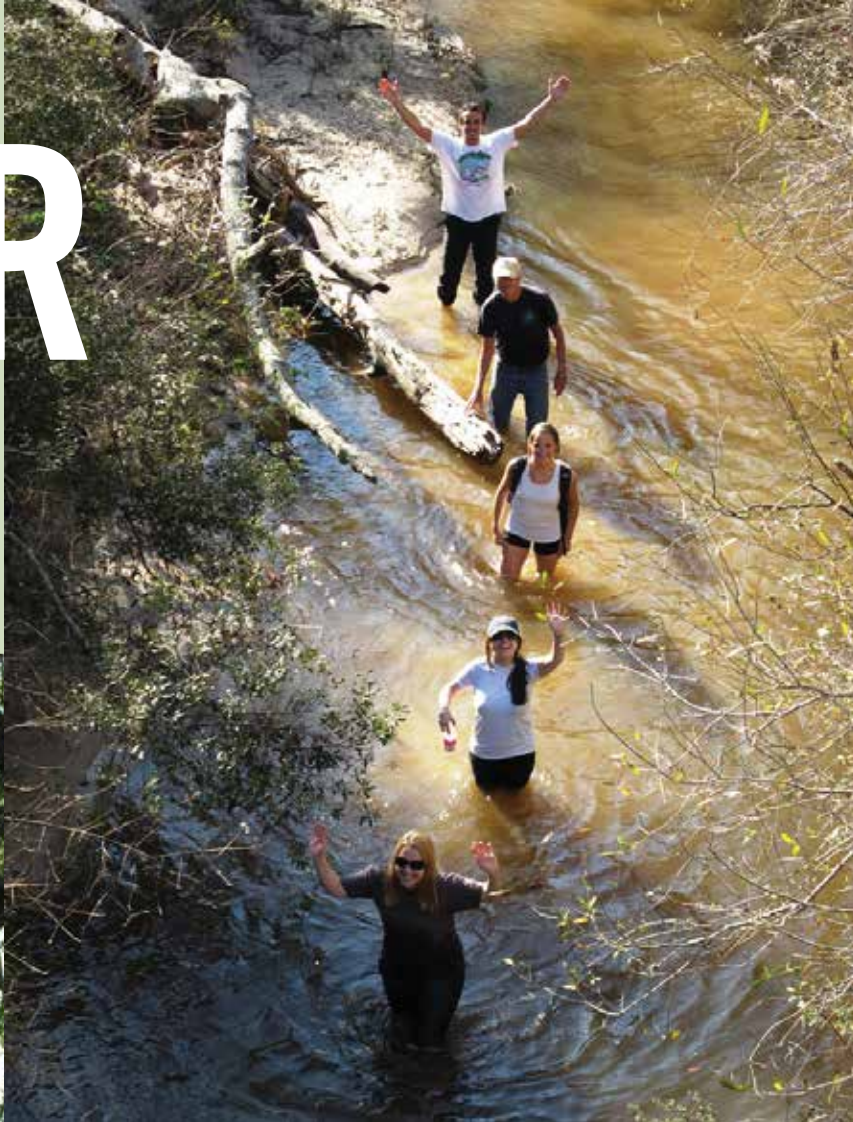
Tree planting in Ninth Ward



Bike Trip, Lake Pontchartrain



# RIVER



Stream Walk, Mississippi

*Continued from pg 11*

Oposa et al are confident it will not stop there, nor remain so limited. Once people get used to the idea, he believes, they will not let it go. Meanwhile, his lawsuit is in abeyance.

Oposa's next step is to bring the idea to the US this fall where he will make presentations at a number of law schools (including Tulane), and open a dialogue with interested cities here. We hesitate to open his email to all who might be interested in his initiative, but suffice it to say that he can be easily found on google.

#### **4) The Mississippi Frog**

*Dusky Gopher Frog, a critically-endangered species*

The Dusky Gopher Frog, formerly known as the Mississippi Gopher Frog, has been reduced from a population that ranged over the interior wetlands of the Gulf coast to a single pond on a single plot of land along the Mississippi, Louisiana border. At an estimated 40 individuals, it is one of the most endangered species in North America. Prompted by threats to its last remaining habitat that included a shopping mall and sewage treatment plant, the Gulf Coast Restoration Network, represented by the Tulane Environmental Law Clinic, filed a notice letter under both the ESA and NEPA, attached to proposed wetland permits. After negotiations that have lasted several years, the development remains in abeyance.

Meanwhile, the US Fish and Wildlife Service, giggered forward by another notice letter, agreed to identify critical habitat for the frog, which originally limited it to the single pond where it now lives. Giggered forward again, the Service expanded the habitat designation to include undeveloped areas where the species had once thrived, but is no longer found. Although the ESA contemplates designation of unoccupied habitat where essential for recovery, an affected landowner, represented by the Pacific Legal Foundation, sued to invalidate the designation as beyond statutory bounds. They drew a conservative federal district court judge who,

inter alia, had ruled harshly against the federal leasing moratorium following the BP blowout, and in favor of subsequent Department of Interior leasing decisions. The prospects for the frog in this particular case were less than clear.

Nonetheless, in a ruling this month that expressed both his disapproval of the law and his commitment to adhere to it, the court upheld the critical habitat designation on unoccupied habitat, solidifying precedent on the issue. His language is instructive as to his ap-



proach to law (which, some will note, tracks that of Chief Justice Burger at the close of the Snail Darter decision), and to a more general feeling about the ESA in this region of the country:

“The Court has little doubt that what the government has done is remarkably intrusive and has all the hallmarks of governmental insensitivity to private property. The troubling question is whether the law authorizes such action and whether the government has acted within the law. Reluctantly, the Court answers yes to both questions.”

**At an estimated 40 individuals, it is one of the most endangered species in North America.**







## POINT/COUNTER-POINT: TLS grads on fracking and preemption of local ordinances

Energy and Environmental law is sprinkled with cases claiming preemption of state law by federal programs; preemption between state and local authorities, while important, has had a smaller place on the docket. No longer. The advent of hydro-fracking has propelled state v. local issues to the forefront, due largely to the momentum of field development and the vigor with which local communities have reacted to what they perceive as threats to their way of life. In these brief articles two recent Tulane Law graduates, each involved in fracking litigation, present differing views on the preemption debate. Their pieces will be expanded, updated, and published in the Spring issue of the Tulane Environmental Law Journal, fully cited, and for that and space reasons their sources are not provided here. Rest assured, they exist. We've seen them.



Jamal L. Knight, Associate at Faegre Baker Danies, LLP; he represents corporate clients in challenges to local fracking ordinances.

### Fracking Litigation: An Industry View

By *Jamal L. Knight, JD TLS 2012*

#### I. Intro

Hydraulic fracturing and horizontal drilling are safely unlocking vast reserves of oil and natural gas found in

shale and other tight-rock formations across the country. Increased concern by municipalities over the effects of hydraulic fracturing on public health and the natural environment has brought the issue to the political arena, and each level of government has sought to exercise greater control over the regulation of the oil and gas industry in response. Local bans have not turned out to be the simple solution local communities hoped. Oil and gas activities in the United States, including hydraulic fracturing, have historically been regulated at the state level, and a number of states have resisted local regulation of hydraulic fracturing when such regulations are inconsistent with the state's broader philosophies regarding the oil and gas industry. While opposition to hydraulic fracturing across the country is likely to persist, efforts to ban the practice at the city and county level should be preempted by statewide regulatory structures.

#### II. The Process

Hydraulic fracturing – the use of pressurized fluids to extract oil or natural gas from tight rock formations – has been used in oil and gas development for more than 60 years. To implement the process, fluid is pumped down a well into formations often located one mile or more beneath the surface. The hydraulic pressure created by the fluids creates small cracks in the formation, at which time small granular solids, such as sand or ceramic beads, are pumped into the cracks to keep the cracks open after the hydraulic pressure is removed. The cracks are then utilized to extract otherwise inaccessible oil or gas from the formation.

Recent advances in drilling technology have led to a surge in hydraulic fracturing. Instead of drilling straight down from the wellhead, operators can now drill down to the formation that they want to tap, and then turn 90 degrees to drill horizontally through the formation, permitting access to oil and gas that could previously have required up to 16 vertical wells and corresponding pads. More than 90% of the oil and gas wells in Colorado currently utilize hydraulic fracturing.

#### III. Conflicting Approaches: Searching for the Proper Balance of Authority

##### Balance of Authority

At the federal level, there is no comprehensive regulation for hydraulic fracturing. Instead, state and local governments have primary and often-times overlapping regulatory authority, and the issues underlying their conflict are similar in every state. The manner in which courts and state legislatures have elected to address these matters, however, varies greatly. Municipalities are creations of the state and, therefore, only have as much authority as the state has given them, either through its constitution or statutes. Many states in which hydraulic fracturing activity is occurring have constitutional provisions granting municipalities authority to adopt ordinances addressing issues of local concern (i.e., home rule). Zoning allows municipalities to adopt comprehensive development plans and implementing ordinances, which control the particular activities or uses permissible within their borders. In many states, a presumption exists that, unless the state legislature has made clear it intends to preempt local regulation, preemption will not be found.

##### A. Colorado

Hydraulic fracturing has become a hot button topic in Colorado as oil and natural gas development has increased near urban and residential areas. During the 2012 election, in response to citizen concerns, the cities of Longmont, Lafayette, Fort Collins, Loveland and Broomfield adopted some form of ban on hydraulic fracturing, despite warnings from state and local industry trade groups that such bans were contrary to state law.

Earlier this year, a district court in Colorado overturned these bans in Longmont and Fort Collins, on grounds that it was preempted by the Colorado Oil and Gas Act. The Court noted that oil and gas operations are a matter of mixed local and state concern, both levels of government may regulate an activity provided that there is no conflict between them.



Applying this principle, the Court was unable to harmonize the local ban with the Oil and Gas Act's purpose of fostering the efficient development and production of oil and gas resources. "Here, giving effect to the local interest, banning fracking, has virtually destroyed the state interest in production. [...] The conflict in this case is an irreconcilable conflict." In the court's mind, local controls could result in uneven production and resource waste, as well as negatively impacting royalty owners.

### **B. Pennsylvania**

Pennsylvania sits on the Marcellus Shale, another hotspot where natural gas production increased six-fold from 2008 to 2011. Unsurprisingly, Pennsylvania's local governments were among the first to regulate that growth, and in 2009, the Supreme Court of Pennsylvania ruled that the Pennsylvania Oil and Gas Act provided local governments with the power to pass ordinances that "control the location of wells consistent with established zoning principles," and that drilling within zoned residential districts was lawfully prohibited by those principles. The Pennsylvania legislature reaction was to take the express preemption approach by enacting the Oil and Gas Act of Pennsylvania (Act 13), written to override most, if not all, local control over oil and gas drilling. Several provisions of Act 13 were challenged by municipalities. In December 2013, the Pennsylvania Supreme Court, relying upon the state's constitution, struck down portions of Act 13, which had barred local governments from asserting home rule jurisdiction and enacting ordinances and regulations governing the use of hydraulic fracturing. In March 2014, the court rejected a request by Gov. Thomas Corbett to reconsider its decision.

### **C. New York**

The Town of Middlefield enacted its ban in June 2011. Although reports at the time indicated that the supporters of the ban were motivated in large part by opposition to hydraulic fracturing,

the ordinance prohibits all oil and gas activity, whether or not it involves fracturing. The ban was soon challenged by Cooperstown Holstein Corporation, which had granted two oil and gas leases a few years before. Cooperstown Holstein argued that the ban was preempted, as in Pennsylvania, by a state oil and gas statute.

In February 2014, a New York court upheld the ordinance. The ruling was the second in four days upholding such a ban, as it followed a court ruling on February 21 that upheld a similar ban by the Town of Dryden. [see companion article, Ed.]

### **D. West Virginia**

In June 2011, Northeast Natural Energy sued the city of Morganton, WV, for an ordinance banning fracking within the city or one mile outside of city limits. A state trial court ruled in favor of the energy company, holding that the state had exclusive control over oil and gas development and that the town "didn't establish that fracking threatened the community's right to clean air and water." It found further that the "[s]tate's interest in oil and gas development throughout the state ... provides for the exclusive area of this law to be within the hands of the [West Virginia Department of Environmental Protection]."

### **E. Louisiana**

A ruling several years ago found that a zoning ordinance by the City of Shreveport, Louisiana, which attempted to ban drilling within the vicinity of a lake, was preempted. In 2006, the U.S. Fifth Circuit Court of Appeals ruled in favor of Energy Management Corporation, holding that the City of Shreveport, LA, did not have the right to ban drilling within 1,000 feet of its lake. The ruling reversed the decision of a federal district court, which had found that Shreveport was within its rights to enact a ban in an effort to protect its city water supply.

### **F. California**

In 2013, the California state legislature passed SB 4, a comprehensive law governing hydraulic fracturing across the state. On Feb. 28, 2014, the Los Angeles City Council unanimously ordered a new ordinance placing a moratorium on "all activity associated with well stimulation, including, but not limited to, hydraulic fracturing", making Los Angeles the only oil-producing city in California to ban the practice. The moratorium would remain in place until the city verified that hydraulic fracturing would not harm public safety or compromise drinking water. SB 4 also includes a "savings clause" that requires all state agencies to comply "with any other provision of existing laws, regulations and orders," seemingly permitting Los Angeles to impose additional environmental and mitigation requirements.

### **IV. The Way Forward**

One common thread underlying the tension between state and local regulation is whether the local ordinance is intended to regulate the "where" or "how" of hydraulic fracturing. The authority to adopt zoning ordinances — the "where" an activity may take place within a municipality — has been traditionally delegated to municipalities. As such, a local ordinance that limits its scope to the where is in a better position to withstand a preemption challenge than one that attempts to regulate the "how" of hydraulic fracturing. Representatives from the oil and gas industry have challenged local bans on grounds that state programs preempt them. In some states like Colorado the lawsuits have succeeded, but opponents of hydraulic fracturing are unlikely to be deterred. Operators and policymakers should therefore prepare for the passage of statewide legislation or constitutional amendments preempting the field. Hydraulic fracturing provides clean fuel alternatives for generations, but its proponents must remain diligent to ensure that it is not delayed or precluded by municipal or statewide policy changes.



Jordan Lesser is Counsel for Assemblywoman Barbara Lifton, and participated as an amicus in the described New York cases.

## Local Land Use Control & Hydrofracking: New York & Beyond

By Jordan A. Lesser, JD, TLS 2009

Where does our energy come from? How will we transition to sources that reduce the amount of greenhouse gas pollution in our atmosphere? Who gets to decide? The boom in hydraulic fracturing (“fracking”) technology has brought these issues, literally, to the doorstep of families across America. Every region of the country witnessed a “land rush” to secure fracking leases. Yet, the impacts of heavy industry and drilling operations to rural and residential neighborhoods do not arrive quietly and without question. Even as some landowners anticipate significant profits, others feel their communities have more to lose than gain with an influx of industrial operations and are impassioned to preserve the character of their community. I first saw this principle directly while advising a citizen’s group from Chalmette, Louisiana for the Tulane Environmental Law Clinic, after Hurricane Katrina destroyed the adjacent Murphy Oil refinery, dumping feet of oil through their homes in

the worst urban oil spill in U.S. history. These residents, once they learned to question the status quo post-Katrina, sought to exert as much local control over their fate as possible. Similar passions have galvanized municipal boards across the United States to use local zoning authority to restrict or exclude fracking.

To determine the validity of these ordinances, the courts must consider the state mineral statutes at issue. One of the highest profile cases in the nation centers around the community of Dryden, New York, located just outside of Ithaca, New York, my hometown. In 2011, the Dryden Town Board voted to amend its zoning ordinance to provide a “clarification” of the principles of their comprehensive plan, which aims to “[p]reserve the rural and small town character of the Town of Dryden, and the quality of life its residents enjoy, as the town continues to grow in the coming decades.” Dryden lies above the Marcellus Shale, the target formation for fracking activities in Pennsylvania, West Virginia and Ohio. Accordingly, Norse Energy, through its predecessor in interest, acquired land leases in the community in 2006. While the Board believed that its existing comprehensive plan and ordinance were sufficient to prevent oil and gas development, they updated the zoning law to specify that

oil and gas exploration, extraction and storage were not authorized. Its stated rationale that fracking “would endanger the health, safety and general welfare of the community through the deposit of toxins into the air, soil, water, environment, and in the bodies of residents.” The industry sued, claiming preemption by state programs.

The case, *Matter of Wallach v. Dryden* (with the bankruptcy trustee for Norse Energy substituted for the Appellant), was decided by the New York Court of Appeals on June 30, 2014. The appeal followed a ruling by Judge Rumsey of the Tompkins County Supreme Court in favor of the Town of Dryden in February 2012, and a unanimous Appellate Division Third Department ruling for Dryden in May 2013.

In New York, local governments have been granted a broad range of powers “to adopt and amend local laws not inconsistent with the provisions of [the] constitution or any general law relating to its property, affairs or government”. In its decision, the Court of Appeals found that “[a]s a fundamental precept, the Legislature has recognized that the local regulation of land use is ‘[a]mong the most significant powers and duties granted . . . to a town government.’” The gravamen of the preemption claim relied on interpretation of the supersession clause of New York’s Oil, Gas and Solution Mining Law (OGSML), which: “shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries; but shall not supersede local government jurisdiction over local roads or the rights of local governments under the Real Property Taxation Law...” (emphasis in original).

Adhering to precedent, the court declined to ascribe a broader meaning to the provision at issue, finding it “naturally read as preempting only local laws that purport to regulate the actual operations of oil and gas activities, not zoning ordinances that restrict or prohibit certain land uses within town boundaries.” The court noted that state programs intended to preempt local authority expressly say so, and typically include additional statutory safeguards



to account for local concerns. The OGSML statute, if it was held to preempt all local ordinances, would preclude protections from local laws of general applicability such as light, noise, dust and odor pollution, storm water management regulations, wetland provisions, land use provisions concerning industrial uses, erosion control regulations, identification of critical environmental areas, and tree cutting regulations.

The court also dismissed an implied preemption argument. Tellingly, it found “the pertinent passages make no mention of zoning at all, much less evince an intent to take away local land use powers.” The decision was joined by five justices, with two in dissent, upholding local zoning authority over oil and gas drilling in New York State.

While courts in New York have validated a municipality’s zoning authority over oil and gas development, other states have ongoing legal battles or have already ruled against town bans. Each analysis depends on the exact wording of an individual local ordinance and the language of the state regulatory scheme and home rule authorizations. It also may depend on the culture of the state and community.

Often, the ethos underlying legislative enactments can be traced to the cultural milieu of each state. West Virginia, Pennsylvania and Ohio have a long history of resource extraction, largely from coal in the Appalachian Mountains. Colorado and much of the west harbor vast tracts of federal land which have historically been subject to laws such as the General Mining Act of 1872 (still in effect today) which encourage natural resource extraction. Indeed, many of the early mining laws were intended to spur exploration and settlement of the arid lands west of the Mississippi River, the foundation of livelihood and society in these regions. New York’s legacy, however, differs significantly.

With the creation of the Adirondack Forest Preserve in 1894 under state constitutional protection, the worldwide conservation movement arguably began in New York State. The Hudson River School of painting cultivated a defining iconography of America. The celebration of wilderness and its place amidst human civilization is prominent in the state’s legal history, as is a highly-participating form of local decisionmaking, town-meetings and all. The question is whether this authority can hold its own.





Front Row: Igor Pak, Ana Maya Aguirre, Osazuwa Okunoghae, Sharaf Asgarova Lucia Manzo Flores; Back Row: Januar Putra, Tamam Tawk , Iliana Ibarra , Dinah Mukasa, Professor Houck, William Matias Ramirez, Thomas Taff



Missing from group shot: Jeffrey Friedman

## MASTERS OF LAW

### MEET THE 2014-2015 ENERGY & ENVIRONMENT LLMS

Tulane's current cadre of Environmental & Energy LLM's is particularly strong, with 12 candidates in the field, 10 of them from abroad. Their experiences add a great deal to our classes in Comparative and Administrative law, and of course the LLM Seminar.

#### Sharaf Asgarova, Azerbaijani

Sharaf holds an undergraduate law degree and master's degree in Commercial Law from Baku State University in Azerbaijani and is a Fulbright scholar; she most recently worked for a major drilling corporation owned by the Republic of Azerbaijani.

#### Jeffrey Friedman, USA

Jeffrey received his J.D. from Cumberland School of Law in Birmingham, Alabama and was the Articles Editor of the American Journal of Trial Advocacy; while earning a degree in political science at Furman University, Jeffrey played college baseball and was team captain his senior year.

#### Iliana Ibarra, Mexico

Although Iliana was born in Texas, she grew up and attended university in Monterrey, Mexico, majoring in corporate law; but after working for a waste transport and treatment

company, her interests shifted to energy and environmental issues, she "hopes to be a pioneer in energy law in Mexico."

#### Lucia Manzo Flores, Mexico

Lucia is a practicing lawyer in Mexico City. She wants to strengthen her current understanding of the field, develop a highly specialized practice, and give "myself the tools to implement effective laws and policies" for her country.

#### William Matias Ramirez, Dominican Republic

With an LLM in Tort Law William is seeking his second graduate degree, so he can contribute to the energy law reform currently taking place in the Dominican Republic.

#### Ana Maya Aguirre, Colombia

Ana has over eight years of experience working on international, legal, human rights, and environmental issues in Colombia, with particular focus on forced displacement, environmental migrations, and indigenous people's rights.

#### Dinah Mukasa, Uganda

After earning her bachelor's of law in the UK, Dinah returned to Uganda, and practiced law for 3 years; while she has no prior knowledge of environmental law, she is "very excited about this new academic adventure."

#### Osazuwa Okunoghae, Nigeria

Osazuwa is a senior associate at a private law firm in Nigeria, and previously worked with an oil and gas company; he is especially interested in the industry and environmental pollution in rural areas.

#### Igor Pak, Uzbekistan

Igor is Fulbright scholar from Tashkent, came to Tulane with the purpose of promoting energy and environmental law in Uzbekistan whose large volumes of mineral and natural resources call for qualified environmental lawyers.

#### Januar Putra, Indonesia

Also attending Tulane as a Fulbright scholar, Januar practiced law in a private firm in Jakarta, Indonesia, and was a part of a REDD+ Task Force formed by the President of Indonesia to oversee and govern the national effort to curb deforestation rates and forest degradation.

#### Thomas Taff, USA

After graduating from the University of Mississippi School of Law in 2006, Thomas has since practiced in Vicksburg, for the U.S. Army Corps of Engineers; his wife owns and operates a business in Hammond, Louisiana.

#### Tamam Tawk, Lebanon

Tamam is also a Fulbright scholar and a practicing lawyer in Lebanon since 2010.



## STUDENT SUMMERS: SNAPSHOTS



### **Alex Johnson, 2L, Brussels**

An “awesome summer” in Brussels, Belgium, working at Van Bael & Bellis. His work included writing newsletters on environmental law and policy for clients interested in updates on enacted and prospective laws that affected their business practices or supply chain. Alex also contributed to cases on REACH regulation compliance and disputes with ECHA.



### **Justine Keel, 3L, Boise**

At the U.S. Attorney’s Office for the District of Idaho in Boise, she worked on a case involving the trafficking of invasive mussels and helped get a temporary restraining order to stop unauthorized mining. She says she enjoyed the job so much, “it made me want to be a prosecutor.”



### **Matthew Landry, 3L, New Orleans**

I worked as a law clerk at Kanner & Whitely, LLC, where I researched natural resource damages law under CERCLA, OPA, and the New Jersey Spill Act; I also researched historic efforts by Louisianians to recover for chronic contamination and coastal wetland loss from oil and gas development.



### **Daniel Newman, 3L, Washington DC**

Daniel worked at the EPA headquarters in the Office of Enforcement Compliance and Assurance. Among other work he wrote a memo on enforcement issues and the Clean Power Plan, and “spent a lot of time following Congressional actions.” As Daniel put it, “DC itself was an amazing experience,” including “the new bike lanes.”



### **Jared Pessetto, 3L, Chicago**

“Clerking with EPA’s Region 5 Office of Regional Counsel gave me the opportunity to witness EPA’s regulatory regimes in action.” My previous coursework allowed me to hit the ground running from day one.



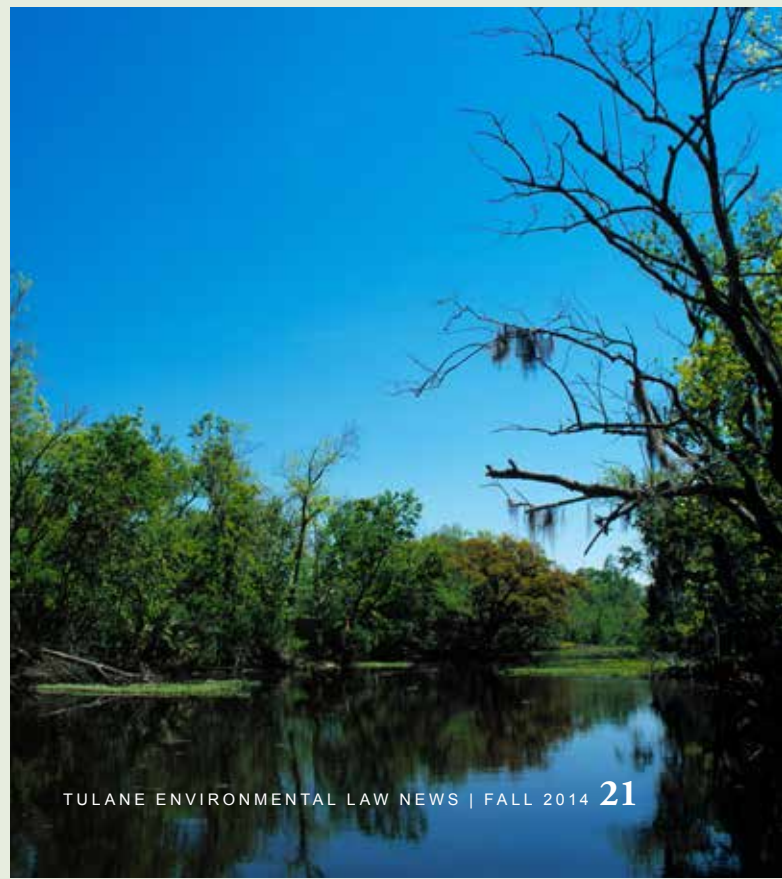
### **Beth Sonne, 3L, Washington DC**

Beth worked as a law clerk for the U.S. E.P.A. Environmental Appeals Board, researching precedent on a wide suite of agency regulations. She wrote memos and drafted decisions and orders for judges, and met with Senior Counsel to the Board to discuss the complexities of cases considered.



### **Kristine Talbot, 3L, Georgia**

I served with EPA Region 4, primarily in the CERCLA Division. I helped draft a case referral to the Department of Justice and drafted a notice of decision for a voluntary disclosure under EPA’s audit policy. I had great mentors and enjoyed serving the Southeast Region.



# Alumni Reports

*We are proud of what you do; a sampling of recent news below.*



## ALUM NAMED ENVIRONMENTAL LAWYER OF THE YEAR

Robin Main, class of 1989, has been named Environmental Lawyer of the year by Best Lawyers, the oldest peer review publication in the legal profession. Dividing her time between offices in Boston and Providence, Main is co-chair of one of the largest environmental practice groups in the Northeast, and is currently facilitating the first offshore wind energy project in US waters. The award was a complete surprise, she says, adding that “It’s been 25 years of hard work. I love what I do”.

### **Frederic Augonnet, San Francisco (2013)**

Mr. Augonnet is “having a ball” in San Francisco, working at a tech startup called Granicus that makes software for governments to increase transparency. He applies for government contracts around the country. He is also excited to have the opportunity to give more of his time to local environmental groups.

### **Jason Holleman, Nashville (1998)**

At the law firm of Jones Hawkins & Farmer in Nashville, Mr. Holleman focuses on land use/zoning, municipal, and state and local regulatory law. He has been involved in many community-driven initiatives, including the first-ever petition-triggered hearing before the TN Utility Management Review Board regarding the impact of a water treatment facility on a local water source. He is also finishing his second term as a District Councilman, and has worked on legislation to encourage quality urban infill development and sponsored legislation to strengthen storm water infrastructure funding and reduce development of floodplain land. A few years ago, he led what has become an annual swim across the Tennessee River, dramatizing the need and the progress of cleanup.

### **Brett Korte, Washington DC (2014)**

Brett has accepted a position as the Manager of the Environmental Education Program with the Environmental Law Institute in the Capitol.

### **Jordan Lesser, Albany (2009)**

Mr. Lesser is counsel to the Office of Assemblywoman Lifton for the New York State Assembly and recently helped enact a law regulating aquatic invasive species transport. He also serves as Vice-Chair for the International Committee of the American Bar Association State and Local Law section.

### **Jackie Maloney, New Orleans (1998)**

Ms. Maloney worked as a prosecutor in Jefferson and Orleans Parishes for 14 years, where she tried a whopping 130 jury trials. In 2012, she left to open her own law firm. She has been politically active over the last several years in Jefferson and has been the campaign chairperson to several successful judicial campaigns.

### **Brandy Parker, Washington DC (2007)**

Ms. Parker was transferred to Coast Guard Headquarters last year, and she says, “after all this time, I finally am getting to do what I always wanted to do – environmental law!” Ms. Parker received her “dream assignment,” a detail

in the Environmental Crimes Section ENRD at the Department of Justice and is responsible for vessel cases referred by the Coast Guard.

### **Adam Pearse, Washington DC (2013)**

Mr. Pearse has been working for Oceana, where he recently played a large role in its successful campaign to create a seafood traceability program to address seafood fraud. He developed a legal theory that took parts of the Lacey Act, Federal Food, Drug, and Cosmetic Act, COOL (Country of Origin Labeling) requirements, the Tariff Act, and others, to show that a federal program could work based on existing laws. Mr. Pearse’s memo made its way, via the Council on Environmental Quality, to the FDA, State, and then ultimately to John Podesta, Counselor to the President. About a month later, President Obama announced a task-force to create the program. Mr. Pearse described this process as “exhilarating,” and also thanks Tulane, as he says, “I would not have gotten here without your insistence on intense/thorough statutory interpretation.”

### **Cody Phillips, Sacramento (2014)**

Mr. Phillips has started his new job in Sacramento at the Delta Stewardship Council, a new agency charged with managing the water resources of





the Sacramento River Delta, including restoring habitat and releasing state funds for levees. He sees a remarkable similarity between the issues facing the Sacramento Delta and the Mississippi Delta, especially those related to the restoration and maintenance of the levees. After spending some time at work looking through stacks of California state legislation, he found that the Natural Resource and Coastal Wetlands classes he took at Tulane helped him “immediately pull out the ‘teeth’ in what I was looking at.”

**Emily Russell, Lewisburg (2013)**

Ms. Russell is an Environmental Law and Policy Analyst with Appalachian Mountain Advocates in Lewisburg, West Virginia. The American Bar Association recently published her article, “Superfund and Climate Change: Lessons Learned from Hurricane Sandy,” a storm that carried toxic and contaminated waters to nearby playgrounds and basements of local residents. With 289 Superfund sites within 9 miles of U.S. shorelines, and 39% of Americans living in coastal counties, there is a genuine risk of hazardous waste from coastal storms.

**Allison Shipp, New Orleans (2011)**

I’m working with the firm of Kanner & Whiteley, on natural resource damages claims for the State of New Jersey and similar cases. It is an “exhilarating, demanding practice and I’m grateful for the opportunity to engage in it.”

**Orie Tasaka-Jupp, Carson City (2014)**

Mr. Tasaka-Jupp is heading out to Carson City, Nevada to start at the Staff Attorney office for the Nevada Supreme Court.

**Mingqing You, Wuhan (2005)**

Mr. You is an Associate Professor at the Environmental and Resource Law Institute at Zhongnan Univeristy of Economics and Law in Wuhan, China. He recently gave a speech at the 2nd Asian Judges Symposium on Environment: Natural Capital and the Rule of Law, which was hosted by the Asian Development Bank in Manila, Philippines.

## TEELS Newsletter

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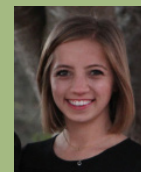
*President*  
Emilie Pfister

*Executive Summit Chair*  
Emily Prince

*Student Editor*  
Samantha Pfothenhauer

*Faculty Advisor*  
Oliver Houck

TEELS would like to thank everyone who contributed to this issue.



Samantha Pfothenhauer



## Tulane's Environmental Law Program

The Tulane Environment and Energy Law Program is one of the largest and most diverse in the world. Each year, Tulane graduates more than forty Juris Doctor and Masters candidates with specialties in these fields. What distinguishes the program in addition to its Faculty is the strength of its Clinic, the scholarship of its Journal, the projects of its Payson Center and Water Institute, the energy of its Environmental Law Society, and the momentum provided by an engaged group of JD, LLM and SJD Students. These seven components of Tulane's program – in the extraordinary setting of post-Katrina New Orleans, the Lower Mississippi River and the Gulf Coast – provide a unique academic experience for those with an interest in environmental, energy and sustainable development policy. For more information, contact the Law School's admission office at [admissions@law.tulane.edu](mailto:admissions@law.tulane.edu), John Giffen Weinmann Hall, Tulane University, 6329 Freret Street, New Orleans, LA 70118, 504.865.5930, or its web site at [www.law.tulane.edu](http://www.law.tulane.edu).



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