

Natural Resources & Environmental Law Program

November 2019



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Emerita Professor Eileen Gauna Receives Prestigious American Bar Association Award

Emerita Professor Eileen Gauna, who retired from UNM in 2016, received a prestigious award from the American Bar Association's (ABA) Section of Environment, Energy, and Resources at the Section's annual Fall Conference in Boston. The Section honored Gauna with the 2019 Environment, Energy, and Resources Dedication to Diversity and Justice Award, recognizing her many years of influential work to promote environmental justice and diversity in the legal profession.

Gauna is a nationally recognized scholar in the field of environmental justice. She co-authored a widely used course book in the area (recently revised by new authors, including UNM's Cliff Villa). She also served several terms on the EPA's National Environmental Justice Advisory Council. (To learn more about her, see Villa's 2017 tribute, *Fighting for Environmental Justice: The Life and Work of Professor Eileen Gauna*, 57 *Natural Resources Journal* 519.)



Photo courtesy of American Bar Association.

UNM Hires Joseph A. Schremmer as Leon Karelitz Oil & Gas Law Professor

Professor Joe Schremmer joined the UNM law faculty in 2019, teaching courses in Oil and Gas Law, Commercial Law, and Property. His scholarship focuses on issues of oil, gas, and mineral law and the nature and extent of property rights in the subsurface of land. He previously served as a partner in a Wichita law firm, and as general counsel for a privately held oil and gas exploration, production, and service company. He taught as an Adjunct Professor at the University of Kansas School of Law and Washburn University School of Law, and was honored by Washburn's 2019 graduating class as Adjunct Professor of the Year.



Schremmer was the Editor-in-Chief of the *University of Kansas Law Review* and received the Samuel Mellinger Award as the top KU Law graduate in the areas of scholarship, leadership, and service.

“As a leading state in oil and gas production, New Mexico needs a law professor who focuses on these issues,” said NREL Program Director Reed D. Benson. “We are thrilled to have Joe Schremmer as UNM’s new Karelitz Chair, and we expect him to be an outstanding teacher and scholar in this evolving field.”

Faculty Scholarship and Presentations

Reed D. Benson has a new article published at 49 *Environmental Law Reporter* 11019 (Nov. 2019). The article, “Ongoing Actions, Ongoing Issues: Trying Again to Free Federal Dams from the ESA,” addresses the application of the Endangered Species Act to federal water projects operated by the Corps of Engineers or Bureau of Reclamation. The Trump Administration’s proposed ESA rules suggested a dramatic change to the way ESA Section 7 applies to “ongoing actions,” which could have greatly reduced protection for species affected by federal dam operations. The Administration did not adopt this change in its final rules, but the article views the suggested change as another effort to limit the application of the ESA to federal water projects, and identifies issues that are likely to arise in ESA consultations and litigation in this context.

Benson will be speaking in Washington, DC, on Nov. 20 at a meeting of two boards of the National Academy of Sciences/National Research Council, focusing on “Large River Management in the U.S.” The boards are examining the Upper Mississippi and Rio Grande Basins, focusing on water management challenges and the implications of climate change. Benson will be part of a panel addressing barriers to improved water management in the Rio Grande Basin.

Gabe Pacyniak’s article “Greening the Old New Deal: Reforming Rural Electricity Cooperative Governance” will be published in volume 85 of the *Missouri Law Review* in Spring 2020. The article argues that structural barriers and a weak and underdetermined system of governance is preventing some cooperatives from making prudent resource planning decisions in the face of climate change. Pacyniak is also working on an article about Climate Justice and Administrative Law, and recently presented on that topic at a Vermont Law Review Symposium on the Green New Deal in October. He will also be presenting on energy efficiency policy on a plenary panel at ACEEE’s 2020 Rural Energy Conference in Chicago in February.

Joe Schremmer’s article “Getting Past Possession: Subsurface Property Disputes as Nuisances” will be published in volume 95 of the *Washington Law Review*. In this piece, Schremmer takes on the assumption that unauthorized subsurface invasions from waste disposal, enhanced recovery operations, hydraulic fracturing, horizontal drilling, and (hypothetically) carbon dioxide storage are trespasses. Here, he argues that courts treat disputes arising from these and similar activities not as trespasses, but as nuisances. And the fact that subsurface disputes are analyzed as nuisances indicates the property interest in the subsurface is nonexclusive, nonpossessory, or incorporeal.

Cliff Villa completed the manuscript for *Environmental Justice: Law, Policy & Regulation* (Third Edition) together with co-authors Rebecca Bratspies (CUNY), Nadia Ahmad (Barry), and Roger Lin (Berkeley). Prof. Villa looks forward to publication of the book in time for adoption in his Environmental Justice seminar in the spring of 2020. He participated in a CLE program, “We Speak for Ourselves: Environmental Justice and the Power of Community Voices” along with artist and social activist Roger Montoya. Villa also presented at the Idaho 2019 Federal Bench-Bar Conference, and the 2019 Tribal Leadership Conference hosted by the Pueblo of Santa Ana.

Jeanette Wolfley presented in September at the University of Idaho Law School’s Water Law Conference speaking on the Lessons Learned in Water Adjudications and Settlements. She is writing an article on the topic due out in the January 2020 edition of the Water Report. She also presented at the 2019 Transitions Tribal Leadership Conference sponsored by the American Indian Law Center and hosted by the Pueblo of Santa Ana.

NREL Clinic Proposes Low Income Energy Efficiency Bill, Participates in Methane Regulation Expert Workgroup

Students in UNM’s Natural Resources and Environmental Law clinic worked with community stakeholders to draft and propose a new bill that would expand low-income energy efficiency services in the state. The bill seeks to reduce electricity costs for New Mexicans living under 200 percent of the poverty level as the state moves to meet a 100 percent zero-carbon electricity standard by 2045. Clinical law students worked with partner organizations Prosperity Works, Southwest Energy Efficiency Project (SWEET), and the Sierra Club to develop a new block grant policy model, conduct legal analysis, draft bill language, and testify in front of legislative committees.

Clinic Faculty Supervisor Gabe Pacyniak was also appointed by the state’s energy and environment cabinet secretaries to serve on a methane advisory panel workgroup. The group is tasked with providing technical input on measures that can reduce methane emissions from the oil and gas sector to inform the development of state regulations. Pacyniak and clinical law students working on the issue are serving as the representatives of the Center for Civic Policy, a community non-profit organization.

Reed D. Benson Elected to Rocky Mountain Mineral Law Foundation Board of Directors

Professor Reed D. Benson, Director of UNM's Natural Resources and Environmental Law Program, has been elected to the Foundation's board of directors. The Foundation is a nonprofit organization with over 3000 members worldwide, established in 1955 and dedicated to education and scholarship in the field of natural resources law. UNM has long been active in the Foundation, and today is one of its 34 "constituent law schools" in the U.S. and Canada.



"Rocky" has always been a leader in natural resources legal education, and I am honored to join its board of directors," said Benson. "I am especially excited to serve at a time of growth and change for the Foundation."

Benson has played various roles within the organization over the past decade, including serving as UNM's Trustee, editor of the Natural Resources Law Teachers Newsletter, and a member of the Scholarships Committee. Benson will serve as one of six at-large members of the board, which also includes two former presidents and the four current officers of the Foundation.

Stefanie Tsosie Hired for Tribal Partnerships Program at Earthjustice

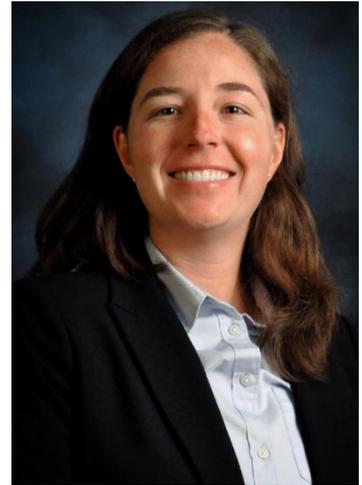
Stefanie Tsosie, a 2015 graduate of UNM Law, has been hired as a Senior Associate Attorney of the inaugural Tribal Partnerships Program at the national environmental law firm Earthjustice. She started at Earthjustice in 2015 as an associate attorney in the Pacific Northwest office, primarily working with tribal and indigenous clients. Stefanie has already been involved in several high-profile matters, including representing the Standing Rock Sioux Tribe in fighting the Dakota Access Pipeline and representing the Menominee Indian Tribe of Wisconsin in their advocacy against the Back 40 Mine.



In her new position, Stefanie will work to develop and strengthen Earthjustice's partnerships with tribal and indigenous clients, and will remain based in Seattle. A member of the Navajo Nation, Stefanie earned a degree in Sociology and Native American Studies from Stanford before law school. She was an outstanding student at UNM, graduating with awards for excellence in both Indian Law and Environmental Law.

2019 Graduate Ann Brethour Gains National Recognition

Ann Brethour, UNM Law Class of '19, earned second place in a national student writing competition on the Endangered Species Act, sponsored by the ABA's Section on Environment, Energy and Resources. Brethour's paper, "Taking Climate Risks Into Account Before Delisting," was originally written for a seminar at UNM taught by Visiting Prof. Pat Parenteau. The SEER Section often publishes such papers on its website. As a law student, Brethour was an editor with the *Natural Resources Journal*, and at graduation she received the NREL Certificate and the 2019 Natural Resources Program Award.



About UNM Law's 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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